

An Act

ENROLLED SENATE
BILL NO. 355

By: Rosino of the Senate

and

Sims, Phillips and Echols
of the House

An Act relating to motor vehicles; creating the Peer-to-Peer Car Sharing Program Act; defining terms; requiring assumption of liability for certain losses or injuries; providing for actions resulting in nonliability; providing for minimum compulsory insurance coverage; stating certain parties charged with maintaining insurance coverage; requiring certain primary insurance coverage; providing for controlling insurance coverage for out-of-state accidents; providing for when certain entities assume primary liability; requiring certain coverage and duty to defend; providing exceptions; requiring certain nondependence on other insurers; disallowing certain limits to liability and contracting; allowing for certain indemnification; providing for certain notice; making certain exclusions; allowing for certain insurance policy exclusions; stating the act does not invalidate, limit or restrict insurers from underwriting or the ability to cancel or nonrenew policies; requiring collection and verification of certain records; requiring retention of records; exempting owner from vicarious liability; providing for right to seek contribution; requiring certain insurable interest; providing for certain nonliability; allowing program to maintain certain policy coverages; requiring certain disclosures; stating certain requirements of car sharing program agreement; requiring certain recordkeeping; stating certain party responsibilities and requirements;

stating certain requirements of programs and owners; requiring verification of safety recalls; providing for certain nonuse of car; requiring certain notice; amending 68 O.S. 2011, Section 2110, as amended by Section 5, Chapter 316, O.S.L. 2012 (68 O.S. Supp. 2020, Section 2110), which relates to rental tax; specifying rental tax shall not apply to certain shared vehicles; providing for collection of tax; defining terms; authorizing the Oklahoma Tax Commission to prescribe certain rules and regulations; providing for codification; and providing an effective date.

SUBJECT: Creating the Peer-to-Peer Car Sharing Program Act

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050 of Title 47, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 15 of this act shall be known and may be cited as the "Peer-to-Peer Car Sharing Program Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1051 of Title 47, unless there is created a duplication in numbering, reads as follows:

As used in the Peer-to-Peer Car Sharing Program Act:

1. "Peer-to-peer car sharing" or "sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program;

2. "Peer-to-peer car sharing program" or "program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. A peer-to-peer car sharing program is not engaged in "renting motor vehicles without a driver" in Oklahoma within the meaning of Section

2110 of Title 68 of the Oklahoma Statutes, except as specifically provided in that section. A peer-to-peer car sharing program is not "engaged in the business of renting motor vehicles without drivers" under the provisions of Section 8-101 of Title 47 of the Oklahoma Statutes. A peer-to-peer car sharing program is not a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for the use of a shared vehicle. A peer-to-peer car sharing program shall not be considered a transportation network company as defined in Section 1011 of Title 47 of the Oklahoma Statutes;

3. "Peer-to-peer car sharing program agreement" or "agreement" means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program. A peer-to-peer car sharing program agreement is not a rental agreement within the meaning of Section 2110 of Title 68 of the Oklahoma Statutes, except as specifically provided in that section. A peer-to-peer car sharing program agreement is not an agreement to rent a motor vehicle without a driver under the provisions of Section 8-101 of Title 47 of the Oklahoma Statutes;

4. "Shared vehicle" or "vehicle" means a vehicle that is available for sharing through a peer-to-peer car sharing program. A shared vehicle is not a "motor vehicle that is rented" within the meaning of Section 2110 of Title 68 of the Oklahoma Statutes, except as specifically provided in that section. A shared vehicle is not a "motor vehicle engaged in the business of renting a motor vehicle without a driver" as described pursuant to Section 8-101 of Title 47 of the Oklahoma Statutes;

5. "Shared vehicle driver" or "driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement;

6. "Shared vehicle owner" or "owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program;

7. "Car sharing delivery period" or "delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program agreement;

8. "Car sharing period" or "sharing period" means the period of time that commences with the car sharing delivery period or, if there is no car sharing delivery period, that commences with the car sharing start time and, in either case, ends at the car sharing termination time;

9. "Car sharing start time" or "start time" means the time when the shared vehicle becomes subject to the control of the shared vehicle driver, at or after the time the reservation of a shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car sharing program; and

10. "Car sharing termination time" or "termination time" means the earliest of the following events:

- a. the expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement,
- b. when the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and the shared vehicle driver as communicated through a peer-to-peer car sharing program agreement, which alternatively agreed upon location shall be incorporated into the car sharing program agreement, or
- c. when the shared vehicle owner, or the shared vehicle owner's authorized designee, takes possession and control of the shared vehicle.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1052 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. A peer-to-peer car sharing program shall assume liability, except as provided in subsection B of this section, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period, in an amount stated in the peer-to-peer car sharing program agreement, which shall not be less than those set forth in Section 7-600 et seq. of Title 47 of the Oklahoma Statutes.

B. Notwithstanding the definition of "car sharing termination time" as set forth in Section 2 of this act, the assumption of liability under subsection A of this section shall not apply to any shared vehicle owner when a shared vehicle owner:

1. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred; or

2. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the car sharing program agreement.

C. Notwithstanding the definition of "car sharing termination time" as set forth in Section 2 of this act, the assumption of liability under subsection A of this section shall apply to bodily injury, property damage, uninsured and underinsured motorist or personal injury protection losses by damaged third parties required by Section 7-600 et seq. of Title 47 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1053 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts set forth in Section 7-600 et seq. of Title 47 of the Oklahoma Statutes, and:

1. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; or

2. Does not exclude use of a shared vehicle by a shared vehicle driver.

B. The insurance required under subsection A of this section may be satisfied by motor vehicle liability insurance maintained by:

1. A shared vehicle owner;

2. A shared vehicle driver;

3. A peer-to-peer car sharing program; or

4. Any combination of a shared vehicle owner, a shared vehicle driver and a peer-to-peer car sharing program.

C. The insurance required in subsection B of this section, that is satisfying the requirement of subsection A of this section, shall be primary during each car sharing period, and in the event that a claim occurs in another state with minimum financial responsibility limits higher than those provided pursuant to Section 7-600 et seq. of Title 47 of the Oklahoma Statutes, during the car sharing period, the coverage maintained under subsection E of this section shall satisfy the difference in minimum coverage amounts, up to the applicable policy limits.

D. The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsection A or B of this section shall assume primary liability for a claim when:

1. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by Section 5 of this act; or

2. A dispute exists as to whether the shared vehicle was returned to the alternatively agreed upon location as required under Section 2 of this act.

E. If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection B of this section has lapsed or does not provide the required coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage required by subsection A of this section beginning with the first dollar of a claim and shall have the duty to defend such claim except under circumstances as set forth in subsection B of Section 3 of this act.

F. Coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program shall not be dependent on another automobile insurer first denying a claim, nor shall another automobile insurance policy be required to first deny a claim.

G. Nothing in the Peer-to-Peer Car Sharing Program Act shall:

1. Limit the liability of the peer-to-peer car sharing program for any act or omission of the program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program; or

2. Limit the ability of the peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1054 of Title 47, unless there is created a duplication in numbering, reads as follows:

At the time a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1055 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy including, but not limited to:

1. Liability coverage for bodily injury and property damage;
2. Personal injury protection coverage;
3. Uninsured and underinsured motorist coverage;
4. Medical payments coverage;
5. Comprehensive physical damage coverage; and
6. Collision physical damage coverage.

B. Nothing in the Peer-to-Peer Car Sharing Program Act shall invalidate or limit an exclusion contained in a motor vehicle liability insurance policy including any insurance policy in use or approved for use, that excludes coverage for motor vehicles made available for rent, sharing, hire or for any business use.

C. Nothing in the Peer-to-Peer Car Sharing Program Act invalidates, limits or restricts an insurer's ability under existing law to underwrite any insurance policy. Nothing in the Peer-to-Peer Car Sharing Program Act invalidates, limits or restricts an insurer's ability under existing law to cancel and non-renew policies.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1056 of Title 47, unless there is created a duplication in numbering, reads as follows:

A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, car sharing period pickup and drop off

locations, fees paid by the shared vehicle driver and revenues received by the shared vehicle owner, and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation or litigation. The peer-to-peer car sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1057 of Title 47, unless there is created a duplication in numbering, reads as follows:

A peer-to-peer car sharing program and a shared vehicle owner shall be exempt from vicarious liability consistent with 49 U.S.C., Section 30106, and under any state or local law that imposes liability solely based on vehicle ownership.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1058 of Title 47, unless there is created a duplication in numbering, reads as follows:

A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period; and
2. Excluded under the terms of its policy.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1059 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other law, statute, rule or regulation to the contrary, a peer-to-peer car sharing program shall have an insurable interest in a shared vehicle during the car sharing period.

B. Nothing in this section shall create liability on a peer-to-peer car sharing program to maintain the coverage mandated by Section 4 of this act.

C. A peer-to-peer car sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance that provide coverage for:

1. Liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement;
2. Liability of the shared vehicle owner;
3. Damage or loss to the shared motor vehicle; or
4. Liability of the shared vehicle driver.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1060 of Title 47, unless there is created a duplication in numbering, reads as follows:

Each car sharing program agreement made in this state shall disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement;

2. That a motor vehicle liability insurance policy issued to the shared vehicle owner for the shared vehicle, or to the shared vehicle driver, does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program;

3. That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;

4. The daily rate, fees and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;

5. That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle;

6. An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries; and

7. If there are conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared motor vehicle.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1061 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. A peer-to-peer car sharing program may not enter into a peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle:

1. Holds a driver license issued under Section 6-101 et seq. of Title 47 of the Oklahoma Statutes that authorizes the driver to operate vehicles of the class of the shared vehicle;

2. Is a nonresident who:

a. has a driver license issued by the state or country of the driver's residence that authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle, and

b. is at least the same age as that required of a resident to drive; or

3. Otherwise is specifically authorized by Section 6-101 et seq. of Title 47 of the Oklahoma Statutes to drive vehicles of the class of the shared vehicle.

B. A peer-to-peer car sharing program shall keep a record of:

1. The name and address of the shared vehicle driver;

2. The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

3. The place of issuance of the driver license.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1062 of Title 47, unless there is created a duplication in numbering, reads as follows:

A peer-to-peer car sharing program shall have sole responsibility for any equipment, such as a Global Positioning System or other special equipment, that is put in or on the vehicle to monitor or facilitate the car sharing transaction, and shall agree to indemnify and hold harmless the vehicle owner for any damage to or theft of such equipment during the sharing period not caused by the vehicle owner. The peer-to-peer car sharing program has the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that occurs during the sharing period.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1063 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. At the time a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program, and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner of the requirements under subsection B of this section.

B. 1. If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, a shared vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer car sharing program until the safety recall repair has been made.

2. If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car sharing program, the shared vehicle owner shall remove the shared vehicle as available on the peer-to-peer car sharing program, as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

3. If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, as soon as practicably possible after receiving the notice of the safety recall, the shared vehicle owner shall notify the peer-to-peer car sharing program about the safety recall so that the shared vehicle owner may address the safety recall repair.

SECTION 15. AMENDATORY 68 O.S. 2011, Section 2110, as amended by Section 5, Chapter 316, O.S.L. 2012 (68 O.S. Supp. 2020, Section 2110), is amended to read as follows:

Section 2110. A. There is hereby levied a rental tax of six percent (6%) on the gross receipts of all motor vehicle rental agreements as provided in this section. This tax shall be levied on any rental agreement of ninety (90) days or less duration on any motor vehicle that is rented to a person by a business engaged in renting motor vehicles without a driver in Oklahoma, irrespective of the state in which the vehicle is registered. This rental tax shall not apply to the following:

1. Any lease agreements;

2. Any truck or truck-tractor registered pursuant to the provisions of Section 1120 or Section 1133 of Title 47 of the Oklahoma Statutes having a laden weight or a combined laden weight of eight thousand (8,000) pounds or more; ~~or~~

3. Any trailer or semitrailer registered pursuant to the provisions of Section 1133 of Title 47 of the Oklahoma Statutes. For purposes of this section, "vehicle" and "person" shall have the same meanings as defined in Section 2101 of this title; or

4. Any shared vehicle upon the purchase of which applicable taxes were paid.

B. The rental tax specified in subsection A of this section shall be apportioned in the manner as provided in Section 2102 of this title.

C. A deduction from gross receipts for bad debts shall be allowed for the rental tax specified in subsection A of this section. For purposes of this section, "bad debts" shall have the same meaning as defined in Section 1366 of this title.

D. The tax hereby levied shall be collected from the person renting the vehicle or shared vehicle driver at the time of the payment of the rental agreement and shall be due and payable to the Oklahoma Tax Commission by the business engaged in renting these vehicles or peer-to-peer car sharing program, but only with respect to shared vehicles upon the purchase of which applicable taxes were not paid, on the twentieth day of each month following the month in which payments for rental agreements subject to tax are made. The Tax Commission shall ~~implement such rules and regulations and~~ devise such forms as it deems necessary for the orderly collection of this tax and the excise tax and penalty provided for in paragraph ~~9~~ 10 of Section 2105 of this title.

E. The provisions of this section shall not apply to state government entities.

F. As used in this section:

1. "Rental agreement" means an agreement of ninety (90) days or less duration on any motor vehicle that is rented to a person by a business engaged in renting motor vehicles without drivers in this state and includes those peer-to-peer car sharing agreements only involving shared vehicles for which the shared vehicle owner has not paid the applicable taxes upon purchase of the shared vehicle;

2. "Applicable taxes" means, with respect to shared vehicles purchased in Oklahoma, motor vehicle excise taxes levied under Section 2103 of this title and sales taxes levied under Sections 1354 and 1355 of this title. With respect to vehicles not purchased in Oklahoma, applicable taxes refers to the sales, use, excise or other tax generally due upon the purchase of a motor vehicle in the jurisdiction in which the shared vehicle was purchased;

3. "Peer-to-peer car sharing program" shall have the same definition set forth in Section 2 of the Peer-to-Peer Car Sharing Program Act;

4. "Car sharing program agreement" shall have the same definition set forth in Section 2 of the Peer-to-Peer Car Sharing Program Act;

5. "Shared vehicle" shall have the same definition set forth in Section 2 of the Peer-to-Peer Car Sharing Program Act;

6. "Shared vehicle owner" shall have the same definition set forth in Section 2 of the Peer-to-Peer Car Sharing Program Act; and

7. "Shared vehicle driver" shall have the same definition set forth in Section 2 of the Peer-to-Peer Car Sharing Program Act.

G. The Oklahoma Tax Commission is authorized to prescribe rules and regulations as necessary to implement the provisions of this section.

SECTION 16. This act shall become effective November 1, 2021.

Passed the Senate the 9th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____