

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 671

BY SENATORS TRUMP AND WOELFEL

[Originating in the Committee on Banking and
Insurance; reported on February 25, 2022]

1 A BILL to amend and reenact §17A-6F-1, §17A-6F-2, §17A-6F-3, §17A-6F-5, §17A-6F-7, and
2 §17A-6F-13 of the Code of West Virginia, 1931, as amended, all relating to the regulation
3 of peer-to-peer car sharing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. PEER-TO-PEER CAR SHARING PROGRAMS.

§17A-6F-1. Scope.

1 This article is intended to govern the intersection of peer-to-peer car services, the state-
2 regulated business of insurance, and state and local taxation of the business transaction. ~~and the~~
3 ~~airport and airport authorities authority to regulate peer-to-peer car services provided to airport~~
4 ~~customers~~ This article does not void, abrogate, restrict, or affect any requirements of §17A-6D-1
5 *et seq.* of this code relating to daily passenger rental car business or §17A-6A-1 *et seq.* of this
6 code relating to motor vehicle dealers, distributors, wholesalers, and manufacturers.

§17A-6F-2. Definitions.

1 As used in this article:

2 “Peer-to-peer car sharing” means the authorized use of a vehicle by an individual other
3 than the vehicle’s owner through a peer-to-peer car sharing program. “Peer-to-peer car sharing”
4 is not a “daily passenger rental car business” as licensed by the provisions of §17A-6D-1 *et seq.*
5 of this code.

6 “Peer-to-peer car sharing program” means a business platform that connects vehicle
7 owners with drivers to enable the sharing of vehicles for financial consideration. “Peer-to-peer car
8 sharing program” does not mean a service provider who is solely providing hardware or software
9 as a service to a person or entity that is not effectuating payment of financial consideration for
10 use of a shared vehicle. For purposes of this section, “hardware” does not mean a motor vehicle
11 as defined by the provisions of §17A-1-1(b) of this code. “Peer-to-peer car sharing program” does
12 not mean a “daily passenger rental car business” as licensed by the provisions of §17A-6D-1 *et*

13 *seq.* of this code. “Peer-to-peer car sharing program” does not include a program provided to a
14 business’s own employees.

15 “Car sharing program agreement” means the terms and conditions applicable to a shared
16 vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-
17 to-peer car sharing program. “Car sharing program agreement” does not mean “master rental
18 agreement” or “rental agreement” as used in §17A-6D-1 *et seq.* of this code.

19 “Shared vehicle” means a vehicle that is available for sharing through a peer-to-peer car
20 sharing program. “Shared vehicle” does not mean a rental car or a rental vehicle as used in a
21 “daily passenger rental car business” licensed by the provisions of §17A-6D-1 *et seq.* of this code.

22 “Shared vehicle driver” means an individual who has been authorized to drive the shared
23 vehicle by the shared vehicle owner under a car sharing program agreement.

24 “Shared vehicle owner” means the registered owner, or a person or entity designated by
25 the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a
26 peer-to-peer car sharing program.

27 “Car sharing delivery period” means the period of time during which a shared vehicle is
28 being delivered to the location of the car sharing start time, if applicable, as documented by the
29 governing car sharing program agreement.

30 “Car sharing period” means the period of time that commences with the car sharing
31 delivery period or, if there is no car sharing delivery period, that commences with the car sharing
32 start time, and in either case ends at the car sharing termination time.

33 “Car sharing start time” means the time when the shared vehicle becomes subject to the
34 control of the shared vehicle driver at or after the time the reservation of a shared vehicle is
35 scheduled to begin as documented in the records of a peer-to-peer car sharing program.

36 “Car sharing termination time” means the earliest of the following events:

37 The expiration of the agreed upon period of time established for the use of a shared vehicle
38 according to the terms of the car sharing program agreement if the shared vehicle is delivered to
39 the location agreed upon in the car sharing program agreement;

40 When the shared vehicle is returned to a location as alternatively agreed upon by the
41 shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car
42 sharing program, and which alternatively agreed upon location shall be incorporated into the car
43 sharing program agreement; or

44 When the shared vehicle owner or the shared vehicle owner's authorized designee takes
45 possession and control of the shared vehicle.

§17A-6F-3. Insurance coverage during car sharing period.

1 (a) A peer-to-peer car sharing program shall assume liability, except as provided in
2 subsection (b) of this section, of a shared vehicle owner for bodily injury or property damage to
3 third parties and uninsured and underinsured motorist ~~and personal injury protection~~ losses during
4 the car sharing period in an amount stated in the peer-to-peer car sharing program agreement
5 which amounts may not be less than ~~\$750,000~~ than those set forth in § 17D-4-2 and §33-6-31 of
6 this code.

7 (b) Notwithstanding the definition of "car sharing termination time" as defined in this article,
8 the assumption of liability under subsection (a) of this section does not apply to any shared vehicle
9 owner when:

10 (1) A shared vehicle owner makes an intentional or fraudulent material misrepresentation
11 or omission to the peer-to-peer car sharing program before the car sharing period in which the
12 loss occurred; or

13 (2) Acting in concert with a shared vehicle driver who fails to return the shared vehicle
14 pursuant to the terms of the car sharing program agreement.

15 (c) Notwithstanding the definition of "car sharing termination time" as defined in this article,
16 the assumption of liability under subsection (a) of this section would apply to bodily injury, property

17 damage, uninsured and underinsured motorist, ~~or personal injury protection~~ losses by damaged
18 third parties in the same manner required by §17D-4-2 and §33-6-31 of this code.

19 (d) A peer-to-peer car sharing program shall ensure that, during each car sharing period,
20 the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability
21 insurance policy that provides insurance coverage which amounts may not be less than the
22 amounts set forth in ~~subsection (a)~~ §17D-4-2 and §33-6-31 of this code and either:

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

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

26 (e) The insurance described under subsection (d) of this section may be satisfied by motor
27 vehicle liability insurance maintained by:

28 (1) A shared vehicle owner;

29 (2) A shared vehicle driver;

30 (3) A peer-to-peer car sharing program; or

31 (4) A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer
32 car sharing program.

33 (f) The insurance described in subsection (e) of this section that is satisfying the insurance
34 requirement of subsection (d) of this section shall be the primary insurance during each car
35 sharing period. If a claim occurs during the car sharing period in another state with minimum
36 financial responsibility limits higher than required by §17D-4-2 of this code, the coverage
37 maintained under subsection (e) of this section shall satisfy the minimum financial responsibility
38 limits of such other state, up to the applicable policy limits that may exceed the minimum financial
39 responsibility limits.

40 (g) The insurer, insurers, or peer-to-peer car sharing program providing coverage under
41 shall assume primary liability for a claim when it is, in whole or in part, providing the insurance

42 ~~required under~~ subsections (d) and (e) of this section and shall assume primary liability for a claim
43 when:

44 (1) A dispute exists as to who was in control of the shared motor vehicle at the time of the
45 loss; ~~and (2) The, and the~~ peer-to-peer car sharing program does not have available, did not
46 retain, or fails to provide the information required by ~~this article~~ §17A-6F-6 of this code; or

47 (2) A dispute exists as to whether the shared vehicle was returned to the alternatively
48 agreed upon location as required by the definition of car sharing termination time as defined in
49 §17A-6F-2 of this code.

50 ~~(3) (h) The insurer, insurers, or A~~ peer-to-peer car sharing program providing coverage
51 under subsection (g) of this section may seek indemnity from a shared vehicle owner if the shared
52 vehicle owner is determined to have been the operator of the shared vehicle at the time of the
53 loss.

54 ~~(h)(i)~~ If insurance maintained by a shared vehicle owner or shared vehicle driver in
55 accordance with subsection (e) of this section has lapsed or does not provide the required
56 coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage
57 required by subsection (d) of this section beginning with the first dollar of a claim and have the
58 duty to defend such claim except under circumstances as set forth in this section.

59 ~~(i) (j)~~ Coverage under an automobile insurance policy maintained by the peer-to-peer car
60 sharing program shall not be dependent on another automobile insurer first denying a claim nor
61 shall another automobile insurance policy be required to first deny a claim.

62 ~~(j) (k)~~ Nothing in this article may be interpreted as either limiting or restricting:

63 (1) The liability of the peer-to-peer car sharing program for any act or omission of the peer-
64 to-peer car sharing program itself that results in injury to any person as a result of the use of a
65 shared vehicle through a peer-to-peer car sharing program; or

66 (2) The ability of the peer-to-peer car sharing program to, by contract, seek indemnification
67 from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the

68 peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car
69 sharing program agreement.

70 ~~(k) If a dispute arises as to whether the car sharing termination time has transpired, or if a~~
71 ~~car return calls into question whether the car sharing termination time has transpired, or if a car~~
72 ~~return calls into question whether the car sharing termination time has occurred, the peer to peer~~
73 ~~car sharing program shall extend primary coverage for the loss. If during the investigation of the~~
74 ~~claim it becomes apparent that one of the parties to the car sharing program agreement was~~
75 ~~negligent, engaged in misrepresentation, or is otherwise responsible for the loss, the car sharing~~
76 ~~program may seek recovery from one or both parties directly through subrogation.~~

§17A-6F-5. Exclusions for personal vehicle liability insurance policy.

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

- 4 (1) Liability coverage for bodily injury and property damage;
- 5 ~~(2) Personal injury protection coverage;~~
- 6 ~~(3) (2) Uninsured and underinsured motorist coverage;~~
- 7 ~~(4) (3) Medical payments coverage;~~
- 8 ~~(5) (4) Comprehensive physical damage coverage; and~~
- 9 ~~(6) (5) Collision physical damage coverage.~~

10 (b) Nothing in this article shall may be construed as invalidating or limiting an exclusion
11 contained in a motor vehicle liability insurance policy, including any insurance policy in use or
12 approved for use that excludes coverage for motor vehicles made available for rent, sharing, or
13 hire, or for any business use.

14 (c) Nothing in this article may be interpreted as either limiting or restricting an insurer's
15 ability to exclude insurance coverage from any insurance policy or an insurer's ability to
16 underwrite any insurance policy pursuant to §33-6A-1 *et seq.* of this code.

§17A-6F-7. Exemption; vicarious liability.

1 A peer-to-peer car sharing program and a shared vehicle owner are exempt from vicarious
2 liability ~~in accordance~~ consistent with 49 U.S.C. §30106 and under any state or local law that
3 imposes liability solely based on vehicle ownership.

§17A-6F-13. Registration, notification, and automobile safety recalls.

1 (a) At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-
2 peer car sharing program and prior to the time when the shared vehicle owner makes a shared
3 vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car
4 sharing program shall:

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

7 (2) Notify the shared vehicle owner of the requirements of subsection (b) of this section;
8 and

9 ~~(3) Notify the shared vehicle owner that the shared vehicle owner's personal insurance~~
10 ~~may exclude peer to peer car sharing activity.~~

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

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

19 (3) If a shared vehicle owner receives an actual notice of a safety recall while the shared
20 vehicle is being used in the possession of a shared vehicle driver, as soon as practicably possible
21 after receiving the notice of the safety recall, the shared vehicle owner shall notify the peer-to-

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- 22 peer car sharing program about the safety recall so that the shared vehicle owner may address
- 23 the safety recall repair.