

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
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As Engrossed: S3/15/21 S3/22/21
A Bill

SENATE BILL 351

By: Senator Irvin
By: Representative Evans

For An Act To Be Entitled

*AN ACT TO REGULATE PEER-TO-PEER CAR-SHARING PROGRAMS;
AND TO CREATE THE PEER-TO-PEER CAR-SHARING PROGRAM
ACT.*

Subtitle

*TO REGULATE PEER-TO-PEER CAR-SHARING
PROGRAMS; AND TO CREATE THE PEER-TO-PEER
CAR-SHARING PROGRAM ACT.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code Title 23, Chapter 13, is amended to add an
additional subchapter to read as follows:*

Subchapter 8 – Peer-to-peer Car-Sharing Program Act

23-13-801. Title.

*This subchapter shall be known and may be cited as the "Peer-to-peer
Car-Sharing Program Act".*

23-13-802. Definitions.

As used in this subchapter:

*(1) "Car-sharing delivery period" means the period of time
during which a shared vehicle is being delivered to the location of a car-
sharing start time, if applicable, as documented by the governing car-sharing
program agreement;*

(2) "Car-sharing period" means a period of time:



(A) That commences with the car-sharing delivery period and ends at the car-sharing termination time; or

(B) If there is no car-sharing delivery period, that commences with the car-sharing start time and ends at the car-sharing termination time;

(3)(A) "Car-sharing program 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.

(B) "Car-sharing program agreement" does not mean a rental car agreement with a rental car company;

(4) "Car-sharing start time" means the time when a 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 by a car-sharing program agreement;

(5) "Car-sharing termination time" means the earliest of:

(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 to in the car-sharing program agreement;

(B) The return of the shared vehicle 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 and whose location is incorporated into the car-sharing program agreement; or

(C) The taking of possession and control of the shared vehicle by the shared-vehicle owner or the shared-vehicle owner's authorized designee;

(6)(A) "Peer-to-peer car-sharing" means the authorized use of a motor vehicle by an individual other than the motor vehicle's owner through a peer-to-peer car-sharing program.

(B) "Peer-to-peer car-sharing" does not include the services offered by a rental car company;

(7)(A) "Peer-to-peer car-sharing program" means a business platform that connects a motor vehicle owner with a driver to enable the sharing of a motor vehicle for financial consideration.

(B) "Peer-to-peer car-sharing program" does not include:

(i) A service offered by a rental car company; or
(ii) A service provider that 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;

(8) "Rental car company" means:

(A) A business engaged in the rental of motor vehicles that is subject to § 27-16-605; and

(B) Is not a peer-to-peer car-sharing program;

(9)(A) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program.

(B) "Shared vehicle" does not include a rental vehicle provided by a rental car company;

(10) "Shared-vehicle driver" means an individual who is authorized to drive a shared vehicle by a shared-vehicle owner under a car-sharing program agreement; and

(11) "Shared-vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to a shared-vehicle driver through a peer-to-peer car-sharing program.

23-13-803. Marketplace facilitator obligations.

(a) A peer-to-peer car-sharing program that rents or leases a motor vehicle through an online-enabled business platform shall be considered a marketplace facilitator as defined in § 26-52-103.

(b) As a marketplace facilitator, if in the previous calendar year or the current calendar year a peer-to-peer car-sharing program facilitates either aggregate sales of one hundred thousand dollars (\$100,000) or two hundred (200) transactions, the peer-to-peer car-sharing program shall collect and remit the applicable sales tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(c) A peer-to-peer car-sharing platform is obligated to collect and remit the rental vehicle tax levied under § 26-63-302(a)(1)(B).

23-13-804. Airport authority.

A municipal airport commission created under the Airport Commission

Act, § 14-359-101 et seq., or a regional airport authority created under the Regional Airport Act, § 14-362-101 et seq., may impose tolls and fees on a peer-to-peer car-sharing program as authorized by §§ 14-359-109 and 14-362-109.

23-13-805. Insurance requirements.

(a) Except as provided in subsection (b) of this section, a peer-to-peer car-sharing program shall assume liability of a shared-vehicle owner for bodily injury or property damage under an automobile liability insurance policy to third parties or uninsured or underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the car-sharing program agreement, but the amount shall not be less than those stated in § 27-22-104.

(b) Notwithstanding the car-sharing termination time, the assumption of liability under subsection (a) of this section does not apply to a shared-vehicle owner if:

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

(2) A shared-vehicle owner has acted in concert with a shared-vehicle driver who fails to return the shared vehicle under the terms of the car-sharing program agreement.

(c) Notwithstanding the definition of car-sharing termination time, the assumption of liability under subsection (a) of this section applies to bodily injury, property damage, and uninsured and underinsured motorist or personal injury protection losses by damaged third parties as applicable to the minimum coverage required in § 27-22-104 by a shared-vehicle owner.

(d) A peer-to-peer car-sharing program shall ensure that during each car-sharing period, a shared-vehicle owner and a shared-vehicle driver are insured under an automobile liability insurance policy that:

(1) Provides insurance coverage in amounts no less than the minimum coverage required in § 27-22-104;

(2) Recognizes that the shared vehicle insured under the automobile liability insurance policy is made available and used through a peer-to-peer car-sharing program; and

(3) Does not exclude the use of a shared vehicle by a shared-

vehicle driver.

(e) The insurance requirements under subsection (d) of this section may be satisfied by automobile 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 the persons or entity described in subdivisions (e)(1)-(3) of this section.

(f) Except as otherwise provided in this section:

(1) The insurance described in subsection (e) of this section that is used to satisfy the insurance requirements of subsection (d) of this section is considered the primary insurance policy during each car-sharing period; and

(2) If a claim occurs in another state with minimum financial responsibility limits higher than the requirements in this state 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.

(g) An insurer or peer-to-peer car-sharing program providing coverage under subsection (d) or subsection (e) of this section shall assume primary liability for a claim if:

(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 § 23-13-807; or

(2) A dispute exists as to whether the shared vehicle was returned to the alternatively agreed upon location as required under § 23-13-802(5)(B).

(h) If automobile liability insurance maintained by a shared-vehicle owner or a shared-vehicle driver according to subsection (e) of this section has lapsed or does not provide the coverage required by subsection (d) of this section, then:

(1) Insurance maintained by a peer-to-peer car-sharing program shall provide the coverage required in subsection (d) of this section beginning with the first one dollar (\$1.00) of a claim; and

(2) Except under circumstances described in subsection (b) of

this section, a peer-to-peer car-sharing program has the duty to defend a claim.

(i) Coverage under an automobile liability insurance policy maintained by a peer-to-peer car-sharing program is not dependent on:

(1) Another insurer's first denying a claim; or

(2) An automobile liability insurance policy's being required to first deny a claim.

(j) This section does not limit the:

(1) Liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing 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) Ability of a peer-to-peer car-sharing program, by contract, to seek indemnification from a shared-vehicle owner or a shared-vehicle driver for economic loss sustained by a peer-to-peer car-sharing program resulting from a breach of the terms and conditions of the car-sharing program agreement.

23-13-806. Notification of implications of lien.

At the time when a motor vehicle owner registers as a shared-vehicle owner on a peer-to-peer car-sharing program and before the time when a shared-vehicle owner makes a shared vehicle available for car sharing on a peer-to-peer car-sharing program, a peer-to-peer car-sharing program shall notify the shared-vehicle owner that if there is a lien against the shared vehicle, then 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.

23-13-807. Exclusions in automobile liability insurance policies.

(a) An authorized insurer that writes automobile liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for a claim afforded under a shared-vehicle owner's automobile liability insurance policy, including without limitation:

(1) Liability coverage for bodily injury and property damage;

(2) Personal injury protection coverage as defined in Arkansas law;

(3) Uninsured and underinsured motorist coverage;

(4) Medical payments coverage;

(5) Comprehensive physical damage coverage; and

(6) Collision physical damage coverage.

(b) This subchapter does not invalidate or limit an exclusion contained in an automobile liability insurance policy, including an insurance policy in use or approved for use that excludes coverage for a motor vehicle made available for rent, sharing, or hire for any business use.

(c) This subchapter does not invalidate, limit, or restrict an insurer's ability under existing law to underwrite an insurance policy or to cancel and nonrenew policies.

23-13-808. Record keeping – Use of motor vehicle in peer-to-peer car-sharing program.

(a) A peer-to-peer car-sharing program shall collect, verify, and maintain the records pertaining to the use of a motor vehicle, including without limitation times used, car-sharing period, pick-up and drop-off locations, fees paid by the shared-vehicle driver, and revenues received by the shared-vehicle owner.

(b) Upon request by a shared-vehicle owner, a shared-vehicle driver, an insurer of a shared-vehicle owner, or an insurer of a shared-vehicle driver, a peer-to-peer car-sharing program shall provide the information described in subsection (a) of this section to facilitate a claim coverage investigation, settlement, negotiation, or litigation.

(c) 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.

23-13-809. Exemption – Vicarious liability.

A peer-to-peer car-sharing program and a shared-vehicle owner are exempt from vicarious liability under 49 U.S.C. § 30106, as it existed on January 1, 2021, and under any state law or local ordinance that imposes liability based solely on motor vehicle ownership.

23-13-810. Indemnification – Insurable interest.

(a) An automobile liability insurer that defends or indemnifies a

claim against a shared vehicle that is excluded under the terms of the shared vehicle's policy may seek recovery against the automobile liability 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 the policy.

(b) Notwithstanding any other law to the contrary, a peer-to-peer car-sharing program shall have an insurable interest in a shared vehicle during the car-sharing period.

(c) This section does not create liability on a peer-to-peer car-sharing program to maintain the coverage mandated by this subchapter.

(d) A peer-to-peer car-sharing program may own and maintain as the named insured one (1) or more policies of an automobile liability insurer that provides coverage for:

(1) Liabilities assumed by the peer-to-peer car-sharing program under a car-sharing program agreement;

(2) Any liability of the shared-vehicle owner;

(3) Damage or loss to the shared vehicle; or

(4) Any liability of the shared-vehicle driver.

23-13-811. Consumer protection disclosures.

A car-sharing program agreement made in this state shall disclose to a shared-vehicle owner and a shared-vehicle driver:

(1) Any right of the peer-to-peer car-sharing program to seek indemnification from a shared-vehicle owner or a 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 an automobile liability insurance policy issued to a shared-vehicle owner for the shared vehicle or to a shared-vehicle driver does not provide a defense or indemnification for a claim asserted by a peer-to-peer car-sharing program;

(3) That a peer-to-peer car-sharing program's insurance coverage of a shared-vehicle owner and a 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 a shared-vehicle owner or a shared-vehicle driver;

(5) That a shared-vehicle owner's automobile liability insurance may not provide coverage for a shared vehicle;

(6) An emergency telephone number to personnel capable of fielding matters related to roadside assistance and other customer service inquiries; and

(7) Whether or not there are conditions under which a shared-vehicle driver shall maintain a personal automobile liability insurance policy with certain applicable coverage limits on a primary basis in order to reserve or book a shared vehicle.

23-13-812. Driver's license verification – Data retention.

(a) A peer-to-peer car-sharing program shall not enter into a car-sharing program agreement with a driver unless the driver who is to operate a shared vehicle:

(1) Holds a driver's license issued under the laws of this state that authorizes the driver to operate a motor vehicle of the class of the shared vehicle;

(2) Is a nonresident who:

(A) Has a driver's license issued by the state or country of the driver's residence that authorizes the driver in that state or country to drive a motor vehicle of the class of the shared vehicle; and

(B) Is at least the same age as that required of a resident of this state to drive; or

(3) Otherwise is specifically authorized by the laws of this state to drive a motor vehicle 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 a shared-vehicle driver;

(2) The number of the driver's license of a shared-vehicle driver and each other person, if any, who will operate a shared vehicle; and

(3) The place of issuance of the driver's license of the shared-vehicle driver.

23-13-813. Responsibility for equipment.

(a)(1) A peer-to-peer car-sharing program has sole responsibility for any equipment, including without limitation a global positioning device or other special equipment, that is installed by the peer-to-peer car-sharing program in or on the shared vehicle to monitor or facilitate a car-sharing program agreement.

(2) A peer-to-peer car-sharing program shall agree to indemnify and hold harmless a shared-vehicle owner for any damage to or theft of any equipment installed by the peer-to-peer car-sharing program during the car-sharing period not caused by the shared-vehicle owner.

(b) A peer-to-peer car-sharing program may seek indemnity from a shared-vehicle driver for any loss or damage to the equipment installed by the peer-to-peer car-sharing program that occurs during the car-sharing period.

23-13-814. Automobile safety recalls.

(a) At the time when a vehicle owner registers as a shared-vehicle owner in a peer-to-peer car-sharing program and before the time when a shared-vehicle owner makes a shared vehicle available for car sharing through 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 shared 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 a shared-vehicle owner has received an actual notice of a safety recall on a shared vehicle, then a shared-vehicle owner shall not make a motor vehicle available as a shared vehicle through a peer-to-peer car-sharing program until the safety recall repair has been made.

(2)(A) If a shared-vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available through the peer-to-peer car-sharing program, then 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.

(B) Until the safety recall repair has been completed, a

shared-vehicle owner shall not make a motor vehicle available as a shared vehicle through a peer-to-peer car-sharing program.

(3) If a shared-vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used and is in the possession of the shared-vehicle driver, then, 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.

/s/Irvin