

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 671

BY SENATORS TRUMP AND WOELFEL

[Introduced February 18, 2022; referred
to the Committee on Banking and Insurance; and then to
the Committee on the Judiciary]

1 A BILL to amend and reenact §17A-6F-1, §17A-6F-2, §17A-6F-3, §17A-6F-5, §17A-6F-7, §17A-
 2 6F-13, and §17A-6F-15 of the Code of West Virginia, 1931, as amended, all relating to
 3 modernizing the regulation of peer-to-peer car-sharing services in West Virginia.

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). “Peer-to-peer car sharing program” does not mean
 12 a “daily passenger rental car business” as licensed by the provisions of §17A-6D-1 *et seq.* of this

13 code. "Peer-to-peer car sharing program" does not include a program provided to a business's
14 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 those terms are 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
22 code.

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

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

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

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

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

37 "Car sharing termination time" means the earliest of the following events:

38 The expiration of the agreed upon period of time established for the use of a shared vehicle

39 according to the terms of the car sharing program agreement if the shared vehicle is delivered to
40 the location agreed upon in the car sharing program agreement;

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

45 When the shared vehicle owner or the shared vehicle owner's authorized designee, takes
46 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 and if a claim occurs in another state with minimum financial responsibility limits
36 higher than §17D-4-2 of this code, during the car sharing period, the coverage maintained under
37 subsection (e) shall satisfy the difference in minimum coverage amounts, up to the applicable
38 policy limits.

39 (g) The insurer, insurers or, peer-to-peer car sharing program providing coverage under
40 shall assume primary liability for a claim when it is, in whole or in part, providing the insurance
41 required under subsections (d) and (e) of this section and:

42 (1) A dispute exists as to who was in control of the shared motor vehicle at the time of the
43 loss; and (2) ~~The~~ the peer-to-peer car sharing program does not have available, did not retain, or

44 fails to provide the information required by ~~this article~~ §17A-6F-6 of this code.

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

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

52 ~~(h)~~(i) If insurance maintained by a shared vehicle owner or shared vehicle driver in
53 accordance with subsection (e) of this section has lapsed or does not provide the required
54 coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage
55 required by subsection (d) of this section beginning with the first dollar of a claim and have the
56 duty to defend such claim except under circumstances as set forth in ~~this section.~~ §17A-6F-3(b of
57 this code.

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

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

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

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

69 ~~(k) If a dispute arises as to whether the car sharing termination time has transpired, or if a~~

70 ~~car return calls into question whether the car sharing termination time has transpired, or if a car~~
 71 ~~return calls into question whether the car sharing termination time has occurred, the peer-to-peer~~
 72 ~~car sharing program shall extend primary coverage for the loss. If during the investigation of the~~
 73 ~~claim it becomes apparent that one of the parties to the car sharing program agreement was~~
 74 ~~negligent, engaged in misrepresentation, or is otherwise responsible for the loss, the car sharing~~
 75 ~~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 this section; and

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

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

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

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

§17A-6F-15. Controlling authority; taxation and other requirements of a peer-to-peer car sharing program.

1 (a) Licensure, registration, and qualification. A municipality, county or other local
2 governmental entity, or special district may not require a peer-to-peer car sharing program to
3 obtain a business license or any other similar authorization to operate within the jurisdiction, or
4 subject a peer-to-peer car sharing program or a shared vehicle owner to any licensure
5 requirement, fee, entry requirement, registration requirement, operating or operational
6 requirement, or any other requirement.

7 (b) *Duty to collect tax.* A peer-to-peer car sharing program operating in this state pursuant
8 to the provisions of this article shall collect and remit all state and municipal consumer sales and
9 service and use taxes on all taxable sales of services to purchasers in this state. For the purposes
10 of collection of tax required under §11-15A-6 and §11-15A-6b of this code, a “peer-to-peer car
11 sharing program” is a remote seller, marketplace facilitator, or referrer that meets the
12 requirements of §11-15A-1(b) of this code.

13 (c) A peer-to-peer car sharing program operating in this state pursuant to the provisions
14 of this article is not subject to the collection and remittance requirements of the daily rental car
15 passenger tax in §17A-6D-2 of this code.

16 (d) A peer-to-peer car sharing program operating in this state pursuant to the provisions
17 of this article may collect the vehicle license cost recovery fee authorized by §17A-6D-16 of this
18 code in the same manner as a daily passenger car rental business.

19 (e) *Limitations and interpretation.*

20 (1) No provision of this section or this article may be interpreted to require or to void,
21 abrogate, restrict, or affect imposition of the ad valorem property tax on tangible personal property
22 of a peer-to-peer car sharing program or of a shared vehicle owner by any levying body.

23 (2) No provision of this section or this article may be interpreted to require or to void,
24 abrogate, restrict, or affect imposition of the state personal income tax or state corporation net
25 income tax on a peer-to-peer car sharing program or a shared vehicle owner.

26 (3) No provision of this section or this article may be interpreted to require or void,

27 abrogate, restrict, or affect imposition of the motor fuel excise tax on any taxable motor fuel or
28 alternative fuel purchased by any peer-to-peer car sharing program, shared vehicle owner, or
29 shared vehicle driver.

30 (4) No provision of this section or this article may be interpreted to require or void,
31 abrogate, restrict, or affect the requirements of chapter 11 of this code for issuance of a business
32 registration certificate for a peer-to-peer car sharing program.

33 (5) No provision of this section or this article may be interpreted to require or void,
34 abrogate, restrict, or affect any requirement of state law with relation to licensure of drivers of
35 motor vehicles.

36 ~~(6) Shared vehicle owners may not assert the exemption from the consumer sales and~~
37 ~~service tax and use tax, for purchases of tangible personal property and services directly used in~~
38 ~~the provision of services in §11-15-9 of this code~~

NOTE: The purpose of this bill is to modernize the law governing ride-sharing services.

Strike-throughs indicate language that would be stricken from a heading or the present law,
and underscoring indicates new language that would be added.