

SUBJECT: Requiring auto insurance coverage in peer-to-peer car sharing programs

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Oliverson, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford

0 nays

1 absent — Vo

WITNESSES: For — Jon Van Arsdell, Avail and Allstate; Jon Schnautz, National Association of Mutual Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Joe Woods, American Property and Casualty Insurance Association; Bradford Shields, Getaround Inc.; Lee Loftis, Independent Insurance Agents of Texas; Servando Esparza, TechNet)

Against — None

On — (*Registered, but did not testify*: Marianne Baker and Jaime Walker, Texas Department of Insurance)

BACKGROUND: Business and Commerce Code sec. 91.001 defines "rental agreement" as an agreement for 30 days or less that states the terms governing the use of a private passenger vehicle rented by a rental company.

DIGEST: CSHB 113 would require a peer-to-peer (P2P) car sharing program to ensure that, during each car sharing period, the owner and driver were insured under certain automobile liability insurance policies. The bill also would define several terms, including "P2P car sharing," "P2P car sharing program," "agreement," and "car sharing period," among others.

Definitions. "Peer-to-peer (P2P) car sharing" would mean the authorized use of a vehicle by an individual other than the vehicle's owner through a P2P car sharing program. The term would not include the use of a private

passenger vehicle from a rental company under certain rental agreement terms as those terms were defined by Business and Commerce Code sec. 91.001.

"P2P car sharing program" would mean a business platform that connected owners with drivers to enable vehicle sharing for financial consideration. The term would not include:

- a service provider who was solely providing hardware or software as a service to a person or entity that was not effectuating payment of financial consideration for use of a shared vehicle; or
- a rental company as defined in current law.

"Agreement" would mean the terms and conditions applicable to an owner and driver that govern the use of a shared vehicle through a P2P car sharing program. The term would exclude a rental agreement defined by current law.

"Car sharing period" would mean the period of time:

- beginning with the delivery period in which a shared vehicle was being delivered to the location of the start time, if applicable, under the agreement; or
- if there was no delivery period, the start time and ending at the termination time.

Eligible drivers. A P2P car sharing program could not enter into an agreement with a driver unless the driver who would operate the shared vehicle:

- was a resident of the state and held a driver's license from this state that authorized the driver to operate in the shared vehicle's class;
 - was a nonresident of the state and held a driver's license from that state that authorized the driver to operate in the shared vehicle's class; and met the minimum driving age requirements of this state;
- or

- was otherwise specifically authorized by this state to drive vehicles in the shared vehicle's class.

Applicability. The bill would apply to auto insurance policies in the state, including policies issued by a Lloyd's plan, a reciprocal or interinsurance exchange, or a county mutual insurance company.

Coverage requirements. Required auto insurance for the owner and driver during each car sharing period would have to:

- provide coverage in amounts not less than amounts under Transportation Code sec. 601.072;
- recognize that the shared vehicle insured under the policy was made available and used through a P2P car sharing program;
- provide primary coverage during the car sharing period; and
- could not exclude the use of a shared vehicle by a driver.

The coverage requirements could be satisfied by automobile insurance maintained by the owner, driver, or P2P car sharing program, or a combination of those coverages.

The bill would allow a P2P car sharing program to own and maintain as the named insured one or more policies of auto insurance that separately or in combination provided coverage for:

- liability assumed by the program under an agreement;
- liability of the owner;
- damage to or loss of the shared vehicle; or
- liability of the driver.

Exclusions. The bill would allow an auto insurer to exclude any coverage and the duty to defend or indemnify for any claim afforded under an owner's auto insurance policy during a car sharing period, including an exclusion of liability for the following coverages: bodily injury and property damage; personal injury protection; uninsured and underinsured motorist; medical payments; comprehensive physical damage; and

collision physical damage.

Assumption of liability. Except as specified in the bill, a P2P car sharing program would have to assume liability of an owner for bodily injury or property damage to third parties or uninsured or underinsured motorist or personal injury protection losses by damaged third parties during the car sharing period in an amount stated in the agreement, which could not be less than amounts:

- required for uninsured or underinsured motorist coverage under Insurance Code sec. 1952.101;
- provided as the maximum amount of required personal injury protection coverage under Insurance Code sec. 1952.153; or
- provided by Transportation Code ch. 601, subch. D.

A P2P car sharing program would not have to assume liability of an owner if the owner:

- made an intentional or fraudulent material misrepresentation or omission to the program before the car sharing period in which the loss occurred; or
- acted in concert with a driver who failed to return the shared vehicle as stated in the agreement.

Claims. An insurer or P2P car sharing program providing the required auto insurance coverage would have to assume primary liability for a claim when:

- a dispute existed as to who was in control of the shared vehicle at the time of the loss and the program did not have available, did not retain, or failed to provide certain required information; or
- a dispute existed as to whether the shared vehicle was returned to the alternatively agreed upon location.

Vicarious liability. Under the bill, a P2P car sharing program and an owner would not be liable under a theory of vicarious liability in

accordance with 49 U.S.C. sec. 30106 or under any state or local law that imposed liability solely based on vehicle ownership.

Disclosures. Each agreement entered into in the state would have to provide certain disclosures to the owner and driver, including:

- any right of the P2P car sharing program to seek indemnification from the owner or driver for economic loss sustained by the program resulting from a breach of the agreement;
- that an auto insurance policy issued to the owner for the shared vehicle or to the driver would not provide a defense or indemnification for any claim asserted by the P2P program;
- that the program's insurance coverage on the owner and the driver was in effect only during each car sharing period;
- the daily rate, fees, and, if applicable, any insurance costs that were charged to the owner or driver; and
- that the owner's auto insurance could not provide coverage for a shared vehicle, among other required disclosures.

Record retention, equipment. The bill would require a P2P car sharing program to keep and maintain records of:

- the name and address of each driver who entered into an agreement with the program; and
- the driver's license number and place of issuance of each driver and individual who would operate a shared vehicle under the program.

A P2P program would have to collect and verify certain information and provide that information on request to the owner, the owner's insurer, or the driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation.

Under the bill, a P2P program would be solely responsible for any equipment placed in or on a shared vehicle used under the program to monitor or facilitate the car sharing transaction. The program would have to agree to indemnify and hold harmless the vehicle's owner for any

damage to or theft of such equipment during the car sharing period not caused by the owner.

Other provisions. Before an owner made a shared vehicle available for car sharing on a P2P program, the bill would require the program to verify that the vehicle did not have a safety recall for which repairs had not been made.

The commissioner of the Texas Department of Insurance could adopt rules to implement the bill's provisions.

The bill would take effect September 1, 2021, and would apply only to a P2P car sharing agreement entered into and an automobile insurance policy issued or renewed on or after January 1, 2022.

**SUPPORTERS
SAY:**

CSHB 113 would establish clear definitions within the peer-to-peer (P2P) car sharing industry, which provides flexibility to car owners who want to offer their vehicles for rent to others. This allows Texans to create new economic opportunities for themselves. The bill would implement robust measures for consumer safety, transparent pricing, and insurance coverage for users in P2P programs by requiring both the owner and driver of a shared vehicle to be covered under an auto insurance policy.

The bill is based on the Peer-to-Peer Car Sharing Model Act, which was developed by the National Council of Insurance Legislators. Currently, 14 other states have adopted this model. The bill is necessary for establishing a uniform, statewide insurance framework for an increasingly popular industry in Texas.

**CRITICS
SAY:**

No concerns identified.