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**HOUSE BILL 2773**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Kirby and Vick

AN ACT Relating to transportation; adding new chapters to Title 46 RCW; creating a new section; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  This act may be known and cited as the peer-to-peer vehicle sharing program act.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Peer-to-peer vehicle sharing program" or "program" means a person or entity that connects peer-to-peer vehicle owners with peer-to-peer vehicle drivers to facilitate the sharing of peer-to-peer vehicles for consideration. The program is not a transportation network company.

(3) "Peer-to-peer vehicle sharing program agreement" or "agreement" means an agreement established through a program that serves as a contract between the program, owner, and driver, and describes the specific terms and conditions of the agreement that govern the use of peer-to-peer vehicles facilitated by the program, including the sharing period and location or locations for transfer of control of the vehicle.

(4) "Peer-to-peer vehicle" or "vehicle" means a personal motor vehicle that is available for use through a peer-to-peer vehicle sharing program for a sharing period of thirty days or less that is registered as a private passenger vehicle under the laws of this or another state.

(5) "Peer-to-peer vehicle driver" or "driver" means an individual who has been authorized to drive peer-to-peer vehicles by peer-to-peer vehicle owners under a peer-to-peer vehicle sharing program agreement.

(6) "Peer-to-peer vehicle owner" or "owner" means the registered owner of a peer-to-peer vehicle made available for sharing facilitated by a peer-to-peer vehicle sharing program.

(7) "Peer-to-peer vehicle delivery period" or "delivery period" means the period of time during which a peer-to-peer vehicle is being delivered to the location of a peer-to-peer vehicle sharing start time, if applicable, as documented by a peer-to-peer vehicle sharing program agreement.

(8) "Peer-to-peer vehicle sharing period" or "sharing period" means the period of time that commences with a peer-to-peer vehicle delivery period or, if there is no peer-to-peer vehicle delivery period, that commences with a peer-to-peer vehicle sharing start time and, in either case, ends at a peer-to-peer vehicle sharing termination time.

(9) "Peer-to-peer vehicle sharing start time" or "start time" means the time when a peer-to-peer vehicle becomes subject to the control of a peer-to-peer vehicle driver at or after the time the reservation of a peer-to-peer vehicle sharing program agreement is scheduled to begin as documented in the records of a peer-to-peer vehicle sharing program.

(10) "Peer-to-peer vehicle 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 peer-to-peer vehicle according to the terms of the peer-to-peer vehicle sharing program agreement, if a peer-to-peer vehicle is delivered to the location agreed upon in a peer-to-peer vehicle sharing program agreement;

(b) When a peer-to-peer vehicle is returned to a location as alternatively agreed upon by a peer-to-peer vehicle owner and peer-to-peer vehicle driver as communicated through a peer-to-peer vehicle sharing program; or

(c) When a peer-to-peer vehicle owner, or authorized designee, takes possession and control of a peer-to-peer vehicle.

NEW SECTION. **Sec.**  (1) Notwithstanding any other provision of law, or any provision in an owner's policy of motor vehicle liability insurance, in the event of a loss or injury that occurs during the sharing period, the program shall:

(a) Assume the liability of an owner for any bodily injury or property damage to third parties, uninsured and underinsured motorist benefits, and personal injury protection losses during the sharing period in an amount stated in an agreement, and which amount may not be less than those set forth in chapter 46.29 RCW; and

(b) Retain such liability irrespective of a lapse in, or otherwise absence of, any coverage under which the program is insured.

(2) The program shall not be liable when an owner:

(a) Makes a material, intentional, or fraudulent misrepresentation, or material, intentional, or fraudulent omission, to the program before the sharing period in which the loss occurred; or

(b) Acts in concert with the driver who fails to return the vehicle pursuant to the terms of the agreement.

(3)(a) The program shall ensure that, during each sharing period, financial responsibility for the vehicle is provided in amounts no less than the minimum amounts set forth in chapter 46.29 RCW, that:

(i) Recognizes that the vehicle is made available and used through the program; or

(ii) Does not exclude use of the vehicle by the driver through the program.

(b) The financial responsibility required under (a) of this subsection may be satisfied by motor vehicle liability insurance, or other acceptable means of demonstrating financial responsibility in this state, voluntarily maintained by:

(i) The owner;

(ii) The driver;

(iii) The program; or

(iv) Any combination of an owner, driver, and program.

(c) The financial responsibility required in (a) of this subsection, satisfied pursuant to (b) of this subsection, shall be primary for losses during the sharing period.

(d) The program shall:

(i) Afford primary financial responsibility for a claim when it is in whole or in part providing the financial responsibility required under this section if:

(A) A dispute exists as to who was in control of the vehicle at the time of the loss; and

(B) The program does not have available, did not retain, or fails to provide the information required by section 6 of this act; and

(ii) Be indemnified by the owner's personal policy of motor vehicle liability insurance to the extent of such policy's obligation, if any, if it is determined that the owner was in control of the vehicle at the time of the loss.

(e) If insurance maintained by the owner or driver in accordance with (b) of this subsection has lapsed or does not provide the required financial responsibility, the program, or its insurer, shall provide the coverage required by (a) of this subsection beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances as set forth in this section.

(f) Financial responsibility maintained by the program is not dependent on another automobile insurer first denying a claim nor shall another automobile insurance policy be required to first deny a claim.

(4) Nothing in this section:

(a) Limits the liability of the 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 vehicle through the program; or

(b) Limits the ability of the program to, by contract, seek indemnification from an owner or driver for economic loss sustained by the program resulting from a breach of the terms and conditions of an agreement.

NEW SECTION. **Sec.**  At the time the owner registers the vehicle for use through the program and again prior to the time the owner makes the vehicle available for use through the program, the program shall notify the owner that, if the vehicle has a lien against it, the use of the vehicle through the program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

NEW SECTION. **Sec.**  (1) 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 an owner's motor vehicle liability insurance policy including, but not limited to:

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

(b) Personal injury protection coverage;

(c) Uninsured and underinsured motorist coverage;

(d) Medical payments coverage;

(e) Comprehensive physical damage coverage; and

(f) Collision physical damage coverage.

(2) Nothing in this section invalidates or limits 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, hire, or for any business use, including peer-to-peer vehicle sharing.

NEW SECTION. **Sec.**  (1) The program shall collect and verify records pertaining to the use of the vehicle including, but not limited to, sharing periods, fees paid by the driver, and revenues received by the owner.

(2) Pursuant to all applicable federal and state privacy obligations, and after receiving the informed consent of an owner and driver, the program shall provide the information collected pursuant to subsection (1) of this section upon request to an owner, owner's insurer, and driver's insurer to facilitate a claim coverage investigation. Providing notice of this section in the agreement shall constitute informed consent.

(3) The program shall retain the records required in this section for three years.

NEW SECTION. **Sec.**  A motor vehicle insurer that defends or indemnifies a claim arising from the operation of a vehicle that is excluded under the terms of its policy shall have the right to seek contribution against a program if the claim is made against an owner or driver for loss or injury that occurs during the sharing period.

NEW SECTION. **Sec.**  (1) Notwithstanding any other law, statute, rule, or regulation to the contrary, the program shall have an insurable interest in a vehicle during the sharing period.

(2) Nothing in this section shall impose liability on a program to maintain the coverage mandated by section 3 of this act.

(3) A program may own and maintain as the named insured one or more policies of motor vehicle liability insurance that provide coverage for:

(a) Liabilities assumed by a program under an agreement;

(b) Liability of an owner;

(c) Damage or loss to a vehicle; or

(d) Liability of a driver.

(4) A program and owner are exempt from vicarious liability in accordance with 49 U.S.C. Sec. 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

NEW SECTION. **Sec.**  (1) Each agreement made in this state shall disclose to an owner and driver:

(a) Any right of a program to seek indemnification from an owner or driver for economic loss sustained by a program resulting from a breach of the terms and conditions of an agreement;

(b) That a motor vehicle liability insurance policy issued to an owner for a vehicle, or to a driver, may not provide defense or indemnity for any claim asserted by a program;

(c) That a program's financial responsibility afforded to an owner and driver is available only during the sharing period;

(d) That, for any use of a vehicle by the driver after the termination time, the driver and owner may not have coverage;

(e) The daily rate, fees, costs, and, if applicable, any insurance or protection package costs that are charged to an owner or driver; and

(f) That an owner's motor vehicle liability insurance may not provide coverage for a vehicle.

(2) Each agreement made in this state shall disclose to a driver:

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

(b) Any conditions under which a driver must maintain a personal automobile insurance policy, and any required coverage limits, on a primary basis in order to use a vehicle through a program.

NEW SECTION. **Sec.**  The program shall have sole responsibility for any equipment, such as a global positioning system or other special equipment that is put in or on a vehicle to monitor or facilitate sharing and shall agree to indemnify and hold harmless an owner for any damage to or theft of such system or equipment during the sharing period not caused by an owner. The program has the right to seek indemnity from a driver for any loss or damage to such system or equipment that occurs during the sharing period.

NEW SECTION. **Sec.**  (1)(a) At the time the owner registers a vehicle for use in a program, and prior to the time when an owner makes a vehicle available for use in a program, the program shall:

(i) Verify that the vehicle does not have any safety recalls for which the repairs have not been made; and

(ii) Notify the owner of the requirements under subsection (2) of this section.

(b) The program shall periodically, and in no case less frequently than once in each seventy-two hour period, verify that the vehicle available for use through the program is not subject to an open safety recall for which repairs have not been made.

(2) An owner shall:

(a) Not make a vehicle available for use through a program if an owner has received notice of a safety recall on a vehicle until the safety recall repair has been made;

(b) Upon receipt of notice of a safety recall on a vehicle when the vehicle is available for use through the program, remove a vehicle from availability as soon as practicably possible, and in no case more than forty-eight hours, after receiving the notice of the safety recall and until the safety recall repair has been made;

(c) Upon receipt of notice of a safety recall on a vehicle, and in no case more than forty-eight hours after such receipt, when the vehicle is in the possession of a driver, notify the program of the safety recall so that the program may notify the driver and the vehicle can be removed from use until the owner effects the necessary safety recall repair.

NEW SECTION. **Sec.**  (1) A program may not enter into an agreement with a driver unless the driver of a vehicle:

(a) Holds a driver's license issued in this state authorizing the driver to operate vehicles of the class of the vehicle; or

(b) Is a nonresident who:

(i) Has a driver's license issued by this 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 vehicle; and

(ii) Is at least the same age as that required of a resident to drive in this state.

(2) The program shall keep a record of:

(a) The name and address of the driver;

(b) The driver's license number and place of issuance for every driver who will operate the vehicle.

NEW SECTION. **Sec.**  (1) The sharing and an agreement are consumer transactions. A program and an owner are the suppliers and a driver is the consumer.

(2) Any violation of this chapter is deemed an unfair or deceptive act in violation of chapter 19.86 RCW. A person injured by a violation of this chapter has a cause of action and is entitled to the relief.

(3) A program is not liable for a violation under chapter 19.86 RCW when the violation is the result of false, misleading, or inaccurate information provided to a program by an owner or driver and the program reasonably relied on that information in good faith.

NEW SECTION. **Sec.**  Nothing in this chapter is construed to affect the taxability of peer-to-peer vehicle sharing pursuant to Title 82 RCW.

NEW SECTION. **Sec.**  (1) The definitions in section 2 of this act apply to this chapter.

(2) The definitions in this subsection apply throughout this chapter unless the context clearly requires otherwise.

(a) "Motor vehicle rental company" means any entity or person engaged in the business of facilitating vehicle rental transactions in this state. The term does not include a peer-to-peer vehicle owner who makes no more than three motor vehicles available for peer-to-peer vehicle sharing through a peer-to-peer vehicle sharing program, or combination of programs, during a twelve-month period.

(b) "Vehicle rental transaction" means the transfer of possession of a motor vehicle, for consideration, without the transfer of ownership of the motor vehicle.

NEW SECTION. **Sec.**  (1) A notice or disclosure required to be provided, delivered, posted, or otherwise made available by a motor vehicle rental company or peer-to-peer vehicle sharing program is deemed timely and effectively made if the notice or disclosure is provided or delivered electronically at or before the time required or included in a master or member agreement in effect at the time of a vehicle rental transaction or peer-to-peer vehicle sharing program agreement.

(2) For purposes of this chapter, a master or member agreement shall include, but is not limited to, a service:

(a) Which is offered by a motor vehicle rental company or peer-to-peer vehicle sharing program that permits customers to bypass a retail service location and obtain a product or service directly;

(b) Where a motor vehicle rental company or peer-to-peer vehicle sharing program does not require customers to execute an agreement at the time of service; or

(c) Where the customer does not receive the terms and conditions at the time of service.

(3) Electronic or written acceptance is deemed a valid form of acceptance of a notice or disclosure.

(4) Acceptance remains effective until the time the acceptance is affirmatively withdrawn by the customer.

NEW SECTION. **Sec.**  A notice or disclosure made pursuant to this chapter is exempt from placement or stylistic display requirements including, but not limited to, location, font size, typeset, or other specifically stated description, if the notice or disclosure is generally consistent in appearance with the entirety of the communication in which it is contained.

NEW SECTION. **Sec.**  (1) A program, owner using a program, or motor vehicle rental company shall, upon request of an airport including, but not limited to, any entity responsible for regulating commerce at such airport within this state, enter into an agreement, which agreement may be a concession agreement, prior to:

(a) Listing a vehicle or motor vehicle parked on airport property or at airport facilities;

(b) Facilitating the use of a vehicle or motor vehicle to transport airport customers to or from airport property or airport facilities, regardless of whether that use is to be initiated or has a start time that occurs on or off of airport property or airport facilities; or

(c) Promoting or marketing a vehicle or motor vehicle to transport airport customers to or from airport property or airport facilities, regardless of whether that transportation is to be initiated or has a start time that occurs on or off of airport property or airport facilities.

(2) The agreement required in subsection (1) of this section shall set forth reasonable standards, regulations, procedures, and fees applicable to a program and peer-to-peer vehicle sharing and a motor vehicle rental company.

NEW SECTION. **Sec.**  In the event a motor vehicle rental company or peer-to-peer vehicle sharing program facilitates rental or sharing via digital, electronic, or other means that allows customers to obtain possession of a motor vehicle or vehicle, as applicable, without in-person contact with an agent or employee of a motor vehicle rental company or peer-to-peer vehicle sharing program, or where the customer does not execute a contract at the time of the transaction, a motor vehicle rental company or peer-to-peer vehicle sharing program is deemed to have met all obligations to physically inspect and compare the customer's driver's license when the provider:

(1) At the time the customer enrolls, or any time thereafter, in a membership program, master agreement, or other means of establishing use of the provider's services, requires verification that the customer is a licensed driver; or

(2) Prior to the customer taking possession of the motor vehicle or vehicle, as applicable, requires documentation that verifies the customer's identity.

NEW SECTION. **Sec.**  Sections 2 through 14 of this act constitute a new chapter in Title 46 RCW.

NEW SECTION. **Sec.**  Sections 15 through 19 of this act constitute a new chapter in Title 46 RCW.

NEW SECTION. **Sec.**  This act takes effect January 1, 2021.

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