

HOUSE BILL REPORT

SHB 2773

As Passed House:
February 19, 2020

Title: An act relating to transportation.

Brief Description: Concerning transportation.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Kirby and Vick).

Brief History:

Committee Activity:

Consumer Protection & Business: 2/5/20, 2/7/20 [DPS].

Floor Activity:

Passed House: 2/19/20, 97-1.

Brief Summary of Substitute Bill

- Prescribes regulations for peer-to-peer vehicle sharing programs.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Kirby, Chair; Vick, Ranking Minority Member; Hoff, Assistant Ranking Minority Member; Barkis, Blake, Duerr, Dufault, Johnson, J., Ryu, Santos, Volz, Walen and Ybarra.

Staff: Robbi Kesler (786-7153).

Background:

Insurance. Every person in this state who operates a private passenger motor vehicle must be insured under an insurance liability policy, a liability bond, a certificate of deposit, or be self-insured. The minimum amounts of liability coverage required by the financial responsibility statutes are:

- \$10,000 in coverage for damage to another's property;
- \$25,000 in coverage for injuries to any one other person; and

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- \$50,000 in aggregate coverage for injuries to all other persons involved.

There are mandatory offerings of personal injury protection coverage and underinsured automobile coverage. There are a number of other types of coverage that can be offered by an automobile insurer. Insurers may offer any type of coverage in any amount that is filed with and approved by the Insurance Commissioner (Commissioner). Automobile insurance rates and forms are filed with the Commissioner and must be approved by the Commissioner prior to use by an insurer. If the Commissioner determines that filed rates are not excessive, inadequate, or unfairly discriminatory, then the Commissioner must approve them.

Since 2012 Washington has regulated car sharing businesses. A "personal vehicle sharing program" (program) is a legal entity qualified to do business that facilitates the sharing of private passenger motor vehicles for noncommercial use by individuals within this state. The regulations include insurance requirements, legal requirements, liability, disclosures, and recordkeeping.

Washington's Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive practices in the conduct of any trade or commerce. The Attorney General may investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

Summary of Substitute Bill:

Definitions.

A peer-to-peer vehicle sharing program (program) is 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.

Peer-to-peer vehicle (vehicle) is a personal motor vehicle that is available for use through a peer-to-peer vehicle sharing program for a sharing period of 30 days or less that is registered as a private passenger vehicle under the laws of this or another state.

Peer-to-peer vehicle sharing period (sharing period) is 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.

Insurance.

A peer-to-peer car sharing program must ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the required state minimum amounts. The insurance may be satisfied by motor vehicle liability insurance maintained by a shared vehicle owner, a shared vehicle driver, a peer-to-peer car sharing program, or both a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

The program is not liable when an owner 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 acts in concert with the driver who fails to return the vehicle pursuant to the terms of the agreement.

The program must provide primary financial responsibility for a claim, when it is in whole or in part, providing the financial responsibility required under this section if a dispute exists regarding who was in control of the vehicle at the time of the loss, if the program does not have required records maintained. If insurance maintained by the owner or driver in accordance has lapsed or does not provide the required financial responsibility, the program, or its insurer, must provide the coverage required beginning with the first dollar of a claim and have the duty to defend such claim unless there is an express exemption.

The program will be indemnified by the owner's personal policy of motor vehicle liability insurance if it is determined that the owner was in control of the vehicle at the time of the loss. The program is not limited in seeking 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.

The program is responsible in the event insurance, which covers the owner or driver, has lapsed or does not provide the required financial responsibility.

An 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. Programs must be provided an insurable interest in a vehicle during the sharing period.

Disclosure Requirements.

The program's agreement includes disclosures related to insurance, including liability, indemnification, and a notice that additional insurance may be required, financial responsibility, rates and fees, emergency contact information for roadside assistance and inquiries, and notice that insurance may end when the sharing period has ended.

Notices and Record Keeping.

Prior to making a vehicle available through the program, the program must notify the owner that participation may violate the terms of the owner's contract with a lienholder, if any.

The program is required to keep records for three years and abide by all state and federal privacy laws. The program must provide records to the owner or owner's insurer to facilitate claims processing in the event of any claims.

Additional Conditions.

The program is responsible 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 must 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.

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

The program may not enter into an agreement with a driver unless the driver holds a driver's license authorizing the driver to operate vehicles of the class of the vehicle the driver will be using through the program.

Any violation is deemed an unfair or deceptive act in violation of the Consumer Protection Act. A person injured by a violation of this chapter has a cause of action and is entitled to the relief. A program is not liable for a violation of the Consumer Protection Act 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.

A program, owner using a program, or motor vehicle rental company may be required to enter into an agreement, which may be a concession agreement, prior to operating at an airport.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2021

Staff Summary of Public Testimony:

(In support) Sometimes new, emerging businesses enter the market without regulation, and it takes a while for the law to catch up. The playing field for rental cars and related businesses should be fair and level. Rental car businesses provide tax revenue to this state and car sharing programs need to be subject to the same standards. Insurance issues need to be addressed to protect consumers.

(Opposed) Car sharing is already regulated in this state and new models should be incorporated into those current standards. Placing private vehicles into sharing programs is risky. The sharing program should be required to provide insurance, and the owner's personal insurance should not be implicated at all. The committee should consider the National Council of Insurance Legislators' model language. The safety recall provision is overly burdensome, and program and owners will find it likely impossible to comply. Individual car hosts should be not classified as a rental company.

(Other) Insurance provisions should be moved into insurance statutes or reference existing statute.

Persons Testifying: (In support) Representative Kirby, prime sponsor; and Brian Rothery, Enterprise Holdings.

(Opposed) Mel Sorensen, American Property and Casualty Insurance Association and Allstate; Jean Leonard, Washington Insurance, National Association of Mutual Insurance Commissioners and State Farm; Anna Powell, CompTIA; Samantha Kersul, TechNet; and Pablo Benavente, Turo.

(Other) Lonnie Johns-Brown, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.