

JAN 17 2020

A BILL FOR AN ACT

RELATING TO PEER-TO-PEER VEHICLE SHARING.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 PEER-TO-PEER MOTOR VEHICLE INDUSTRY

6 § -1 Short title. This chapter may be cited as the
7 "Peer-to-Peer Industry Act".

8 § -2 Scope. This chapter shall apply to all persons in
9 the business of peer-to-peer motor vehicle sharing in this
10 State.

11 § -3 Definitions. For the purposes of this chapter:

12 "Delivery period" means the period of time during which a
13 vehicle is being delivered to the location of the start time, if
14 applicable, as documented by the peer-to-peer agreement.

15 "Peer-to-peer agreement" means the terms and conditions
16 applicable to a peer-to-peer owner and a peer-to-peer driver
17 that govern the use of a vehicle through a peer-to-peer program.



1 "Peer-to-peer driver" means an individual who has been
2 authorized to drive a vehicle by the peer-to-peer owner under a
3 peer-to-peer agreement.

4 "Peer-to-peer motor vehicle" or "vehicle" means a motor
5 vehicle as defined in section 286-2 which is:

- 6 (1) Available for rent through a peer-to-peer program;
- 7 (2) Used non-exclusively for peer-to-peer sharing; and
- 8 (3) Used by the peer-to-peer owner for personal use
9 outside of peer-to-peer sharing.

10 "Peer-to-peer owner" means the registered owner of a
11 vehicle made available to peer-to-peer drivers through a
12 peer-to-peer program.

13 "Peer-to-peer period" means the period of time that
14 commences with the delivery period or, if there is no delivery
15 period, that commences with the start time, and ends at the
16 termination time.

17 "Peer-to-peer program" means any person in the business of
18 operating a business platform that connects peer-to-peer owners
19 with peer-to-peer drivers to enable the peer-to-peer sharing of
20 vehicles for financial consideration.



1 "Peer-to-peer sharing" means the authorized use of a shared
2 vehicle by persons other than the peer-to-peer owner,
3 facilitated by a peer-to-peer program, and does not include
4 transportation network companies as defined in
5 section 431-10C:701.

6 "Start time" means the time when the vehicle becomes
7 subject to the control of the peer-to-peer driver at or after
8 the time the reservation of a peer-to-peer agreement is
9 scheduled to begin as documented in the records of a
10 peer-to-peer program.

11 "Termination time" means the earliest of the following
12 events:

- 13 (1) The expiration of the agreed upon period of time
14 established for the use of a vehicle according to the
15 terms of the peer-to-peer agreement, if the vehicle is
16 delivered to the location agreed upon in the
17 peer-to-peer agreement;
- 18 (2) When the vehicle is returned to a location as
19 alternatively agreed upon by the peer-to-peer owner
20 and peer-to-peer driver as communicated through a
21 peer-to-peer program; or



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

§ -4 Disclosures. (a) Each peer-to-peer agreement made
in this State shall disclose to the peer-to-peer owner and
peer-to-peer driver:

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

(2) That a motor vehicle insurance policy issued to a
peer-to-peer owner for a vehicle, or to a peer-to-peer
driver does not provide a defense or indemnification
for any claim asserted by a peer-to-peer program;

(3) That a peer-to-peer program's financial responsibility
afforded to the peer-to-peer owner and peer-to-peer
driver is available only during the peer-to-peer
period;

(4) That, for any use of vehicle by the peer-to-peer
driver after the termination time, the peer-to-peer
driver and peer-to-peer owner may not have coverage;



(5) The daily rate, fees, costs, and, if applicable, any insurance or protection package costs that are charged to peer-to-peer owners or peer-to-peer drivers; and

(6) That the peer-to-peer owner's motor vehicle insurance policy may not provide coverage for the vehicle.

(b) Each peer-to-peer agreement made in this State shall disclose to a peer-to-peer driver:

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

(2) Any conditions under which a peer-to-peer driver must maintain a motor vehicle insurance policy, and any required coverage limits, on a primary basis in order to rent vehicle.

§ -5 Driver license verification and retention. (a) A peer-to-peer program may not enter into a peer-to-peer agreement with a peer-to-peer driver unless the peer-to-peer driver, and any additional authorized operator, of the vehicle:

(1) Holds a valid driver license authorizing the peer-to-peer driver to operate the same class of vehicle; or



1 (2) Is a nonresident who:

2 (A) Has a driver license issued by the state or
3 country of the peer-to-peer driver's residence
4 that authorizes the peer-to-peer driver in that
5 state or country to operate the same or
6 comparable class of vehicle; and

7 (B) Is at least the same age as that required of a
8 resident to drive in this State.

9 (b) The peer-to-peer program shall keep a record of:

10 (1) The name and address of the peer-to-peer driver; and

11 (2) The driver license number and place of issuance of the
12 peer-to-peer driver and every other person, if any,
13 who will operate vehicle.

14 **§ -6 Responsibility for equipment.** A peer-to-peer
15 program shall have sole responsibility for any equipment,
16 including but not limited to a GPS system or other special
17 equipment, that is put in or on a vehicle to monitor or
18 facilitate peer-to-peer sharing. A peer-to-peer program shall
19 agree to indemnify and hold harmless the peer-to-peer owner for
20 any damage to or theft of such equipment during peer-to-peer
21 period not caused by the peer-to-peer owner. A peer-to-peer



1 program has the right to seek indemnity from the peer-to-peer
2 driver for any loss or damage to such equipment that occurs
3 during the peer-to-peer period.

4 **§ -7 Automobile safety recalls.** (a) At the time a
5 peer-to-peer owner registers their vehicle for use by a
6 peer-to-peer program, and prior to the time the peer-to-peer
7 owner makes the vehicle available for use in the peer-to-peer
8 program, the peer-to-peer program shall:

- 9 (1) Verify that the vehicle does not have any safety
10 recalls for which the repairs have not been made;
11 (2) Notify the peer-to-peer owner of the requirements
12 under subsection (b); and
13 (3) Verify every seventy-two hours that any vehicle
14 available for use through a peer-to-peer program is
15 not subject to an open safety recall for which repairs
16 have not been made.

17 (b) A peer-to-peer owner shall:

- 18 (1) Not make a vehicle available for use through a
19 peer-to-peer program if the peer-to-peer owner has
20 received notice of a safety recall on the vehicle,
21 until the safety recall repair has been made;



(2) Remove any vehicle available through a peer-to-peer program upon receipt of notice of a safety recall as soon as practicably possible but no longer than forty-eight hours after receipt of notice of a safety recall; and

(3) Notify the peer-to-peer program of a safety recall within forty-eight hours of receipt of a safety recall when the vehicle is in the possession of a peer-to-peer driver so that the peer-to-peer program may notify the peer-to-peer driver and the vehicle can be removed from use until the peer-to-peer owner effects the necessary safety recall repair.

§ -8 Operating at an airport. A peer-to-peer program shall enter into a contract or other agreement with the department of transportation airports division in accordance with section 261-7(a) prior to operating at an airport in this State.

§ -9 Additional mandatory charges prohibited. The daily and periodic cost to the peer-to-peer driver shall include the amount of each charge which is required as a condition to the peer-to-peer agreement. The peer-to-peer program shall disclose



1 as part of any quotations of price, including all quotations
2 contained in advertising or through online quotations, all
3 payments a peer-to-peer driver must make as part of the
4 peer-to-peer agreement.

5 **§ -10 Unfair trade practices.** Each peer-to-peer
6 program, and each officer, employee, agent, and other
7 representative thereof, is prohibited from engaging in any
8 practice constituting a violation of chapter 480. The following
9 shall be per se violations of section 480-2:

10 (1) The making of any material statement that has the
11 tendency or capacity to mislead or deceive, either
12 orally or in writing, in connection with peer-to-peer
13 sharing, offer for peer-to-peer sharing, or
14 advertisement for peer-to-peer sharing;

15 (2) The omission of any material statement that has the
16 tendency or capacity to mislead or deceive, in
17 connection with peer-to-peer sharing, offer for
18 peer-to-peer sharing, or advertisement for
19 peer-to-peer sharing;

20 (3) The making of any statement by the peer-to-peer owner
21 to the effect that peer-to-peer driver is or will be



1 confined to remain within boundaries specified by the
2 peer-to-peer owner unless payment or an agreement
3 relating to the payment of damages has been made by
4 the peer-to-peer driver;

5 (4) The charging of a peer-to-peer driver more than a
6 reasonable estimate of the actual income lost for loss
7 of use of a vehicle; and

8 (5) A violation of section -9."

9 SECTION 2. Chapter 431, article 10C, Hawaii Revised
10 Statutes, is amended by adding a new part to be appropriately
11 designated and to read as follows:

12 **"PART . PEER-TO-PEER MOTOR VEHICLE INDUSTRY**

13 **§431:10C-A Definitions.** For the purposes of this chapter:

14 "Delivery period" means the period of time during which a
15 vehicle is being delivered to the location of the start time, if
16 applicable, as documented by the peer-to-peer agreement.

17 "Peer-to-peer agreement" means the terms and conditions
18 applicable to a peer-to-peer owner and a peer-to-peer driver
19 that govern the use of a vehicle through a peer-to-peer program.

20 "Peer-to-peer driver" means an individual who has been



1 authorized to drive a vehicle by the peer-to-peer owner under a
2 peer-to-peer agreement.

3 "Peer-to-peer motor vehicle" or "vehicle" means a motor
4 vehicle as defined in section 286-2 which is:

- 5 (1) Available for rent through a peer-to-peer program;
6 (2) Used non-exclusively for peer-to-peer sharing; and
7 (3) Used by the peer-to-peer owner for personal use
8 outside of peer-to-peer sharing.

9 "Peer-to-peer owner" means the registered owner of a
10 vehicle made available to peer-to-peer drivers through a
11 peer-to-peer program.

12 "Peer-to-peer period" means the period of time that
13 commences with the delivery period or, if there is no delivery
14 period, that commences with the start time, and ends at the
15 termination time.

16 "Peer-to-peer program" means any person in the business of
17 operating a business platform that connects peer-to-peer owners
18 with peer-to-peer drivers to enable the peer-to-peer sharing of
19 vehicles for financial consideration.

20 "Peer-to-peer sharing" means the authorized use of a shared
21 vehicle by persons other than the peer-to-peer owner,



1 facilitated by a peer-to-peer program, and does not include
2 transportation network companies as defined in section
3 431-10C:701.

4 "Start time" means the time when the vehicle becomes
5 subject to the control of the peer-to-peer driver at or after
6 the time the reservation of a peer-to-peer agreement is
7 scheduled to begin as documented in the records of a
8 peer-to-peer program.

9 "Termination time" means the earliest of the following
10 events:

11 (1) The expiration of the agreed upon period of time
12 established for the use of a vehicle according to the
13 terms of the peer-to-peer agreement, if the vehicle is
14 delivered to the location agreed upon in the
15 peer-to-peer agreement;

16 (2) When the vehicle is returned to a location as
17 alternatively agreed upon by the peer-to-peer owner
18 and peer-to-peer driver as communicated through a
19 peer-to-peer program; or

20 (3) When the peer-to-peer owner, or authorized designee,
21 takes possession and control of the vehicle.



1 §431:10C-B Liability during peer-to-peer period. (a)

2 Notwithstanding any other law to the contrary, or any provision
3 in a motor vehicle insurance policy, in the event of a loss or
4 injury that occurs during peer-to-peer period, a peer-to-peer
5 program shall:

6 (1) Be liable for any bodily injury or property damage to
7 third parties, uninsured and underinsured motorist
8 benefits, and personal injury protection losses during
9 the peer-to-peer period in an amount stated in

10 peer-to-peer agreement, and which amount may not be
11 less than those set forth in section 431:10C-301; and

12 (2) Retain such liability irrespective of a lapse in, or
13 otherwise absence of, any coverage under which a
14 peer-to-peer program is insured; and

15 (b) Notwithstanding the definition of "termination time"
16 as set forth in section 431:10C-A, a peer-to-peer program shall
17 not be liable when a peer-to-peer owner:

18 (1) Makes a material, intentional or fraudulent
19 misrepresentation or omission to a peer-to-peer
20 program before the peer-to-peer period in which the
21 loss occurred, or



(2) Acts in concert with a peer-to-peer driver who fails to return the vehicle pursuant to the terms of a peer-to-peer agreement.

§431:10C-C Insurance coverage during peer-to-peer period.

(a) A peer-to-peer program shall ensure that, during each peer-to-peer period, financial responsibility for the vehicle is provided in amounts no less than the minimum amounts set forth in section 431:10C-301, that:

(1) Recognizes that the vehicle is made available and used through a peer-to-peer program; or

(2) Does not exclude use of the vehicle by a peer-to-peer driver through a peer-to-peer program.

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

(1) Peer-to-peer owner;

(2) Peer-to-peer driver;

(3) Peer-to-peer program; or

(4) Any combination of peer-to-peer owner, peer-to-peer driver, and a peer-to-peer program.



1 (c) The financial responsibility required in
2 subsection (a), satisfied pursuant to subsection (b), shall be
3 primary for losses during peer-to-peer period.

4 (d) A peer-to-peer program shall:

5 (1) Assume primary liability for a claim when it is in
6 whole or in part providing the financial
7 responsibility required under section 431:10C-B if:

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

10 (B) Peer-to-peer program does not have available, did
11 not retain, or fails to provide the information
12 required by section 431:10C-F; and

13 (2) Be indemnified by the peer-to-peer owner's motor
14 vehicle insurance policy to the extent of such
15 policy's obligation, if any, if it is determined that
16 the peer-to-peer owner was in control of a vehicle at
17 the time of the loss.

18 (e) If insurance maintained by the peer-to-peer owner or
19 peer-to-peer driver in accordance with subsection (b) has lapsed
20 or does not provide the required financial responsibility,
21 peer-to-peer program, or its insurer, shall provide the coverage



1 required by subsection (a) beginning with the first dollar of a
2 claim and have the duty to defend such claim except under
3 circumstances as set forth in section 431:10C-A.

4 (f) Financial responsibility maintained by peer-to-peer
5 program shall not be dependent on another insurer first denying
6 a claim nor shall another motor vehicle insurance policy be
7 required to first deny a claim.

8 (g) Nothing in this chapter:

9 (1) Limits the liability of peer-to-peer program for any
10 act or omission of peer-to-peer program itself that
11 results in injury to any person as a result of the use
12 of a vehicle through a peer-to-peer program; or

13 (2) Limits the ability of peer-to-peer program to, by
14 contract, seek indemnification from peer-to-peer owner
15 or peer-to-peer driver for economic loss sustained by
16 peer-to-peer program resulting from a breach of the
17 terms and conditions of peer-to-peer agreement.

18 **§431:10C-D Notification of implications of lien.** At the
19 time a peer-to-peer owner registers a vehicle for use through a
20 peer-to-peer program and prior to the time peer-to-peer owner
21 makes a vehicle available for use through a peer-to-peer



1 program, the peer-to-peer program shall notify the peer-to-peer
2 owner that, if the vehicle has a lien against it, the use of the
3 vehicle through the peer-to-peer program, including use without
4 physical damage coverage, may violate the terms of the contract
5 with the lienholder.

6 **§431:10C-E Exclusions in motor vehicle insurance policies.**

7 (a) An insurer may exclude any and all coverage and the duty to
8 defend or indemnify for any claim afforded under the peer-to-
9 peer owner's motor vehicle insurance policy, including but not
10 limited to:

- 11 (1) Liability coverage for bodily injury and property
12 damage as defined in section 431:10C-301(b);
- 13 (2) Personal injury protection coverage as defined in
14 section 431:10C-103.5;
- 15 (3) Uninsured and underinsured motorist coverage;
- 16 (4) Medical payments coverage;
- 17 (5) Comprehensive physical damage coverage; and
- 18 (6) Collision physical damage coverage.

19 (b) Nothing in this part shall invalidate or limit an
20 exclusion contained in a motor vehicle insurance policy,
21 including any insurance policy in use or approved for use that



1 excludes coverage for vehicles made available for rent, hire or
2 for any business use, including peer-to-peer vehicles.

3 **§431:10C-F Recordkeeping.** (a) A peer-to-peer program
4 shall collect and verify records pertaining to the use of a
5 vehicle, including, but not limited to, times used, fees paid by
6 peer-to-peer drivers, and revenues received by peer-to-peer
7 owners.

8 (b) Pursuant to all applicable federal and state privacy
9 obligations, and after receiving the informed consent of a
10 peer-to-peer owner and a peer-to-peer driver, a peer-to-peer
11 program shall provide the information collected pursuant to
12 subsection (a), upon request, to peer-to-peer owner,
13 peer-to-peer owner's insurer, and peer-to-peer driver's insurer
14 to facilitate a claim coverage investigation.

15 (c) The peer-to-peer program shall retain the records
16 required for a time period not less than 6 years.

17 **§431:10C-G Contribution against indemnification.** An
18 insurer that defends or indemnifies a claim arising from the
19 operation of a vehicle that is excluded under the terms of its
20 policy shall have the right to seek contribution against a
21 peer-to-peer program if the claim is made against a peer-to-peer



1 owner or peer-to-peer driver for loss or injury that occurs
2 during a peer-to-peer period.

3 **§431:10C-H Insurable interest.** (a) Notwithstanding any
4 other statute, rule or regulation to the contrary, a
5 peer-to-peer program shall have an insurable interest in a
6 vehicle during the peer-to-peer period.

7 (b) Nothing in this section shall impose liability on a
8 peer-to-peer program to maintain the coverage mandated by
9 section 431:10C-B.

10 (c) A peer-to-peer program may own and maintain as the
11 named insured one or more motor vehicle insurance policies that
12 provides coverage for:

- 13 (1) Liabilities assumed by peer-to-peer program under the
14 peer-to-peer agreement;
15 (2) Liability of peer-to-peer owner;
16 (3) Damage or loss to vehicle; or
17 (4) Liability of peer-to-peer driver."

18 SECTION 3. Chapter 251, Hawaii Revised Statutes, is
19 amended by amending its title to read as follows:

20 **"CHAPTER 251**



1 RENTAL MOTOR VEHICLE, TOUR MOTOR VEHICLE, [AND] CAR-SHARING
2 VEHICLE, AND PEER-TO-PEER MOTOR VEHICLE SURCHARGE TAX"

3 SECTION 4. Section 251-1, Hawaii Revised Statutes, is
4 amended by adding new definitions to be appropriately inserted
5 and to read as follows:

6 "Peer-to-peer motor vehicle" or "vehicle" means a motor
7 vehicle as defined in section 286-2 which is:

- 8 (1) Available for rent through a peer-to-peer program;
9 (2) Used non-exclusively for peer-to-peer sharing; and
10 (3) Used by the peer-to-peer owner for personal use
11 outside of peer-to-peer sharing.

12 "Peer-to-peer program" means any person in the business of
13 operating a business platform that connects peer-to-peer owners
14 with peer-to-peer drivers to enable the peer-to-peer sharing of
15 vehicles for financial consideration.

16 "Peer-to-peer sharing" means the authorized use of a shared
17 vehicle by persons other than the peer-to-peer owner,
18 facilitated by a peer-to-peer program, and does not include
19 transportation network companies as defined in section
20 431-10C:701."



SECTION 5. Chapter 251, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§251- Peer-to-peer motor vehicle sharing surcharge tax.

(a) There is levied and shall be assessed and collected each month a peer-to-peer motor vehicle sharing surcharge tax of \$5 a day, or any portion of a day that a peer-to-peer vehicle is shared.

(b) The peer-to-peer program shall be responsible for collection and remittance of the surcharge tax to the department."

SECTION 6. Section 251-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each person, as a condition precedent to engaging or continuing in:

(1) [the] The business of providing rental motor vehicles to the public~~[, engaging or continuing in]~~;

(2) [the] The tour vehicle operator business~~[, or engaging or continuing in a]~~;

(3) A car-sharing organization business; or

(4) A peer-to-peer program,



1 shall register with the director. A person required to so
2 register shall make a one-time payment of \$20, upon receipt of
3 which the director shall issue a certificate of registration in
4 [~~such~~] a form as the director determines, attesting that the
5 registration has been made. The registration shall not be
6 transferable and shall be valid only for the person in whose
7 name it is issued and for the transaction of business at the
8 place designated therein. The registration, or in lieu thereof
9 a notice stating where the registration may be inspected and
10 examined, shall at all times be conspicuously displayed at the
11 place for which it is issued.

12 (b) The registration shall be effective until canceled in
13 writing. Any application for the reissuance of a previously
14 canceled registration identification number shall be regarded as
15 a new registration application and shall be subject to the
16 payment of the one-time registration fee in subsection (a). The
17 director may revoke or cancel any certificate of registration
18 issued under this chapter for cause as provided by rule under
19 chapter 91.

20 (c) If the registration fee is paid, the department shall
21 not refuse to issue a registration or revoke or cancel a



1 registration for the exercise of a privilege protected by the
2 First Amendment of the Constitution of the United States, or for
3 the carrying on of interstate or foreign commerce, or for any
4 privilege the exercise of which, under the Constitution and laws
5 of the United States, cannot be restrained on account of
6 nonpayment of taxes, nor shall section 251-13 be invoked to
7 restrain the exercise of such a privilege, or the carrying on of
8 such commerce.

9 (d) Any person who may lawfully be required by the State,
10 and who is required by this chapter, to register as a condition
11 precedent to engaging or continuing in the business of
12 ~~[providing rental motor vehicles or tour vehicles to the public~~
13 ~~subject to taxation under this chapter,]~~ the categories listed
14 in subsection (a), who engages or continues in the business
15 without registering in conformity with this chapter, shall be
16 guilty of a misdemeanor. Any officer or director of a
17 corporation who permits, aids, or abets the corporation to
18 engage or continue in business without registering in conformity
19 with this chapter, shall likewise be guilty of a misdemeanor.
20 The penalty for the misdemeanors shall be that prescribed by
21 section 231-34 for violation of that section."



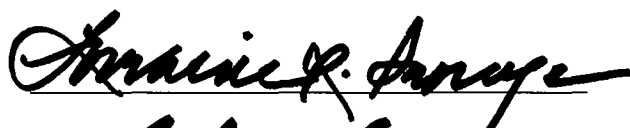



S.B. NO. 2232

1 SECTION 7. In codifying the new sections added by
2 section 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect on January 1, 2021.

8

INTRODUCED BY: 






S.B. NO. 2232

Report Title:

Vehicle Sharing; Peer-to-peer Program Regulation; Insurance

Description:

Creates a new chapter in the Hawaii Revised Statutes regulating peer-to-peer vehicle sharing in Hawaii.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

