

JAN 26 2022

A BILL FOR AN ACT

RELATING TO PEER-TO-PEER CAR-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 title 15 to be appropriately designated
3 and to read as follows:

4 **"CHAPTER**

5 **PEER-TO-PEER CAR-SHARING**

6 § -1 **Definitions.** As used in this chapter:

7 "Car-sharing delivery period" means the period of time
8 during which a shared car is being delivered to the location of
9 the car-sharing start time, if applicable, as documented by the
10 governing car-sharing program agreement.

11 "Car-sharing period" means the period of time that
12 commences with the car-sharing delivery period or, if there is
13 no delivery period, that commences with the car-sharing start
14 time and, in either case, ends at the car-sharing termination
15 time.

16 "Car-sharing program agreement" means the terms and
17 conditions applicable to a shared car owner and a shared car



1 driver that govern the use of a shared car through a
2 peer-to-peer car-sharing program. "Car-sharing program
3 agreement" does not include a rental agreement as defined in
4 section 437D-3.

5 "Car-sharing start time" means the time when the shared car
6 becomes subject to the control of the shared car driver at or
7 after the time the reservation of a shared car is scheduled to
8 begin as documented in the records of a peer-to-peer car-sharing
9 program.

10 "Car-sharing termination time" means the earliest of the
11 following events:

12 (1) The expiration of the agreed upon period of time
13 established for the use of a shared car according to
14 the terms of the car-sharing program agreement if the
15 shared car is delivered to the location agreed upon in
16 the car-sharing program agreement;

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



1 (3) When the shared car owner or the shared car owner's
2 authorized designee takes possession and control of
3 the shared car.

4 "Peer-to-peer car-sharing" means the authorized use of a
5 vehicle by an individual other than the vehicle's owner through
6 a peer-to-peer car-sharing program. "Peer-to-peer car-sharing"
7 does not include the business of providing rental motor vehicles
8 to the public as that phrase is used in section 251-3 or the
9 business of a lessor as defined in section 437D-3.

10 "Peer-to-peer car-sharing program" means a business
11 platform that connects vehicle owners with drivers to enable the
12 sharing of vehicles for financial consideration. "Peer-to-peer
13 car-sharing program" does not mean a lessor as defined in
14 section 437D-3. "Peer-to-peer car-sharing program" does not
15 include a car-sharing organization as defined in section 251-1.

16 "Shared car" means a vehicle that is available for sharing
17 through a peer-to-peer car-sharing program. "Shared car" does
18 not include a rental motor vehicle or vehicle as those terms are
19 defined in section 437D-3.

20 "Shared car driver" means an individual who has been
21 authorized to drive the shared car by the shared car owner under



1 a car-sharing program agreement. "Shared car driver" does not
2 include a lessee as defined in section 437D-3.

3 "Shared car owner" means the registered owner, or a person
4 or entity designated by the registered owner, of a vehicle made
5 available for sharing to shared car drivers through a
6 peer-to-peer car-sharing program. "Shared car owner" does not
7 include a lessor as defined in section 437D-3.

8 **§ -2 Insurance coverage during car-sharing period. (a)**

9 A peer-to-peer car-sharing program shall assume liability,
10 except as provided in subsection (b), of a shared car owner for
11 bodily injury or property damage to third parties or uninsured
12 and underinsured motorist or personal injury protection losses
13 during the car-sharing period in an amount stated in the
14 car-sharing program agreement, which shall not be less than the
15 amounts set forth in section 431:10C-301.

16 (b) Notwithstanding the definition of "car-sharing
17 termination time" in section -1, the assumption of liability
18 under subsection (a) shall not apply to any shared car owner
19 when:

20 (1) A shared car owner makes an intentional or fraudulent
21 material misrepresentation or omission to the



1 peer-to-peer car-sharing program before the
2 car-sharing period in which the loss occurred; or

3 (2) Acting in concert with a shared car driver who fails
4 to return the shared car pursuant to the terms of the
5 car-sharing program agreement.

6 (c) Notwithstanding the definition of "car-sharing
7 termination time" in section -1, the assumption of liability
8 under subsection (a) shall apply to bodily injury, property
9 damage, uninsured and underinsured motorist, or personal injury
10 protection losses by damaged third parties as required by
11 section 431:10C-301.

12 (d) A peer-to-peer car-sharing program shall ensure that,
13 during each car-sharing period, the shared car owner and the
14 shared car driver shall be insured under a motor vehicle
15 insurance policy that provides insurance coverage in amounts no
16 less than the minimum amounts required under section 431:10C-301
17 and:

18 (1) Recognizes that the shared car insured under the
19 policy is made available and used through a
20 peer-to-peer car-sharing program; or



1 (2) Does not exclude use of a shared car by a shared car
2 driver.

3 (e) The insurance described under subsection (d) may be
4 satisfied by the motor vehicle insurance maintained by:

5 (1) A shared car owner;

6 (2) A shared car driver;

7 (3) A peer-to-peer car-sharing program; or

8 (4) A shared car owner or a shared car driver, or both,
9 and a peer-to-peer car-sharing program.

10 (f) Insurance described in subsection (e) that satisfies
11 the insurance requirement of subsection (d) shall be the primary
12 insurance during each car-sharing period.

13 (g) If the peer-to-peer car-sharing program, in whole or
14 in part, provides the insurance required under subsections (d)
15 and (e), the program shall assume primary liability for a claim
16 when:

17 (1) A dispute exists as to who was in control of the
18 shared car at the time of the loss; and

19 (2) The peer-to-peer car-sharing program does not have
20 available, did not retain, or fails to provide the
21 information required by section -5.



1 The shared car's insurer shall indemnify the peer-to-peer
2 car-sharing program to the extent of its obligation under, if
3 any, the applicable insurance policy, if it is determined that
4 the shared car's owner was in control of the shared car at the
5 time of the loss.

6 (h) If insurance maintained by a shared car owner or
7 shared car driver in accordance with subsection (e) has lapsed
8 or does not provide the required coverage, insurance maintained
9 by a peer-to-peer car-sharing program shall provide the coverage
10 required by subsection (d) beginning with the first dollar of a
11 claim and shall have the duty to defend the claim except under
12 circumstances as set forth in subsection (b).

13 (i) In addition to the insurance coverage required by this
14 section, insurers offering insurance through a peer-to-peer
15 car-sharing program shall be subject to chapter 431.

16 (j) Coverage under a motor vehicle insurance policy
17 maintained by the peer-to-peer car-sharing program shall not be
18 dependent upon another motor vehicle insurer first denying a
19 claim nor shall another motor vehicle insurance policy be
20 required to first deny a claim.

21 (k) Nothing in this chapter shall limit the:



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

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

§ -3 Notification of implications of lien. When a car owner registers as a shared car owner on a peer-to-peer car-sharing program and prior to when the shared car owner makes a shared car available for car-sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program shall notify the shared car owner that, if the shared car has a lien against it, the use of the shared car through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.



1 **§ -4 Exclusions in motor vehicle insurance policies.**

2 (a) An authorized insurer that writes motor vehicle insurance
3 in the State may exclude any and all coverage and the duty to
4 defend or indemnify any claim afforded under a shared car
5 owner's motor vehicle insurance policy, including:

6 (1) Liability coverage for bodily injury and property
7 damage;

8 (2) Personal injury protection coverage as set forth in
9 section 431:10C-103.5(a);

10 (3) Uninsured and underinsured motorist coverage;

11 (4) Medical payments coverage;

12 (5) Comprehensive physical damage coverage; and

13 (6) Collision physical damage coverage.

14 (b) Nothing in this chapter shall invalidate or limit an
15 exclusion contained in a motor vehicle insurance policy,
16 including any insurance policy in use or approved for use that
17 excludes coverage for motor vehicles made available for rent,
18 sharing, or hire.

19 **§ -5 Recordkeeping; use of vehicle in car-sharing.** A

20 peer-to-peer car-sharing program shall collect and verify
21 records pertaining to the use of a shared car, including times



1 used, fees paid by the shared car driver, and revenues received
2 by the shared car owner, and provide that information upon
3 request to the shared car owner, the shared car owner's insurer,
4 or the shared car driver's insurer to facilitate a claim
5 coverage investigation. The peer-to-peer car-sharing program
6 shall retain the records for a time period no less than the
7 six-year statute of limitations period set forth under section
8 657-1(4).

9 **§ -6 Exemption; vicarious liability.** Consistent with
10 title 49 United States Code section 30106, a peer-to-peer
11 car-sharing program and a shared car owner shall be exempt from
12 vicarious liability under any state or local law that imposes
13 liability solely based upon motor vehicle ownership.

14 **§ -7 Contribution against indemnification.** A motor
15 vehicle insurer that defends or indemnifies a claim against a
16 shared car that is excluded under the terms of its policy shall
17 have the right to seek contribution against the motor vehicle
18 insurer of the peer-to-peer car-sharing program if the claim is:

- 19 (1) Made against the shared car owner or the shared car
20 driver for loss or injury that occurs during the
21 car-sharing period; and



1 (2) Excluded under the terms of its policy.

2 § -8 **Insurable interest.** (a) Notwithstanding any other
3 law or rule to the contrary, a peer-to-peer car-sharing program
4 shall have an insurable interest in a shared car during the
5 car-sharing period.

6 (b) A peer-to-peer car-sharing program may own and
7 maintain as the named insured one or more policies of motor
8 vehicle insurance that provides coverage for:

- 9 (1) Liabilities assumed by the peer-to-peer car-sharing
10 program under a car-sharing program agreement;
11 (2) Any liability of the shared car owner; or
12 (3) Damage or loss to the shared car or any liability of
13 the shared car driver.

14 § -9 **Required disclosures and notices.** For each shared
15 car participating in a car-sharing program agreement on its
16 platform, a peer-to-peer car-sharing program shall:

- 17 (1) Provide the shared car owner and shared car driver
18 with the terms and conditions of the car-sharing
19 program agreement;
20 (2) Disclose to the shared car driver each specific
21 charge, fee, tax, or other cost item that is charged



1 to the shared car driver under the car-sharing program

2 agreement;

3 (3) Disclose to the shared car owner each specific charge,

4 fee, tax, or other cost item that is charged to the

5 shared car owner under the car-sharing program

6 agreement;

7 (4) Provide an emergency telephone number for a person

8 capable of facilitating roadside assistance to the

9 shared car driver;

10 (5) Disclose any right of the peer-to-peer car-sharing

11 program to seek indemnification from the shared car

12 owner or the shared car driver for economic loss

13 sustained by the peer-to-peer car-sharing program

14 caused by a breach of the car-sharing program

15 agreement;

16 (6) Disclose that a motor vehicle insurance policy issued

17 to the shared car owner for the shared car or to the

18 shared car driver does not provide a defense or

19 indemnification for any claim asserted by the

20 peer-to-peer car-sharing program;



(7) Disclose that the peer-to-peer car-sharing program's insurance coverage on the shared car owner and the shared car driver is in effect only during each car-sharing period and that the shared car may not have insurance coverage for use of the shared car by the shared car driver after the car-sharing termination time;

(8) Disclose any insurance or protection package costs that are charged to the shared car owner or the shared car driver;

(9) Disclose that the shared car owner's motor vehicle insurance policy may not provide coverage for a shared car; and

(10) Disclose to the shared car driver any conditions in which the shared car driver is required to maintain a motor vehicle insurance policy as the primary coverage for the shared car in order to drive a shared car.

§ -10 Driver's license verification and data retention.

(a) A peer-to-peer car-sharing program shall not enter into a car-sharing program agreement with a shared car driver unless the shared car driver:



(1) Holds a driver's license issued under section 286-102 that authorizes the shared car driver to operate vehicles of the class of the shared car;

(2) Is a nonresident who:

(A) Has a driver's license issued by the state or country of the driver's residence that authorizes the shared car driver in that state or country to drive vehicles of the class of the shared car;

and

(B) Is at least the same age as that required of a resident to drive; or

(3) Otherwise is specifically authorized to drive vehicles of the class of the shared car.

(b) A peer-to-peer car-sharing program shall record:

(1) The name and address of the shared car driver;

(2) The place of issuance and number of the driver's license of the shared car driver and each other person, if any, who will operate the shared car.

§ -11 Responsibility for equipment. A peer-to-peer car-sharing program shall have sole responsibility for any equipment, such as a global positioning system or other special



1 equipment that is put in or on the shared car to monitor or
2 facilitate the car-sharing transaction, and shall agree to
3 indemnify and hold harmless the shared car owner for any damage
4 to or theft of the equipment during the car-sharing period not
5 caused by the shared car owner. The peer-to-peer car-sharing
6 program shall have the right to seek indemnification from the
7 shared car driver for any loss or damage to the equipment that
8 occurs during the car-sharing period.

9 § -12 **Motor vehicle safety recalls.** (a) At the time
10 when a vehicle owner registers as a shared car owner on a
11 peer-to-peer car-sharing program and prior to the time when the
12 shared car owner makes a shared car available for car-sharing on
13 the peer-to-peer car-sharing program, the peer-to-peer
14 car-sharing program shall:

15 (1) Verify that no safety recalls exist for the make and
16 model of the shared car for which repairs have not
17 been made; and

18 (2) Notify the shared car owner of the requirements under
19 subsection (b).

20 (b) A shared car owner shall:



(1) Not make the shared car available for use through a peer-to-peer car-sharing program if the shared car owner has received notice of a safety recall on the shared car, until the safety repair has been made;

(2) Remove any shared car listed for use through a peer-to-peer car-sharing program upon receipt of a notice of a safety recall as soon as practicably possible but no longer than seventy-two hours after receipt of notice of a safety recall; and

(3) Notify the peer-to-peer car-sharing program of a safety recall when the shared car is in the possession of a shared car driver so that the peer-to-peer car-sharing program may notify the shared car driver and the shared car may be removed from use until the shared car owner effects the necessary safety recall repair.

§ -13 Relation to other laws. Chapter 437D shall not apply to peer-to-peer car-sharing."

SECTION 2. Section 251-2.5, Hawaii Revised Statutes, is amended to read as follows:



1 "[+]§251-2.5[+] **Car-sharing vehicle surcharge tax.** (a)

2 There is levied and shall be assessed and collected a
3 car-sharing vehicle surcharge tax [~~of 25 cents~~] equal to
4 one-twelfth of the rate set forth in section 251-2(a), per
5 half-hour, or any portion of a half-hour, that a rental motor
6 vehicle is rented or leased by a car-sharing organization[+] and
7 a shared car is shared pursuant to a car-sharing program
8 agreement as those terms are defined in section -1; provided
9 that for each rental of six hours or more, the tax shall be
10 assessed in a manner provided in section 251-2. The car-sharing
11 vehicle surcharge tax shall be levied upon the car-sharing
12 organization[+] or the peer-to-peer car-sharing program, as
13 appropriate.

14 (b) An organization that qualifies as a car-sharing
15 organization as defined in section 251-1, that is registered
16 with the department pursuant to section 251-3, or a peer-to-peer
17 car-sharing program as defined in section -1, and that is
18 subject to the surcharges imposed by this section shall not be
19 subject to the surcharges imposed by section 251-2; provided
20 that any organization registered with the department pursuant to



1 section 251-3 shall be subject to at least one surcharge imposed
2 by this chapter."

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

5 "(a) Each person as a condition precedent to engaging or
6 continuing in the business of providing rental motor vehicles to
7 the public, engaging or continuing in the tour vehicle operator
8 business, [~~or~~] engaging or continuing in a car-sharing
9 organization business, or engaging or continuing in a
10 peer-to-peer car-sharing program as defined in section -1
11 shall register with the director. A person required to so
12 register shall make a one-time payment of \$20, upon receipt of
13 which the director shall issue a certificate of registration in
14 such form as the director determines, attesting that the
15 registration has been made. The registration shall not be
16 transferable and shall be valid only for the person in whose
17 name it is issued and for the transaction of business at the
18 place designated therein. The registration, or in lieu thereof
19 a notice stating where the registration may be inspected and
20 examined, shall at all times be conspicuously displayed at the
21 place for which it is issued."



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2022.

4

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'C. Lee', is written over a horizontal line.

S.B. NO. 3271

Report Title:

DoTAX; Peer-to-Peer Car-sharing; Car-sharing Surcharge Tax;
State Highway Fund

Description:

Authorizes peer-to-peer car-sharing and establishes regulations thereof. Imposes the car-sharing surcharge tax on peer-to-peer car-sharing programs. Sets the car-sharing vehicle surcharge tax at a rate equal to one-twelfth of the rate of the rental motor vehicle surcharge tax. Requires those persons engaging or continuing in a peer-to-peer car-sharing program to register with the Department of Taxation.

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

