

ACT 56

H.B. NO. 1619

A Bill for an Act Relating to Peer-to-Peer Car-Sharing Insurance Requirements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that peer-to-peer car-sharing programs, which are not rental car businesses, do not have established requirements for insurance coverage. These agreement-based car-sharing programs must ensure that cars in their programs are properly insured specifically for peer-to-peer car-sharing purposes.

The legislature further finds that it is in the public's interest to establish requirements for peer-to-peer car-sharing programs regarding mandatory insurance coverage.

Accordingly, the purpose of this Act is to establish mandatory insurance terms for peer-to-peer car-sharing programs.

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

“PART . PEER-TO-PEER CAR-SHARING INSURANCE

§431:10C-A Definitions. As used in this chapter:

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

“Car-sharing period” means the period of time that commences with the car-sharing delivery period or, if there is no delivery period, that commences with the car-sharing start time and, in either case, ends at the car-sharing termination time.

“Car-sharing program agreement” means the terms and conditions applicable to a shared car owner, a shared car driver, and a peer-to-peer car-sharing platform, if applicable, that govern the use of a shared car through a peer-to-peer car-sharing program. “Car-sharing program agreement” does not include a rental agreement as defined in section 437D-3.

“Car-sharing start time” means the time the shared car driver obtains operation, use, or control of a shared car through a peer-to-peer car-sharing program.

“Car-sharing termination time” means the latest of the following events:

- (1) The expiration of the agreed upon period of time established for the use of a shared car according to the terms of the car-sharing program agreement if the shared car is delivered to the location agreed upon in the car-sharing program agreement;
- (2) When the shared car is returned to a location as alternatively agreed upon by the shared car owner and shared car driver as communicated through a peer-to-peer car-sharing program;

- (3) When a shared car is returned to the location agreed upon in the car-sharing program agreement or alternatively agreed upon by the shared car owner and the shared car driver, as communicated through a peer-to-peer car-sharing program, before the expiration of the period of time established for the use of a shared car according to the terms of the car-sharing program agreement, and the shared car driver notifies the peer-to-peer car-sharing program of the location of the shared car;
- (4) When a shared car, during the car-sharing period, cannot safely or legally be operated and the shared car driver notifies the peer-to-peer car-sharing program that the shared car is inoperable and identifies the location of the shared car;
- (5) When the shared car owner receives notice of a safety recall affecting the shared car and the shared car driver returns the shared car to the location agreed upon in the car-sharing program agreement, or alternatively agreed upon by the shared car owner and the shared car driver, and the shared car driver notifies the peer-to-peer car-sharing program of the location of the shared car; or
- (6) When the shared car owner or the shared car owner's authorized designee takes possession and control of the shared car.

"Peer-to-peer car-sharing" means the operation, use, or control of a motor vehicle by an individual other than the motor vehicle's owner through a peer-to-peer car-sharing program. "Peer-to-peer car-sharing", for the purposes of assessing a vehicle surcharge tax, does not mean the business of providing rental motor vehicles to the public as that phrase is used in section 251-3.

"Peer-to-peer car-sharing platform" means any person or business that owns or operates a peer-to-peer car-sharing program.

"Peer-to-peer car-sharing program" means:

- (1) Any person who enables a shared car driver to identify, reserve, or use a shared car owned by a shared car owner; or
- (2) Any person who enables a shared car owner to describe, list, or make available a shared car for identification, reservation, or use by a shared car driver.

"Peer-to-peer car-sharing program" does not include:

- (1) A transportation network company as defined in section 431:10C-701;
- (2) A car-sharing organization as defined in section 251-1;
- (3) Any person registered and acting as a travel agency pursuant to chapter 468L; or
- (4) Any person registered and acting as an activity desk pursuant to chapter 468M.

"Shared car" means a motor vehicle that is registered pursuant to chapter 286 and is not owned; controlled; operated; maintained; or managed by or registered, directly or indirectly through an affiliate, to the peer-to-peer car-sharing program; and is available for sharing through a peer-to-peer car-sharing program. "Shared car" does not include a rental motor vehicle or vehicle as those terms are defined in section 437D-3.

"Shared car driver" means an individual who has been authorized to drive the shared car by the shared car owner under a car-sharing program agreement. "Shared car driver" does not include a lessee as defined in section 437D-3.

"Shared car owner" means the registered owner of a shared car. "Shared car owner" does not include a lessor as defined in section 437D-3.

§431:10C-B Insurance coverage during car-sharing period. (a) A peer-to-peer car-sharing program shall ensure that during each car-sharing period,

the shared car shall be insured under a motor vehicle insurance policy that shall provide:

- (1) Primary insurance coverage for each shared car available and used through a peer-to-peer car-sharing program in amounts not less than \$750,000 for death, bodily injury, and property damage per accident, and costs of defense outside the limits;
- (2) Primary insurance coverage for each shared car available and used through a peer-to-peer car-sharing program for personal injury protection coverage that meets the minimum coverage amounts required by section 431:10C-103.5; and
- (3) The following optional coverages, which any named insured may elect to reject or purchase, that provides primary coverage for each shared car available and used through a peer-to-peer car-sharing program:
 - (A) Uninsured and underinsured motorist coverages as provided in section 431:10C-301, which shall be equal to the primary liability limits specified in this section; provided that uninsured and underinsured motorist coverage offers shall provide for written rejection of the coverages as provided in section 431:10C-301;
 - (B) Uninsured and underinsured motorist coverage stacking options as provided in section 431:10C-301; provided that the offer of the stacking options shall provide for written rejection as provided in section 431:10C-301;
 - (C) An offer of required optional additional insurance coverages as provided in section 431:10C-302; and
 - (D) In the event the only named insured under the motor vehicle insurance policy issued pursuant to this section is the peer-to-peer car-sharing program, the insurer or the peer-to-peer car-sharing program shall:
 - (i) Disclose the coverages in writing to the peer-to-peer car-sharing driver;
 - (ii) Disclose to the peer-to-peer car-sharing driver in writing that all optional coverages available may not have been purchased under sections 431:10C-301 and 431:10C-302; and
 - (iii) Obtain a written acknowledgement from the peer-to-peer car-sharing driver of receipt of the written disclosures required in paragraphs (1) and (2). The standard disclosure forms used in paragraphs (1) and (2), and every modification of such forms intended to be used, shall be filed with the commissioner within fifteen days of providing such disclosure to the peer-to-peer car-sharing driver. The insurer or the peer-to-peer car-sharing program shall also send to the peer-to-peer car-sharing driver every modified disclosure form within fifteen days of the filing of such modified disclosure form and comply with paragraph (3). Such disclosures and acknowledgement may be sent and received by electronic means.

(b) If insurance maintained by a shared car owner or shared car driver in accordance with subsection (a) has lapsed, contains an exclusion for peer-to-peer car-sharing, or does not provide the required coverage, insurance maintained by a peer-to-peer car-sharing program shall provide the coverage required

by subsection (a) beginning with the first dollar of a claim and shall have the duty to defend the claim.

(c) Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program shall not be dependent on another motor vehicle insurer first denying a claim.

§431:10C-C Exclusions in motor vehicle insurance policies. (a) Notwithstanding section 431:10C-B, an authorized insurer that writes motor vehicle insurance in the State may exclude any and all coverage and the duty to defend or indemnify any claim afforded under a shared car owner's motor vehicle insurance policy during the car-sharing period, including:

- (1) Liability coverage for bodily injury and property damage;
- (2) Personal injury protection coverage as set forth in section 431:10C-304;
- (3) Uninsured and underinsured motorist coverage;
- (4) Medical payments coverage;
- (5) Comprehensive physical damage coverage; and
- (6) Collision physical damage coverage.

(b) Except as required under section 431:10C-B, nothing in this part shall invalidate or limit an exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire.

§431:10C-D Recordkeeping; use of vehicle in peer-to-peer car-sharing. A peer-to-peer car-sharing program shall collect and verify records pertaining to the use of a shared car for each car-sharing program agreement, including:

- (1) Dates and times of the car-sharing start time and the car-sharing termination time in the car-sharing program agreement;
- (2) Dates and times of the car-sharing start time and car-sharing termination time;
- (3) Itemized descriptions and amounts of all fees and costs charged to the shared car driver;
- (4) Itemized descriptions and amounts of all fees and costs paid by the shared car driver;
- (5) Itemized descriptions and amounts of all fees and costs paid to the shared car owner;
- (6) The name and contact information of the shared car owner and the shared car driver; and
- (7) The insurance policy number, effective date, coverage, and coverage amounts of each insurance policy that identifies the peer-to-peer car-sharing program, shared car owner, or shared car driver as the insured.

The peer-to-peer car-sharing program shall retain the records for a time period of not less than six years. Upon request, the peer-to-peer car-sharing program shall provide the information required by this section and any information relating to the peer-to-peer car-sharing agreement in its possession and control to the shared car owner, shared car owner's insurer, shared car driver, shared car driver's insurer, persons who have sustained injury or property damage involving a shared car, and police and other governmental entities to facilitate accident or claim coverage investigation.

§431:10C-E Right of recovery from peer-to-peer car-sharing program or its motor vehicle insurer. (a) A motor vehicle insurer that defends or indemnifies a liability claim against a shared car owner or shared car driver that is excluded under the terms of the shared car owner's or shared car driver's policy shall have

a right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the liability claim is made against the shared car owner or shared car driver for injury or damage that occurs during the car-sharing period.

(b) A motor vehicle insurer that pays personal injury protection benefits for injury sustained by an occupant of, or by a pedestrian when struck by, a shared car when the obligation to pay personal injury protection benefits is excluded under the shared car owner's or shared car driver's policy shall have the right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the injury occurs during the car-sharing period.

(c) A motor vehicle insurer that pays uninsured motorist benefits or underinsured motorist benefits for injury sustained by an occupant of a shared car when the obligation to pay uninsured motorist benefits or underinsured motorist benefits is excluded under the shared car owner's or shared car driver's policy shall have the right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the injury occurs during the car-sharing period.

(d) A motor vehicle insurer that pays a shared car owner for loss or damage to a shared car that is excluded under the comprehensive physical damage coverage or collision physical damage coverage of the shared car owner's or shared car driver's policy shall have the right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the loss or damage to the shared car occurs during the car-sharing period.

§431:10C-F Insurable interest. (a) Notwithstanding any law to the contrary, a peer-to-peer car-sharing program shall have an insurable interest in a shared car during the car-sharing period.

(b) In addition to the insurance coverage mandated by section 431:10C-B, a peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance that provides coverage for:

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

§431:10C-G Required disclosures and notices. For each shared car participating in a car-sharing program agreement, a peer-to-peer car-sharing program shall:

- (1) Before the execution of a car-sharing program agreement, provide the shared car owner and shared car driver with the terms and conditions of the car-sharing program agreement;
- (2) Before the execution of a car-sharing program agreement, disclose to the shared car driver, all costs or fees that are charged to the shared car driver under the car-sharing program agreement, including all costs or fees for mandatory insurance coverage charged by the peer-to-peer car-sharing program;
- (3) Before the execution of a car-sharing program agreement, disclose to the shared car owner, all costs or fees that are charged to the shared car owner under the car-sharing program agreement, including fees or costs for mandatory insurance coverage charged by the peer-to-peer car-sharing program;
- (4) Provide a twenty-four hour emergency telephone number for a person capable of facilitating roadside assistance for the shared car driver;
- (5) Disclose any right of the peer-to-peer car-sharing program to seek indemnification from the shared car owner or shared car driver for

economic loss sustained by the peer-to-peer car-sharing program caused by a breach of the car-sharing program agreement; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure before execution of a car-sharing program agreement;

- (6) Disclose that a motor vehicle insurance policy issued to the shared car owner for the shared car or to the shared car driver may not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure before execution of a car-sharing program agreement;
- (7) Disclose that the peer-to-peer car-sharing program's insurance coverage of the shared car owner and 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; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure before the execution of a car-sharing program agreement;
- (8) Disclose any insurance or protection package costs that are charged to the shared car owner or shared car driver; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure before the execution of a car-sharing program agreement;
- (9) 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; and
- (10) Disclose that a shared car owner shall be permitted to obtain insurance that provides coverage for loss of use of a shared car."

SECTION 3. The insurance commissioner shall submit a report on the progress in the implementation of this part, including but not limited to the number of complaints and the nature of the complaints and the effect of the coverage limits on victims involved in motor vehicle accidents with peer-to-peer vehicles, to the legislature no later than twenty days prior to the convening of the regular session of 2025.

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

SECTION 5. This Act shall take effect on January 1, 2023, and shall be repealed on June 30, 2025.

(Approved June 17, 2022.)