

ACT 77

H.B. NO. 1971

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

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to title 15 to be appropriately designated and to read as follows:

“CHAPTER

PEER-TO-PEER CAR-SHARING

§ -1 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 driver 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 lessee as defined in section 437D-3.

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

§ -2 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 peer-to-peer 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.

§ -3 Recordkeeping; use of vehicle in 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 no 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.

§ -4 Exemption; vicarious liability. Consistent with title 49 United States Code section 30106, a peer-to-peer car-sharing program and shared car owner shall be exempt from vicarious liability under any state or local law that imposes liability solely based upon motor vehicle ownership.

§ -5 Required disclosures and notices. For each shared car participating in a car-sharing program agreement, a peer-to-peer car-sharing program shall:

- (1) Provide, prior to the execution of a car-sharing program agreement, the shared car owner and shared car driver with the terms and conditions of the car-sharing program agreement;
- (2) Disclose to the shared car driver, prior to the execution of a car-sharing program agreement, all costs or fees that are charged to the shared car driver under the car-sharing program agreement, includ-

- ing all costs or fees for mandatory insurance coverage charged by the peer-to-peer car-sharing program;
- (3) Disclose to the shared car owner, prior to the execution of a car-sharing program agreement, 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 prior to 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 prior to execution of a car-sharing program agreement;
 - (7) Disclose that the peer-to-peer car-sharing program's insurance coverage on 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 prior to 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 prior to 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.

§ -6 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; and
 - (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.

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

§ -8 Motor vehicle safety recalls. (a) At the time when a vehicle owner registers as a shared car owner on a peer-to-peer car-sharing program, prior to the time when the shared car owner makes a shared car available for peer-to-peer car-sharing on the peer-to-peer car-sharing program and no more than forty-eight hours before the car-sharing start time, the peer-to-peer car-sharing program shall:

- (1) Verify that no safety recalls exist for the make and model of the shared car for which repairs have not been made;
- (2) Notify the shared car owner of the requirements under subsection (b); and
- (3) Not make the shared car available for use through a peer-to-peer car-sharing program if the shared car owner or peer-to-peer car-sharing program has received notice or is aware of a safety recall on the shared car, until the safety repair has been made.
- (b) A shared car owner shall:
 - (1) 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
 - (2) 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.

§ -9 General excise tax; rental motor vehicle surcharge tax; collection. The activity of peer-to-peer car-sharing shall be subject to general excise tax under chapter 237 and the rental motor vehicle surcharge tax pursuant to section 251-2(a); provided that the peer-to-peer car-sharing program shall be responsible for collecting and remitting any taxes and surcharges to the department of taxation.

§ -10 Relation to other laws. Chapter 437D shall not apply to peer-to-peer car-sharing."

SECTION 2. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of \$5 a day, or any portion of a day that a rental motor vehicle is rented or leased. Beginning January 1, 2022, and each subsequent year on January 1 until December 31, 2027, the rental motor vehicle surcharge tax shall increase by \$0.50. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that:
 - (A) Is being repaired; or
 - (B) Has been stolen and is unrecovered or will not be repaired due to a total loss of the vehicle; and
- (2) A record of the repair order, the stolen vehicle record, or total loss vehicle claim for the vehicle is retained either by the lessor for two years for verification purposes or by a motor vehicle repair dealer for two years as provided in section 437B-16.

In addition to the requirements imposed by section 251-4, a lessor shall disclose, to the department, the portion of the remittance attributed to the county in which the motor vehicle was operated under rental or lease. A peer-to-peer car-sharing program, as defined in chapter , shall be subject to the tax imposed by this subsection and be subject to the other requirements of this chapter.”

SECTION 3. 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 the business of providing rental motor vehicles to the public, engaging or continuing in the tour vehicle operator business, ~~engaging or continuing in a car-sharing organization business, or engaging or continuing in a peer-to-peer car-sharing program as defined in section -1~~ shall register with the director. A person required to so register shall make a one-time payment of \$20, upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued.”

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

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

(Approved June 17, 2022.)