

Legislative Analysis



PEER-TO-PEER CAR SHARING PROGRAM ACT

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<http://www.house.mi.gov/hfa>

House Bill 4915 (proposed substitute H-1)
Sponsor: Rep. Michele Hoytenga

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4916 as introduced
Sponsor: Rep. Amos O'Neal

House Bill 4917 (proposed substitute H-1)
Sponsor: Rep. Pat Outman

Committee: Regulatory Reform
Complete to 3-22-22

BRIEF SUMMARY:

House Bill 4917 would create a new act, the Peer-to-Peer Car Sharing Program Act, to do, among other things, all of the following:

- Establish obligations of the parties involved in a peer-to-peer car sharing program, including operators of a peer-to-peer car sharing program, owners of vehicles used in a car sharing program, insurance companies, and airport operators.
- Require a car sharing program to assume liability for a shared vehicle owner, unless the owner engaged in intentional fraud or misrepresentation.
- Require a car sharing program to ensure that the shared vehicle owner and the shared vehicle driver are insured under an automobile insurance policy as prescribed in the bill.
- Allow auto insurers to exclude coverage, as provided in the bill.
- Establish certain record-keeping requirements.
- Require certain disclosures to a shared vehicle owner and driver by a car sharing program agreement.
- Require vehicles for which a safety recall notice has been received to be repaired before being made available for vehicle sharing.
- Require certain taxes to be collected and paid.
- If requested by an airport, require a peer-to-peer car sharing program or shared vehicle owner to enter into an agreement before a shared vehicle could engage in certain activities at an airport.

House Bills 4915 and 4916 are companion bills that would respectively amend the Insurance Code and the Michigan Vehicle Code to comport with provisions of the proposed new act. House Bill 4915 would allow insurers to exclude coverage for certain claims afforded under a shared vehicle owner's auto insurance policy. House Bill 4916 would exclude a shared vehicle owner from civil liability for injuries resulting from a violation of the Motor Vehicle Code by the owner or operator of a vehicle.

DETAILED SUMMARY:

House Bill 4917 would create the Peer-to-Peer Car Sharing Program Act to impose obligations on and provide rights to certain individuals and entities, including persons who operate *peer-to-peer car sharing*, co-owners of a vehicle used in peer-to-peer car sharing, automobile insurance companies, and airport operators. The bill also would provide for liability for injuries to persons and property, provide remedies, and define terms. The bill would not specifically identify a state department or agency to administer or enforce the new act.

Peer-to-peer car sharing would mean the authorized use of a vehicle by an individual other than the vehicle's owner through a *peer-to-peer car sharing program*. The term would not include either a car rental or rental activity by a car rental company or a transportation network company prearranged ride, as defined in the Michigan Consumer Protection Act and the Transportation Network Company Act, respectively.

Peer-to-peer car sharing program would mean a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. The term would not include a car rental company, a transportation network company, or a service provider solely providing hardware or software as a service to a person that is not paying financial consideration for the use of a *shared vehicle*.

Shared vehicle would mean a vehicle available for sharing through a peer-to-peer car sharing program. The term would not include a rental car available to be rented by a car rental company.

The new act would be divided into chapters as follows:

CHAPTER 4: INSURANCE

Under the bill, a peer-to-peer car sharing program would be required to assume liability of a *shared vehicle owner* for bodily injury or property damage to third parties, uninsured and underinsured motorist liability, and personal protection insurance (PPI) benefits during the *car sharing period* in an amount stated in the peer-to-peer *car sharing program agreement*.

Shared vehicle owner would mean the registered owner, or a person designated by the registered owner, of a vehicle made available for sharing to *shared vehicle drivers* through a peer-to-peer car sharing program.

Shared vehicle driver would mean an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement.

Car sharing period would mean the period of time that commences with the *car sharing delivery period* or, if no delivery period, with the car sharing start time and ends in either case at the *car sharing termination time*.

Car sharing delivery period would mean the period of time during which a shared vehicle 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 start time would mean the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program.

Car sharing termination time would mean the earliest of the following:

- The time the agreed-upon period of time established for the use of the shared vehicle expires according to the terms of the agreement if the shared vehicle is delivered to the agreed-upon location.
- The time the vehicle is returned to an alternatively agreed-upon location as communicated through a peer-to-peer car sharing program.
- The time the owner or owner's authorized designee takes possession and control of the shared vehicle.

Car sharing program agreement would mean the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program. The term would not include a car rental agreement by a car rental company or an agreement for a transportation network company prearranged ride.

The bodily injury and property damage liability would, at a minimum, have to provide coverage as required under section 3009 of the Insurance Code. PPI benefits would, at a minimum, have to provide PPI benefits as required under Chapter 31 of the Insurance Code.

Assumption of liability for a shared vehicle owner would not apply if the owner made an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program either before the car sharing period in which the loss occurred *or* if the owner acted in concert with a shared vehicle driver who failed to return the vehicle in accordance with the terms of the car sharing program agreement.

Insurance coverage

A peer-to-peer car sharing program would have to ensure that, during each car sharing period, the shared vehicle owner and driver were insured under an automobile insurance policy that would have to be primary during each car sharing period and that provides for assumption of liability described above, recognizes that the shared vehicle is made available and used through a peer-to-peer car sharing program, and does not exclude use of a shared vehicle by a shared vehicle driver. The insurance requirement could be satisfied by a policy maintained by the shared vehicle owner, the shared vehicle driver, the peer-to-peer car sharing program, or a combination of those persons.

A program would have an insurable interest in a shared vehicle during the car sharing period under the bill, but this would not create liability on a program to maintain the coverage described above. A program could own and maintain as the named insured one or more policies of motor vehicle liability insurance that provide coverage for any of the following:

- Liabilities assumed by the program under a peer-to-peer car sharing program agreement.
- Any liability of the shared vehicle owner.
- Damage or loss to the shared vehicle.
- Any liability of the shared vehicle driver.

Liability for claims

Primary liability for a claim would be assumed by a peer-to-peer car sharing program if it provides, in whole or in part, the required insurance and both of the following apply:

- A dispute exists as to who was in control of the shared vehicle at the time of the loss.
- The program does not have available, did not retain, or fails to provide the information required under the bill pertaining to record maintenance.

Indemnification of the car sharing program would be by the shared vehicle owner's insurer, to the extent of the insurer's obligation, if it were determined that the owner was in control of the vehicle at the time of the loss. If the insurance maintained by the shared vehicle owner or driver had lapsed or did not provide the required coverage, insurance maintained by the peer-to-peer car sharing program would have to provide the coverage beginning with the first dollar of a claim and would have the duty to defend the claim except if fraudulent misrepresentations or omissions had been made by the shared vehicle owner. Further, coverage under a policy maintained by a peer-to-peer car sharing program could not be dependent on another automobile insurer's first denying a claim.

The provisions of Chapter 4 would not limit the liability of a peer-to-peer car sharing program for any act or omission of the program that results in injury to an individual using a shared vehicle or limit the ability of the program to, by contract, seek indemnification from the shared vehicle owner or driver for economic loss sustained by the program resulting from a breach of the terms and conditions of the car sharing program agreement.

A peer-to-peer car sharing program would have to notify the shared vehicle owner that, if the shared vehicle has a lien against it, using the vehicle through a car sharing program, including use without physical damage coverage, could violate the terms of the contract with the lienholder. The notice would have to be given when the vehicle owner registers as a shared vehicle owner with a car sharing program and before the owner makes the vehicle available for car sharing through the program.

Chapter 4 would not invalidate or limit an exclusion in an auto insurance policy, including a policy in use or approved for use that excludes coverage for vehicles made available for rent, sharing, or hire or for any business use. Authorized insurers that write auto insurance in Michigan could exclude any coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's auto insurance policy as allowed under section 3018 of the Insurance Code, as proposed by House Bill 4915.

An auto insurer that defends or indemnifies a claim arising out of the ownership, maintenance, or use of a shared vehicle that is excluded under the terms of the insurer's policy could seek contribution against the auto insurer of the peer-to-peer car sharing program if the claim were made against the shared vehicle owner or driver for loss or injury that occurs during the car sharing period.

A peer-to-peer car sharing program and a shared vehicle owner would be exempt from vicarious liability under 49 USC 30106 and section 401 of the Michigan Vehicle Code.

Record-keeping requirements

The bill would require a peer-to-peer sharing program to collect and verify records pertaining to the use of a shared vehicle. This would include at least times used, fees paid by the shared vehicle driver, and revenues received by the owner. Records would have to be provided upon request to the shared vehicle owner, the owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation. Records would have to be retained for at least three years.

CHAPTER 5: CONSUMER PROTECTION DISCLOSURES

A car sharing program agreement made in Michigan would have to disclose all of the following to the shared vehicle owner and the shared vehicle driver:

- Any right of the peer-to-peer car sharing program to seek indemnification from the owner or driver for economic loss sustained by the program from a breach of the terms and conditions of the agreement.
- That a motor vehicle liability insurance policy issued to the owner or driver would not provide a defense or indemnification for any claim asserted by the program.
- That the program's insurance coverage on the owner and driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared driver after the car sharing termination time, the driver and owner may not have insurance coverage.
- The daily rate, fees, and, if applicable, any insurance or protection package costs charged to the owner or driver.
- That the owner's auto insurance may not provide coverage for a shared vehicle.
- An emergency telephone number for roadside assistance and other customer service inquiries.
- Any conditions under which a shared vehicle driver would be required to maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

A program could not enter into an agreement with an individual who will operate the shared vehicle unless the individual is specifically authorized by Michigan law to drive vehicles of the class of the shared vehicle or holds a Michigan driver license to operate a vehicle of the class of the shared vehicle or from the country of his or her residence if a nonresident. A nonresident would have to be at least the minimum age to drive in Michigan.

Additional record-keeping requirements

A peer-to-peer car sharing program would have to keep a record of the name and address of the shared vehicle driver, the driver license number of the driver and of each individual who will operate the shared vehicle, and the place of issuance of these driver licenses.

Peer-to-peer program responsibilities

A program would have sole responsibility for equipment, such as a GPS system, installed in or on a shared vehicle to monitor or facilitate the car sharing transaction. The program would have to agree to indemnify and hold harmless the shared vehicle owner for damage to or theft of the equipment during a car sharing period not caused by the owner. The program would have the right to seek indemnity from the shared vehicle driver for any loss or damage to the equipment that occurs during the car sharing period.

When a vehicle owner registers as a shared vehicle owner and before the owner makes a shared vehicle available, a program would have to verify the vehicle does not have any safety recalls for which the repairs have not been made and would have to notify the owner that if a notice of a safety recall on the vehicle has been received, the owner could not make the vehicle available through a program until the safety recall repair is made. If the safety recall notice is received while the shared vehicle is available, the owner would have to remove it as soon as practicable until the safety recall repair is made. If the owner receives a safety recall notice while the vehicle is being used in the possession of a shared vehicle driver, as soon as practicable, the owner would have to notify the program of the safety recall so that the owner could address the safety recall repair.

CHAPTER 6: EFFECTIVE DATE

The bill would take effect nine months after being enacted.

CHAPTER 7: TAXES

All of the following would apply to peer-to-peer car sharing transactions:

- Fleet registration taxes and requirements to apply for registration under the Michigan Vehicle Code.
- Any liabilities and record-keeping and reporting obligations imposed on a marketplace facilitator under the Use Tax Act.
- Taxes imposed under section 3 of the Use Tax Act.
- Any applicable local excise tax.

In addition, a peer-to-peer car sharing program would have to do the following:

- Pay all taxes described above.
- Apply for any registration described above.
- Retain all required information in its records if the program claims relief from liability because of prior payment or under an exemption under the Use Tax Act. The program would have to provide the information upon request of any Michigan department or agency.

CHAPTER 9: AIRPORT AUTHORITIES

The bill would provide that if a person that operates an airport in the state so requests, a peer-to-peer car sharing program or shared vehicle owner would have to enter into an agreement, which could be a concession agreement, before doing any of the following:

- Listing, publishing, or advertising a vehicle parked on airport property or at airport facilities.
- Facilitating the use of a vehicle, or promoting or marketing a vehicle, to transport airport customers to or from airport property or airport facilities, regardless of whether that use is to be initiated or has a start time that occurs on or off of airport property or airport facilities.

The agreement would have to set forth same or reasonably similar standards, regulations, procedures, fees, and access requirements applicable to peer-to-peer car sharing programs, shared vehicle owners, and car rental companies.

Injunction

If a program or owner refused or failed to enter into an agreement, or performed, participated in, or undertook any of the actions described above before entering into an agreement after a request by an airport operator, the airport could seek an injunction prohibiting operations at the airport and could also seek damages against the program or owner.

House Bill 4915 would add a new section to the Insurance Code to allow an authorized insurer that writes auto insurance in the state to exclude any coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's automobile insurance policy, including, but not limited to, all of the following:

- Liability coverage for bodily injury and property damage.
- Personal injury protection coverage.
- Uninsured and underinsured motorist coverage.
- Comprehensive physical damage coverage.
- Collision physical damage coverage.

The bill also would add a reference to the new section described above in several provisions pertaining to limitations or exclusions of coverage. ("Shared vehicle owner" would mean that term as defined in House Bill 4917.)

MCL 500.3009 et seq. and proposed MCL 500.3018

House Bill 4916 would amend the Michigan Vehicle Code. Generally speaking, the owner of a motor vehicle is liable for an injury caused by the negligent operation of the vehicle whether the negligence is a violation of a state law or the ordinary care standard required by common law. The bill would provide that this liability imposed on an owner would not apply to a shared vehicle owner during a car sharing period. ("Car sharing period" and "shared vehicle owner" would mean those terms as defined in House Bill 4917.)

MCL 257.401

Tie-bars:

House Bill 4917 is tie-barred to House Bills 4915 and 4916. House Bills 4915 and 4916 are tie-barred to House Bill 4917, but not to each other. A bill cannot take effect unless all of the bills to which it is tie-barred are also enacted into law.

FISCAL IMPACT:

House Bill 4917, as described in detail above, establishes a framework for the establishment of agreements, including concession agreements, between a person that operates an airport in Michigan and a peer-to-peer car sharing program or shared vehicle owner. Among other things, the bill requires that an agreement between a peer-to-peer car sharing program or shared vehicle owner and the airport operator include for a peer-to-peer car sharing program or shared vehicle owner the same or reasonably similar standards, regulations, procedures, fees, and access requirements as for car rental companies.

Fees from concession agreements between airport operators and peer-to-peer car sharing program or shared vehicle owner could result in additional revenue to some airports, airports which are primarily local units of government.

There are approximately 230 public use airports in the Michigan. Of these, approximately 130 are publicly owned. These publicly owned airports are almost entirely local units of government in some sense—either component units of a county, city, or township or organized as an airport authority under one of several Michigan statutes.

Of the 130 publicly owned airports, only 15 are designated “Commercial Service – Primary Airports,” that is, airports with scheduled air service and more than 10,000 annual boardings. Most of the publicly owned airports in Michigan are designated as “General Aviation Airports,” which means a public-use airport that does not have scheduled service or which has scheduled service with fewer than 2,500 passenger boardings each year. There are 82 General Aviation Airports in Michigan.

As is the case currently with concession agreements between airports and car rental companies, the amount of revenue from agreements between airport operators and peer-to-peer car sharing programs or shared vehicle owner would depend on circumstances specific to each airport in the state as well as specific agreement terms.

House Bills 4915 and 4916 would not have an appreciable fiscal impact on the Department of Insurance and Financial Services or any other unit of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.