

Legislative Analysis



PEER-TO-PEER CAR SHARING PROGRAM ACT

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

House Bill 5949 (H-1) as reported from committee
Sponsor: Rep. Tyrone Carter

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

House Bill 5950 as reported from committee
Sponsor: Rep. Brenda Carter

House Bill 5951 as reported from committee
Sponsor: Rep. Matt Bierlein

Committee: Regulatory Reform
Revised 12-19-24

SUMMARY:

House Bill 5949 would create the Peer-to-Peer Car Sharing Program Act, which would regulate *peer-to-peer car sharing programs* in Michigan, including establish minimum insurance coverages, establish the obligations and liabilities of various parties, requiring certain disclosures, and various other provisions.

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. It would not include either of the following:

- Car rental or rental activity by a car rental company, as that term is defined in section 3h of the Michigan Consumer Protection Act.¹
- A transportation network company prearranged ride, as that term is defined in the Limousine, Taxicab, and Transportation Network Company Act.²

Peer-to-peer car sharing program would mean an individual, partnership, corporation, association, or other legal entity that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. It would not include any of the following:

- Car rental or rental activity by a car rental company.
- A transportation network company prearranged ride.
- A service provider that is solely providing hardware or software as a service to a person that is not effectuating payment of financial consideration for the use of a *shared vehicle*.

Shared vehicle would mean a vehicle that is available for sharing through a peer-to-peer car sharing program. It would not mean or include a rental car available to be rented by a car rental company.

¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-445-903H>

² <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-257-2102>

Insurance

The bill would require the shared vehicle owner and shared vehicle driver to be insured during each *car sharing period* under an automobile insurance policy that either recognizes that the vehicle is used for a peer-to-peer car sharing program or does not exclude the vehicle's use in such a program. The insurance would have to provide all of the following:

- For the shared vehicle owner:
 - Residual third-party liability insurance as required under section 3101 of the Insurance Code,³ in the amounts required under section 3009 of code.⁴
 - Personal protection insurance and property protection insurance of the types and in the amounts required by chapter 31 of the Insurance Code,⁵ except that the peer-to-peer car sharing program would not have to ensure that the shared vehicle owner has personal protection insurance benefits if the shared vehicle owner has elected to not maintain coverage for personal protection insurance benefits, or if an exclusion applies to the vehicle under the Insurance Code.
- For the shared vehicle driver, residual third-party liability insurance as required by section 3101 of the Insurance Code, in the amounts required under section 3009 of code.

Car sharing period would mean the period of time that commences with the car sharing delivery period (i.e., the time during which the vehicle is being delivered) or, if there is no car sharing delivery period, that commences with the car sharing start time (i.e., the time when the shared vehicle driver takes control of the vehicle) and in either case ends at the *car sharing termination time*.

Car sharing termination time would mean, except as otherwise provided regarding liability, the earliest of the following:

- The time the agreed-on period of time established for the use of the shared vehicle expires according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed on in the agreement.
- The time of the return of the shared vehicle to a location that is alternatively agreed on by the shared vehicle owner and shared vehicle driver, as communicated through the peer-to-peer car sharing program, which alternatively agreed-on location must be incorporated into the car sharing program agreement.
- The time the shared vehicle owner or the shared vehicle owner's authorized designee takes possession and control of the shared vehicle.

If the insurance maintained by the shared vehicle owner or driver lapses or does not provide the required coverage, the insurance maintained by the peer-to-peer car sharing program must provide the required coverage beginning with the first dollar of a claim and provide the duty to defend the claim except under circumstances relating to liability described below. Coverage maintained by a peer-to-peer car sharing program could not be dependent on another automobile insurer first denying a claim, and another automobile insurer could not be required to first deny a claim.

³ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-500-3101>

⁴ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-500-3009>

⁵ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-218-1956-31>

This insurance would have to be the primary insurance during every car sharing period. If, during a car sharing period, a claim occurred in a state with higher minimum financial responsibility limits, the coverage would have to satisfy the difference between the two limits, up to the applicable policy limits.

All of the following would apply to the required insurance:

- It could be placed with an insurer licensed under Chapter 4 of the Insurance Code or, if it is maintained by a peer-to-peer car sharing program, the insurance could be placed with an eligible unauthorized insurer under chapter 19 of the code.
- It would have to satisfy the financial responsibility requirements of the Michigan Vehicle Code.
- It could be maintained by the shared vehicle owner, shared vehicle driver, peer-to-peer car sharing program, or any combination of these entities.

The insurer or peer-to-peer car sharing program providing the required coverage would assume primary liability for a claim when either of the following occurs:

- A dispute exists as to who was in control of the shared vehicle at the time of the loss and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by the bill.
- A dispute exists as to whether the shared vehicle was returned to the alternatively agreed-on location as required under the bill.

Liability

Generally, the bill would provide that a peer-to-peer car sharing program assumes the liability of a shared vehicle owner in the amounts required by the ***car sharing program agreement***, which could not be less than those required by section 3009 of the Insurance Code. Notwithstanding the definition of *car sharing termination time*, this assumption of liability would also apply to the financial responsibility requirements in chapter V of the Michigan Vehicle Code⁶ and to the requirements for insurance coverage for bodily injury to and damage to the property of third parties in section 3009 of the Insurance Code.

Car sharing program agreement would mean the terms and conditions applicable to a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program that govern the use of a shared vehicle through a peer-to-peer car sharing program. It would not mean or include either of the following:

- A car rental agreement by a car rental company, or a similar agreement.
- An agreement for a transportation network company prearranged ride.

Also notwithstanding the definition of *car sharing termination time*, the assumption of liability would not apply to a shared vehicle owner if the shared vehicle owner does either of the following:

- Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred.
- Acts in concert with the shared vehicle driver who fails to return the shared vehicle in accordance with the terms of the car sharing program agreement.

⁶ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-300-1949-V>

The bill would not do any of the following:

- Limit the liability of a peer-to-peer car sharing program for any act or omission of the program itself that results in injury or damage to a person as a result of the use of a shared vehicle through the program.
- Limit the ability of a peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program that results from a breach of the terms and conditions of the car sharing program agreement.

The bill would exempt peer-to-peer car sharing programs and shared vehicle owners from vicarious liability, consistent with federal law, under an state or local law that imposes liability based on vehicle ownership, including the Michigan Vehicle Code.

Consumer protection provisions

The bill would require any car sharing program agreement made in Michigan to disclose all of the following to the shared vehicle's owner and driver:

- Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner driver for economic loss sustained by the program that results from a breach of the terms and conditions of the car sharing program agreement.
- That an automobile insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program.
- That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the driver after the car sharing termination time, the shared vehicle driver and owner may not have insurance coverage.
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or driver.
- That the shared vehicle owner's automobile insurance may not provide coverage for a shared vehicle during the car sharing period and may exclude coverage and the duty to defend and indemnify for any claim arising out of the ownership, maintenance, or use of a shared vehicle afforded under the insurance.
- That the shared vehicle owner's or driver's automobile insurance policy might already provide the coverage required by the bill, depending on the terms of the policy.
- An emergency phone number to personnel capable of fielding roadside assistance and other customer service inquiries.
- If there are any conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared motor vehicle.
- That, in accordance with sections 3101 and 3102 of the Insurance Code, the operation of a shared vehicle for more than 30 days in Michigan may require the shared vehicle driver to maintain security for payment of benefits as required under Chapter 31 of the code, and that the failure to maintain required security might be subject to penalty as provided by law.

In addition, the bill would require a peer-to-peer car sharing program to notify a shared vehicle owner that, if the vehicle has a lien against it, its use through the program, including without comprehensive and collision coverage, could violate the terms of the vehicle owner's contract with the lienholder.

Before a shared vehicle is made available through a sharing program, the program would have to verify that the vehicle does not have any safety recalls for which repairs have not been made and notify the shared vehicle owner of the following requirements:

- If a shared vehicle owner has received an actual notice of a safety recall on a shared vehicle, they could not make it available as a shared vehicle through a peer-to-peer car sharing program until the safety recall repair has been made.
- If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available through a peer-to-peer car sharing program, they would have to remove it from availability through the program as soon as practicable after receiving the notice and until the safety recall repair has been made.
- If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, as soon as practicable after receiving the notice, the owner would have to notify the peer-to-peer car sharing program about the safety recall so that the vehicle owner may address it.

Further, the bill would require that any individual that enters a car sharing agreement with a peer-to-peer car sharing program satisfy one of the following conditions:

- The individual holds a driver license issued under the Michigan Vehicle Code that authorizes the individual to operate vehicles of the class of the shared vehicle in Michigan.
- The individual is a nonresident of this state to whom both of the following apply:
 - They have a driver license issued by the state or country of the individual's residence that authorizes the individual to drive vehicles of the shared vehicle's class in that state or country.
 - They are at least the same age as that required of a resident of Michigan to drive.
- The individual is otherwise specifically authorized by state law to drive vehicles of the shared vehicle's class.

Required recordkeeping

The bill would require peer-to-peer car sharing programs to keep a record of all of the following:

- The name and address of the shared vehicle driver.
- The number and place of issuance of the driver license of the shared vehicle driver and of each other individual, if any, who will operate the shared vehicle.

In addition, a program would have to collect, verify, and maintain, for at least three years, records that pertain to the use of the shared vehicle, including times used, car sharing delivery and return locations, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner. These records would also be provided upon request to the shared vehicle owner's or driver's insurer to facilitate a claim coverage investigation, negotiation, settlement, or litigation.

Other

Under the bill, a peer-to-peer car sharing program would have the sole responsibility for any equipment, including a GPS system or other special equipment, that is put in or on the shared vehicle to monitor or facilitate the car sharing transaction and would have to indemnify and hold harmless the shared vehicle owner for any damage to or theft of the equipment during the car sharing period not caused by the vehicle owner. The program would still have a right to

seek indemnity from the shared vehicle driver for any loss or damage to the equipment that occurs during the car sharing period.

House Bill 5950 would amend the Insurance Code to provide that a peer-to-peer car sharing program has an insurable interest in a shared vehicle during the car sharing period and may own and maintain one or more policies as the named insured that provide coverage for any of the following:

- Liabilities assumed by the peer-to-peer car sharing program under a 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.

Programs could not do either of the following:

- Unless otherwise authorized, offer or sell insurance, except travel or auto-related insurance offered or sold in connection with and incidental to the sharing of a motor vehicle under a car sharing program agreement.
- Make a car sharing program agreement contingent on the shared vehicle driver purchasing residual third-party liability insurance through the peer-to-peer car sharing program.

Rights and duties of insurers

The bill would provide that it does not require a shared vehicle owner's insurance policy to provide coverage while the vehicle is operated during the car sharing period and does not preclude an insurer from providing coverage for a share vehicle, including by contract or endorsement.

Under the bill, an authorized producer that issues automobile insurance policies in Michigan and issues a policy to the owner of a shared vehicle for that vehicle could exclude coverage for any loss or injury that occurs during the car sharing period, including all of the following:

- Residual third-party liability insurance required under sections 3009 and 3101 of the code.
- Personal protection insurance and property protection insurance required under section 3101 of the code.
- Uninsured and underinsured motorist coverage.
- Comprehensive coverage.
- Collision coverage, including coverage required to be offered under section 3037 of the code.

If an insurer excluded the coverages described above, they would not have a duty to defend or indemnify for any claim that is expressly excluded. If an insurer defended or indemnified a claim arising out of the ownership, maintenance, or use of a shared vehicle that was excluded under the terms of the insurer's policy, they could seek recovery from the insurer of the peer-to-peer car sharing program if the claim was made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurred during the car sharing period.

Finally, the bill would state that it does not invalidate or limit an exclusion contained in a policy, including a policy in use or approved for use in Michigan before the bill's effective date, that excludes coverage for vehicles made available for rent, sharing, or hire or for any

business use. Nor would it invalidate, limit, or restrict an insurer's ability under existing law to underwrite a policy or to cancel or nonrenew a policy.

MCL 500.1202 et seq. and proposed MCL 500.130 and MCL 500.3018

House Bill 5951 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 does not apply to a shared vehicle owner during a car sharing period.

The bill also would provide that a shared vehicle driver, rather than the peer-to-peer car sharing program or shared vehicle owner, is liable for a violation of a local ordinance or state statute relating to a standing or parked vehicle involving the shared vehicle if the program or vehicle owner furnishes all of the following proof to the clerk of the court or parking violations bureau that issued the citation to show that the vehicle described in the citation, complaint, warrant, or notice was in the possession or custody of, or was being operated or used by, the shared vehicle driver at the time of the violation:

- The shared vehicle driver's name, address, and operator's license number.
- A copy of the car sharing program agreement (including in an electronic form), showing the car sharing start time and the car sharing termination time.

This proof would have to be provided within 30 days of the shared vehicle owner receiving notice of the violation.

MCL 257.401 et seq. and proposed MCL 257.675e

The bills would take effect nine months after being enacted. None of them could take effect unless all of them were enacted.

FISCAL IMPACT:

House Bills 5949 and 5950 would likely have a minimal fiscal impact on the Department of Insurance and Financial Services (DIFS). House Bill 5949 would amend the Insurance Code to allow for peer-to-peer car sharing programs and include provisions for program requirements. House Bill 5950 would provide for additional requirements for peer-to-peer car sharing programs and insurers.

Section 150 of the Insurance Code provides for recourse and penalties in the event of a violation of the code. Under the provisions of that section, violators have the opportunity for an administrative hearing before the DIFS director, who may levy a civil fine of \$1,000 for each violation, or \$5,000 if the individual knew or reasonably should have known that they were violating the Insurance Code. Civil fine payments under the Insurance Code are capped at \$50,000, and any revenue collected must be deposited to the state's general fund. To the extent that violations of the new provisions within the bills occur, additional general fund revenue may be realized and enforcement costs incurred.

House Bill 5951 would have no fiscal impact on any units of state or local government.

POSITIONS:

Representatives of Turo testified in support of the bills. (11-12-24)

The Insurance Alliance of Michigan indicated support for the bills. (11-12-24)

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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.