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BILL ANALYSIS

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House Bill 5949 (Substitute H-1 as passed by the House)
House Bills 5950 and 5951 (as passed by the House)
Sponsor: Representative Tyrone Carter (H.B. 5949)
Representative Brenda Carter (H.B. 5950)
Representative Matt Bierlein (H.B. 5951)
House Committee: Regulatory Reform
Senate Committee: Regulatory Affairs

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INTRODUCTION

The bills would provide for the establishment of peer-to-peer car sharing programs, which are programs that facilitate a vehicle owner allowing another driver to drive the owner's vehicle, usually for a fee. They would provide the requirements of the peer-to-peer car sharing program, the shared vehicle owner, and the shared vehicle driver, prescribing responsibility for insurance and liability within these types of transactions.

House Bill 5949 is tie-barred to House Bills 5950 and 5951, which are in turn tie-barred to House Bill 5949. Each bill would take effect nine months after its enactment.

FISCAL IMPACT

The bill could have a minor, indeterminate fiscal impact on local court systems. In instances in which car sharing programs or shared vehicle owners provided driver information to court clerks within 30 days of notice of violation, the bill could add an additional step to get notice of violation to the driver responsible for the violation. This could increase local enforcement costs and delay local ordinance fine collection but only in those instances where the driver responsible was not the owner of a shared vehicle.

MCL 500.1202 et al. (H.B. 5950)
257.401 et al. (H.B. 5951)

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CONTENT

House Bill 5949 (H-1) would enact the "Peer-to-Peer Car Sharing Program Act" to do the following:

- Require a peer-to-peer car sharing program to assume the liability of a shared vehicle owner for bodily injury and property damage to third parties during the car sharing period in amounts stated in the car sharing program agreement.
- Require a peer-to-peer car sharing program to ensure that the shared vehicle owner and shared vehicle driver were insured under an automobile insurance policy that covered residual third-party liability, property protection, and personal protection.
- Require a peer-to-peer car sharing program to notify a shared vehicle owner if the shared vehicle had a lien whose terms could potentially be violated by a contract with the program.
- Exempt from certain liability a peer-to-peer car sharing program and a shared vehicle owner under any State or local law that imposed liability based on vehicle ownership.
- Require a car sharing program agreement to disclose certain information to the shared vehicle owner and the shared vehicle driver.
- Specify that a peer-to-peer car sharing program would have sole responsibility for any equipment, such as a GPS system or other special equipment, that was put in or on the shared vehicle to monitor or facilitate the car sharing transaction.
- Require a peer-to-peer car sharing program to check a potential shared vehicle for any safety recalls and notify the shared vehicle owner of the results.
- Require a shared vehicle owner, upon receiving notification that the shared vehicle had a safety recall, to make a safety recall repair and to, as soon as possible, remove the vehicle from being used in the program until the shared vehicle was fixed.
- Require a peer-to-peer car sharing program to collect and maintain certain records for a period of at least three years.

House Bill 5950 would amend the Insurance Code to do the following:

- Prescribe requirements for a peer-to-peer car sharing program's automobile insurance.
- Specify that a license as an insurance producer would not be required by a person whose only sale of insurance was for travel or auto-related insurance sold in connection to a car sharing program agreement.
- Allow an automobile insurer to exclude coverage for a shared vehicle on an automobile insurance policy if the loss or injury the insurer was liable to cover occurred during a car sharing period.

House Bill 5951 would amend the Michigan Vehicle Code to do the following:

- Specify that liability caused by negligent operation of a motor vehicle would not apply to a shared vehicle owner or a peer-to-peer car sharing program during a car sharing period.
- Allow a shared vehicle owner or peer-to-peer car sharing program to avoid liability for a legal violation under the Code if the owner or program produced evidence showing the shared vehicle driver was at fault.

House Bill 5949 (H-1)

Chapter 3 (Definitions)

Under Chapter 3 (Definitions) of the "Peer-to-peer Car Sharing Program Act", the following definitions would be enacted into law.

"Automobile insurance" would mean that term as defined in Insurance Code: insurance for automobiles that provides 1) security under the Code; 2) personal protection, property protection, and residual liability insurance for amounts in excess of the amounts required under Chapter 31 (Motor Vehicle Personal and Property Protection) of the Code; 3) insurance coverage customarily known as comprehensive and collision; or 4) other insurance coverages for a private passenger nonfleet automobile as prescribed by rule promulgated by the Department of Insurance and Financial Services (DIFS).

"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 period" would mean the period of time that commences with the car sharing delivery period or, if there is no car sharing 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" 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. The term would not include either of the following:

- A car rental agreement by a car rental company (a person whose primary business is renting vehicles to consumers under rental agreements for periods of 90 days or less), or a similar agreement.
- An agreement for a transportation network company prearranged ride, as that term is defined in Section 2 of the Limousine, Taxicab, and Transportation Network Company Act: the provision of transportation by a transportation network company driver to a transportation network company rider, beginning when a transportation network company driver accepts a ride requested by a transportation network company rider through a digital network controlled by a transportation network company, continuing while the transportation network company driver transports the requesting transportation network company rider, and ending when the last requesting transportation network company rider departs from the personal vehicle.

"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, except as provided in Chapter 4 (Insurance), 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 car sharing program 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.

"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 of the following:

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

"Peer-to-peer car sharing program" would mean a person that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. The term would not mean or include any of the following:

- A car rental company.
- A transportation network company, as that term is defined in Section 2 of the Limousine, Taxicab, and Transportation Network Company Act.
- A service provider that was solely providing hardware or software as a service to a person that was not effectuating payment of financial consideration for the use of a shared vehicle.

"Person" would mean an individual, partnership, corporation, association, or other legal entity.

"Shared vehicle" would mean a vehicle that is 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. "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. "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. The term would not include a car rental company.

"Vehicle" would mean a motor vehicle as that term is defined in Section 3101 of the Insurance Code, which House Bill 5950 would define.

Chapter 4 (Insurance)

Except as provided below, a peer-to-peer car sharing program would have to assume the liability of a shared vehicle owner for bodily injury and property damage to third parties during the car sharing period in amounts stated in the car sharing program agreement, which could not be less than those required under the Insurance Code.

The assumption of liability above would not apply to a shared vehicle owner if the shared vehicle owner did either of the following:

- Made 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.
- Acted in concert with the shared vehicle driver who failed to return the shared vehicle in accordance with the terms of the car sharing program agreement.

The assumption of liability above would apply to financial responsibility requirements described in Chapter V of the Michigan Vehicle Code, and requirements for insurance coverage for bodily injury to and damage to the property of third parties under Section 3009 of the Insurance Code.

A peer-to-peer car sharing program would have to ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver were insured under an automobile insurance policy that either recognized that the shared vehicle insured under the policy was made available and used through a peer-to-peer car sharing program or that did not exclude use of a shared vehicle by a shared vehicle owner or a shared vehicle driver. The peer-to-peer car sharing program would have to ensure that the automobile insurance required under the bill provided all the following for the shared vehicle owner:

- Residual third-party liability insurance as required under the Insurance Code in the amounts required under the Insurance Code.
- Personal protection insurance and property protection insurance of the types and in the amounts required by Chapter 31 (Motor Vehicle Personal and Property Protection) of the Insurance Code, except that the peer-to-peer car sharing program would not be required to ensure that the shared vehicle owner had personal protection insurance benefits if the shared vehicle owner had elected to not maintain coverage for personal protection insurance benefits under the Insurance Code, or if an exclusion applied to the vehicle under the Insurance Code.

In addition, for the shared vehicle driver, the peer-to-peer car sharing program would have to ensure that the automobile insurance required under the bill provided residual third-party liability insurance as required under Insurance Code in the amounts required under the Code.

All the following would apply to the insurance required above:

- The insurance could be placed with an insurer licensed under Chapter 4 (Authorization of Insurers and General Requirements) of the Insurance Code, if the insurance was maintained by a peer-to-peer car sharing program, an eligible unauthorized insurer under Chapter 19 of the Insurance Code.
- The insurance satisfied the financial responsibility requirements described in Chapter V of the Michigan Vehicle Code (the Act that provides for the registration, title, sale, transfer, and regulation of vehicles operated in public spaces).

The insurance required above could be satisfied by automobile insurance maintained by any of the following:

- The shared vehicle owner.
- The shared vehicle driver.
- The peer-to-peer car sharing program.
- A combination of the shared vehicle owner, the shared vehicle driver, and the peer-to-peer car sharing program.

The insurance described above that is satisfying the insurance requirement described above would have to be primary during each car sharing period and if a claim occurred in another state with higher minimum financial responsibility limits during the car sharing period, the coverage maintained above would have to satisfy the difference in minimum coverage amounts, up to the applicable policy limits. The insurer, insurers, or peer-to-peer car sharing program providing coverage above would have to assume primary liability for a claim when either of the following occurred:

- A dispute existed as to who was in control of the shared vehicle at the time of the loss and the peer-to-peer car sharing program did not have available, did not retain, or failed to provide the information required below.
- A dispute existed as to whether the shared vehicle was returned to the alternatively agreed-on location as required under Chapter 3.

If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with the above requirements 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 required above beginning with the first dollar of a claim and provide the duty to defend the claim except under circumstances as set forth above.

Coverage under an automobile insurance policy 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.

Chapter 4 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 peer-to-peer car sharing program itself that resulted in injury or damage to a person as a result of the use of a shared vehicle through a peer-to-peer car sharing 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 resulted from a breach of the terms and conditions of the car sharing program agreement.

Requirements of a Peer-to-peer Car Sharing Program (Chapter 4)

When a person registered as a shared vehicle owner with a peer-to-peer car sharing program and before the shared vehicle owner made a shared vehicle available for car sharing through the peer-to-peer car sharing program, the peer-to-peer car sharing program would have to notify the shared vehicle owner that, if the shared vehicle had a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without comprehensive and collision coverage, could violate the terms of the contract with the lienholder.

A peer-to-peer car sharing program would have to collect and verify records that pertained to the use of a 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, and provide that information on request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, negotiation, settlement, or litigation. The peer-to-peer car sharing program would have to retain the records for at least three years.

A peer-to-peer car sharing program and a shared vehicle owner would be exempt from vicarious liability, consistent with Federal law, under any State or local law that imposed liability based on vehicle ownership, including the Michigan Vehicle Code.

Chapter 5 (Consumer Protection Disclosures)

A car sharing program agreement made in the State 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 shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program that resulted 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 would 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 the shared vehicle driver would be in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car sharing termination time, the shared vehicle driver and the shared vehicle owner could not have insurance coverage.
- The daily rate, fees, and, if applicable, any insurance or protection package costs that were charged to the shared vehicle owner or the shared vehicle driver.
- That the shared vehicle owner's automobile insurance could not provide coverage for a shared vehicle during the car sharing period and could 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 the shared vehicle driver's automobile insurance policy might already provide the coverage required by the Act, depending on the terms of the policy.
- An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.
- If there were conditions under which a shared vehicle driver would have to 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 the Insurance Code, the operation of a shared vehicle for more than 30 days in Michigan could require the shared vehicle driver to maintain security for payment of benefits as required under Chapter 31 of the Insurance Code, and that the failure to maintain required security could be subject to penalty as provided by law.

Requirements of a Program Agreement (Chapter 5)

A peer-to-peer car sharing program could not enter a peer-to-peer car sharing program agreement with an individual unless the individual would operate the shared vehicle and satisfied one of the following:

- The individual held a driver license issued under the Michigan Vehicle that authorized the individual to operate vehicles of the class of the shared vehicle in Michigan.
- The individual was otherwise specifically authorized by the law to drive vehicles of the class of the shared vehicle.

In addition to the provisions above, the individual also could be a nonresident of Michigan to whom the following apply:

- The individual had a driver license issued by the state or country of the individual's residence that authorized the individual to drive vehicles of the class of the shared vehicle in that state or country.
- The individual was at least the same age as that required of a State resident to drive.

A peer-to-peer car sharing program would have to keep a record of all the following:

- The name and address of the shared vehicle driver.

- The number of the driver license of the shared vehicle driver and of each other individual, if any, who would operate the shared vehicle.
- The place of issuance of the driver licenses identified above.

A peer-to-peer car sharing program would have sole responsibility for any equipment, such as a GPS system or other special equipment that was put in or on the shared vehicle to monitor or facilitate the car sharing transaction, and would have to agree 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 shared vehicle owner. The peer-to-peer car sharing program would have the right to seek indemnity from the shared vehicle driver for any loss or damage to the equipment that occurred during the car sharing period.

Requirements of a Shared Vehicle Owner (Chapter 5)

When a vehicle's registered owner registers as a shared vehicle owner with a peer-to-peer car sharing program and before the shared vehicle owner made the shared vehicle available for car sharing through the peer-to-peer car sharing program, the peer-to-peer car sharing program would have to do the following:

- Verify that the shared vehicle did not have any safety recalls on the vehicle for which the repairs had not been made.
- Notify the shared vehicle owner of the requirements above.

If a shared vehicle owner had received an actual notice of a safety recall on a shared vehicle, the shared vehicle owner could not make the vehicle available as a shared vehicle through a peer-to-peer car sharing program until the safety recall repair had been made.

If a shared vehicle owner received an actual notice of a safety recall on a shared vehicle while the shared vehicle was made available through a peer-to-peer car sharing program, the shared vehicle owner would have to remove the shared vehicle from being available through the peer-to-peer car sharing program as soon as practicable after receiving the notice and until the safety recall repair had been made.

If a shared vehicle owner received an actual notice of a safety recall while the shared vehicle was being used in the possession of a shared vehicle driver, as soon as practicable after receiving the notice, the shared vehicle owner would have to notify the peer-to-peer car sharing program about the safety recall so that the shared vehicle owner could address the safety recall repair.

House Bill 5950

Peer-to-Peer Sharing Program Insurable Interest

The bill would amend the Insurance Code to specify that a peer-to-peer car sharing program would have an insurable interest in a shared vehicle during the car sharing period. A peer-to-peer car sharing program could own and maintain as the named insured one or more policies of automobile insurance that provided 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.

A peer-to-peer car sharing program could not do any of the following:

- Unless 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.

No Requirement for Insurance Producer License

Under the bill, a license as an insurance producer would not be required by a person whose only sale of insurance was for travel or auto-related insurance sold in connection with and incidental to the sharing of a motor vehicle under a car sharing program agreement.

Car Sharing Period Insurance Exemptions

Under the bill, an authorized insurer that issued automobile insurance policies in Michigan and issued an insurance policy to a shared vehicle owner insuring a shared vehicle could exclude all coverage afforded under the policy for any loss or injury that occurred during a car sharing period, including all the following:

- Residual third-party liability insurance required under the Act.
- Personal protection insurance and property protection insurance required under the Act.
- Uninsured and underinsured motorist coverage.
- Comprehensive coverage.
- Collision coverage, including coverage required to be offered under the Act.

The bill would not require a shared vehicle owner's automobile insurance policy to provide coverage while the shared vehicle was operated during a car sharing period. It also provisions would not preclude an insurer from providing coverage for a shared vehicle, including by contract or endorsement.

An insurer that excluded the coverage described above would not have a duty to defend or indemnify for any claim that was expressly excluded. The bill would not invalidate or limit an exclusion contained in a policy, including a policy in use or approved for use in Michigan before the effective date of the bill, that excluded coverage for vehicles made available for rent, sharing, or hire or for any business use. The bill would not invalidate, limit, or restrict an insurer's ability under existing law to underwrite a policy or to cancel or nonrenew a policy.

An insurer that 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 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.

House Bill 5951

Liability Exemption for Peer-to-Peer Car Sharing Program

The Michigan Vehicle Code specifies that the owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of the State or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with the owner's express or implied consent or knowledge.

The bill would specify that this liability would not apply to a shared vehicle owner or a peer-to-peer car sharing program during a car sharing period.

Evidence Production to Avoid Liability During Legal Violations

Under the bill, a shared vehicle driver and not the peer-to-peer car sharing program or the shared vehicle owner would be liable for a violation of a local ordinance or State statute relating to a standing or parked vehicle involving the shared vehicle if the peer-to-peer car sharing program or the shared vehicle owner furnished the proof required below to show that the vehicle described in the citation, complaint, warrant, or notice was in the possession of, was in the custody of, or was being operated or used by the shared vehicle driver at the time of the violation.

A peer-to-peer car sharing program and shared vehicle owner could avoid liability for a violation described above if the peer-to-peer car sharing program or shared vehicle owner provided all the following information to the clerk of the court or parking violations bureau issuing the violation by 30 days after the shared vehicle owner had received notice of the violation:

- The shared vehicle driver's name, address, and operator's license number.
- A copy of the car sharing program agreement, showing the car sharing start time and the car sharing termination time.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.