

Amendment No. 1 to SB2207

Bailey
Signature of Sponsor

AMEND Senate Bill No. 2207

House Bill No. 1593*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-4-1901(a), is amended by adding the following at the end of the subsection:

The surcharge or tax as applied in this subsection (a) does not apply to entities or shared vehicle owners engaged in peer-to-peer car sharing or to any gross proceeds from peer-to-peer car sharing.

SECTION 2. Tennessee Code Annotated, Section 67-4-1901(c), is amended by deleting the subsection and substituting the following:

(c) As used in this part:

(1) "Commissioner" means the commissioner of revenue;

(2) "Peer-to-peer car sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program;

(3) "Peer-to-peer car sharing program" means a business platform that connects motor vehicle owners with drivers to enable the sharing of motor vehicles for financial consideration; and

(4) "Shared vehicle owner" has the same meaning as defined in § 55-12-301.

SECTION 3. Tennessee Code Annotated, Title 42, Chapter 3, Part 1, is amended by adding the following as a new section:

Amendment No. 1 to SB2207

Bailey
Signature of Sponsor

AMEND Senate Bill No. 2207

House Bill No. 1593*

(a) As used in this section, "peer-to-peer car sharing program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration.

(b) If a peer-to-peer car sharing program conducts business at an airport or otherwise uses airport facilities, then the program shall enter into a written agreement with an airport, or the entity responsible for regulating commerce at the airport, within this state.

SECTION 4. Tennessee Code Annotated, Section 67-6-102, as amended by Chapter ____ of the Public Acts of 2020 (Senate Bill 2182 / House Bill 2249), is amended by adding the following as a new subdivision under the subdivision defining the term "marketplace facilitator":

(C) "Marketplace facilitator" includes a peer-to-peer car sharing program as defined in § 67-4-1901;

SECTION 5. Tennessee Code Annotated, Title 55, Chapter 12, is amended by adding the following as a new part:

55-12-301. Part definitions.

As used in this part:

(1) "Car sharing delivery period" means 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;

(2) "Car sharing period" means the period of time:

(A) That commences with the car sharing delivery period and ends at the car sharing termination time; or

(B) If there is no car sharing delivery period, that commences with the car sharing start time and ends at the car sharing termination time;

(3) "Car sharing program agreement":

(A) Means 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; and

(B) Does not mean rental car agreement with a rental car company;

(4) "Car sharing start time" means 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;

(5) "Car sharing termination time" means the earliest of the following events:

(A) The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement;

(B) When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program; or

(C) When the shared vehicle owner or the shared vehicle owner's authorized designee, takes possession and control of the shared vehicle;

(6) "Peer-to-peer car sharing":

(A) Means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program; and

(B) Does not include the services offered by a rental car company;

(7) "Peer-to-peer car sharing program":

(A) Means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration; and

(B) Does not include:

(i) The services offered by a rental car company; or

(ii) A service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle;

(8) "Rental car company" means a business engaged in the rental of motor vehicles that is subject to title 67, chapter 4, part 19, and not a peer-to-peer car sharing program;

(9) "Shared vehicle":

(A) Means a vehicle that is available for sharing through a peer-to-peer car sharing program; and

(B) Does not mean a rental vehicle provided by a rental car company;

(10) "Shared vehicle driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement; and

(11) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

55-12-302. Insurance coverage during car sharing period.

(a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b), of a shared vehicle owner for bodily injury or property damage to third

parties or uninsured and underinsured motorist losses during the car sharing period in an amount, as stated in the peer-to-peer car sharing program agreement, that must not be less than the amount set forth in subsection (d).

(b) Notwithstanding the car sharing termination time, the assumption of liability under subsection (a) does not apply to any shared vehicle owner when:

(1) A shared vehicle owner 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; or

(2) A shared vehicle owner has acted in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the car sharing program agreement.

(c) Notwithstanding the car sharing termination time, the assumption of liability under subsection (a) applies to bodily injury, property damage, uninsured and underinsured motorist, or losses by damaged third parties to the extent required for proof of financial responsibility, as defined in § 55-12-102.

(d) A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that:

(1) Provides insurance coverage in amounts no less than the minimum amounts for proof of financial responsibility, as defined in § 55-12-102; and

(2)

(A) Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; or

(B) Does not exclude the use of a shared vehicle by a shared vehicle driver.

(e) The insurance requirement described under subsection (d) may be satisfied by motor vehicle liability insurance maintained by:

- (1) A shared vehicle owner;
- (2) A shared vehicle driver;
- (3) A peer-to-peer car sharing program; or
- (4) Any combination of those described in subdivisions (e)(1)-(3).

(f) Except as otherwise provided for in this section:

(1) The insurance described in subsection (e) that is used to satisfy the insurance requirement of subsection (d) is primary during each car sharing period;

(2) If coverage is applicable through more than one (1) motor vehicle liability insurance policy as set forth in subdivision (e)(4), then the order of priority of coverage is as follows, unless one (1) policy contains a provision affirmatively stating that the policy's coverage is primary and thereby is primary during the car sharing period:

(A) A policy maintained by the shared vehicle driver is first in priority;

(B) A policy maintained by the peer-to-peer car sharing program is next in priority; and

(C) A policy maintained by the shared vehicle owner is last in priority; and

(3) If coverage is applicable through more than one (1) motor vehicle liability insurance policy as set forth in subdivision (e)(4) and more than one (1) of those policies contain a provision affirmatively stating that the policy's coverage is primary, then the order of priority of coverage is as described in subdivisions (f)(2)(A)-(C).

(g)

(1) The peer-to-peer car sharing program shall assume primary liability for a claim when:

(A) The peer-to-peer car sharing program is in whole or in part providing the insurance required under subsections (d) and (e);

(B) A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

(C) The peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by § 55-12-305.

(2) The peer-to-peer car sharing program may seek indemnity from a shared vehicle owner if the shared vehicle owner is determined to have been the operator of the shared vehicle at the time of the loss.

(h) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (e) has lapsed or does not provide the coverage required by subsection (d), then:

(1) Insurance maintained by a peer-to-peer car sharing program must provide the coverage required by subsection (d) beginning with the first dollar of a claim; and

(2) The peer-to-peer car sharing program has the duty to defend the claim, except under circumstances as set forth in subsection (b).

(i) Coverage under a motor vehicle liability insurance policy maintained by the peer-to-peer car sharing program is not dependent on another insurer first denying a claim nor is another motor vehicle liability insurance policy required to first deny a claim.

(j) This section does not:

(1) Limit the liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program;

(2) Limit the ability of the 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 resulting from a breach of the terms and conditions of the car sharing program agreement; or

(3) Limit the obligations of a shared vehicle owner to comply with the requirements of part 1 of this chapter.

55-12-303. Notification of implications of lien.

At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program, and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, then the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

55-12-304. Applicability to exclusions in motor vehicle liability insurance policies.

This part does not invalidate or limit an exclusion contained in a motor vehicle liability 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 or for any business use.

55-12-305. Recordkeeping; use of vehicle in car sharing.

(a) A peer-to-peer car sharing program shall collect, verify, and maintain the records necessary to comply with this section for a time period not less than the applicable bodily injury or property damage statute of limitations.

(b) Upon request by a shared vehicle owner, the insurer of the shared vehicle owner, a shared vehicle driver, or the insurer of a shared vehicle driver, for the purpose

of assisting a claim coverage investigation, settlement, negotiation, or litigation, a peer-to-peer car sharing program shall provide the following information:

- (1) The precise start and termination times for the car sharing period during which an event occurred giving rise to a claim;
- (2) The information set forth in § 55-12-308(b) for the car sharing period during which an event occurred giving rise to a claim; and
- (3) For the period twelve (12) hours preceding and twelve (12) hours following an event giving rise to a claim, the precise start and termination times for all car sharing periods other than the period disclosed under subdivision (b)(1), and the information set forth in § 55-12-308(b) with respect to the car sharing periods.

55-12-306. Exemption; vicarious liability.

A peer-to-peer car sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. § 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

55-12-307. Indemnification.

Each car sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

- (1) 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 resulting from a breach of the terms and conditions of the car sharing program agreement;
- (2) That a motor vehicle liability 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;

(3) That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is 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 may not have insurance coverage;

(4) The daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;

(5) That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle;

(6) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries; and

(7) Whether there are 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.

55-12-308. Driver license verification and data retention.

(a) A peer-to-peer car sharing program shall not enter into a peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle:

(1) Holds a driver license issued under the laws of this state that authorizes the driver to operate vehicles of the class of the shared vehicle;

(2) Is a nonresident who:

(A) Has a driver license issued by the state or country of the driver's residence that authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(B) Is at least the same age as that required of a resident to drive;

or

(3) Otherwise is specifically authorized by the laws of this state to drive vehicles of the class of the shared vehicle.

(b) A peer-to-peer car sharing program shall keep a record of:

(1) The name and address of the shared vehicle driver;

(2) The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

(3) The place of issuance of the driver license.

55-12-309. Responsibility for equipment.

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

55-12-310. Automobile safety recalls.

(a) At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall:

(1) Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

(2) Notify the shared vehicle owner of the requirements under subsection

(b) of this section.

(b)

(1) If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, then a shared vehicle owner may not make a vehicle

available as a shared vehicle on a peer-to-peer car sharing program until the safety recall repair has been made.

(2) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car sharing program, then the shared vehicle owner shall remove the shared vehicle as available on the peer-to-peer car sharing program, as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) 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, then, as soon as practicably possible after receiving the notice of the safety recall, the shared vehicle owner shall notify the peer-to-peer car sharing program about the safety recall so that the shared vehicle owner may address the safety recall repair.

55-12-311. Conflicts.

Nothing in this act shall expand or restrict in any manner the respective rights or obligations of, or limitations upon, motor vehicle manufacturers and licensed motor vehicle dealers as set forth in chapter 17, part 1 of this title. To the extent that this act conflicts with chapter 17, part 1 of this title, then chapter 17, part 1 of this title shall control.

SECTION 6. Tennessee Code Annotated, Title 56, Chapter 7, Part 11, is amended by adding the following as a new section:

56-7-1120.

(a) As used in this section:

(1) "Car sharing delivery period" means 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;

(2) "Car sharing period" means the period of time:

(A) That commences with the car sharing delivery period and ends at the car sharing termination time; or

(B) If there is no car sharing delivery period, that commences with the car sharing start time and ends at the car sharing termination time;

(3) "Car sharing program agreement":

(A) Means 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; and

(B) Does not mean a rental car agreement with a rental car company;

(4) "Car sharing start time" means 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;

(5) "Car sharing termination time" means the earliest of the following events:

(A) The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement;

(B) When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program; or

(C) When the shared vehicle owner, or the shared vehicle owner's authorized designee, takes possession and control of the shared vehicle;

(6) "Peer-to-peer car sharing":

(A) Means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program; and

(B) Does not include the services offered by a rental car company;

(7) "Peer-to-peer car sharing program":

(A) Means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration; and

(B) Does not include:

(i) The services offered by a rental car company; or

(ii) A service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle;

(8) "Rental car company" means a business engaged in the rental of motor vehicles that is subject to title 67, chapter 4, part 19, and not a peer-to-peer car sharing program;

(9) "Shared vehicle":

(A) Means a vehicle that is available for sharing through a peer-to-peer car sharing program; and

(B) Does not mean a rental vehicle provided by a rental car company;

(10) "Shared vehicle driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement; and

(11) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

(b) An authorized insurer that writes motor vehicle liability insurance in the state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including, but not limited to:

- (1) Liability coverage for bodily injury and property damage;
- (2) Uninsured and underinsured motorist coverage;
- (3) Medical payments coverage;
- (4) Comprehensive physical damage coverage; and
- (5) Collision physical damage coverage.

(c) The exclusions in subsection (b) apply notwithstanding any requirement in this title or title 55, chapter 12. This section does not require that a personal automobile insurance policy provide coverage during a car sharing period.

(d) Automobile insurers that exclude coverage as described in subsection (b) have no duty to defend or indemnify any claim expressly excluded. This section and title 55, chapter 12, do not invalidate or limit an exclusion contained in the policy, including any policy in use or approved for use in this state prior to January 1, 2021, that excludes coverage for vehicles that are rented or that are engaged in a commercial use.

(e) A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded or not covered under the terms of its policy may seek contribution from any other motor vehicle insurer providing coverage required by § 55-12-302(d), except to the extent the shared vehicle is excluded or not covered under the terms of the other policy.

(f) In a claims investigation involving a shared vehicle, the insurer of the peer-to-peer car sharing program, the insurer of the shared vehicle owner, and the insurer of the shared vehicle driver shall cooperate with each other to facilitate the exchange of relevant information, including, without limitation, records that the peer-to-peer car sharing program is required to collect under title 55, chapter 12, part 3. The insurer of

the peer-to-peer car sharing program, the insurer of the shared vehicle owner, and the insurer of a shared vehicle driver shall disclose to each other a clear description of the coverage, exclusions, and limits provided in their respective policies.

(g)

(1) Notwithstanding any other law, statute, or rule to the contrary, a peer-to-peer car sharing program has an insurable interest in a shared vehicle during the car sharing period.

(2) This section does not create liability on a peer-to-peer car sharing program to maintain insurance coverage beyond the extent mandated by § 55-12-302.

(3) A peer-to-peer car sharing program may own and maintain as the named insured one (1) or more policies of motor vehicle liability insurance that provides coverage for:

(A) Liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement;

(B) Any liability of the shared vehicle owner; or

(C) Damage or loss to the shared motor vehicle or any liability of the shared vehicle driver.

(h) This section does not preclude an insurer from providing coverage for a peer-to-peer car sharing program or a shared vehicle owner, if it chooses to do so by contract or endorsement.

SECTION 7. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 8. Section 4 of this act takes effect at 12:01 a.m. on October 1, 2020, the public welfare requiring it. Sections 3, 5, and 6 of this act take effect on January 1, 2021, the

public welfare requiring it. All remaining sections of this act take effect upon becoming a law,
the public welfare requiring it.