

SENATE BILL 556

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

John M. Sapien

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING THE PEER-TO-PEER CAR SHARING ACT; REQUIRING A RENTAL CAR COMPANY AND A CAR SHARING PROGRAM TO ENTER INTO A CONCESSION FEE AGREEMENT WITH A PUBLIC ENTITY THAT OPERATES A PUBLIC AIRPORT TO OPERATE AT THE AIRPORT; PROVIDING INSURANCE COVERAGE REQUIREMENTS FOR PEER-TO-PEER CAR SHARING; REPEALING THE LEASED VEHICLE SURCHARGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Peer-to-Peer Car

.213536.3

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight↔

delete = →bold, red, highlight, strikethrough↔

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Sharing Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Peer-to-Peer Car Sharing Act:

A. "car sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a car sharing program;

B. "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;

C. "car sharing period" means 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;

D. "car sharing program" means a business entity that provides a platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration;

E. "car sharing program agreement" means the terms and conditions SJC→~~applicable to~~ contained in an agreement between a car sharing program and←SJC a shared vehicle owner SJC→and or←SJC a shared vehicle driver that govern the use of a shared vehicle through a car sharing program;

F. "car sharing start time" means the time the

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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 car sharing program;

G. "car sharing termination time" means:

(1) the time SJC→that←SJC the shared vehicle is returned to the location designated by the shared vehicle owner through a car sharing program SJC→or the shared vehicle owner or the shared vehicle owner's authorized designee takes possession of the shared vehicle←SJC; and

(2) the earliest of the SJC→following time that the following occurs←SJC:

(a) the expiration of the agreed period of time established for the use of a shared vehicle in the governing car sharing program agreement; SJC→or←SJC

(b) the intent to terminate the use of the shared vehicle is verifiably communicated by the shared vehicle driver to the shared vehicle owner using the car sharing program; SJC→or←SJC

SJC→(c) the shared vehicle owner or the shared vehicle owner's authorized designee takes possession and control of the shared vehicle;←SJC

H. "shared vehicle" means a vehicle that is available for sharing through a car sharing program;

I. "shared vehicle driver" means an individual who

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement; and

J. "shared vehicle owner" means the registered owner of a vehicle made available for sharing to shared vehicle drivers through a car sharing program.

**SECTION 3. [NEW MATERIAL] INSURANCE REQUIREMENT--
VICARIOUS LIABILITY EXEMPTION--RESPONSIBILITY FOR SPECIAL
EQUIPMENT.--**

A. A 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 insurance policy pursuant to Section 9 of this 2019 act.

B. A car sharing program and a shared vehicle owner shall be exempt from vicarious liability in accordance with the federal Motor Carrier Safety Reauthorization Act of 2005, as that act may be amended, regarding rented or leased motor vehicle safety and responsibility, and under any state or local law that imposes liability solely based on vehicle ownership.

C. A car sharing program shall have sole responsibility for any equipment such as a global positioning system or other special equipment that is put in or on the shared vehicle to monitor or facilitate the car sharing transaction and shall agree to indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car sharing period not caused by the

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

shared vehicle owner. The car sharing program has the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that occurs during the car sharing period.

SECTION 4. [NEW MATERIAL] DRIVER'S LICENSE REQUIRED.--A car sharing program shall not enter into a car sharing program agreement with a driver unless the driver who will operate the shared vehicle:

A. holds a driver's license that authorizes the driver to operate vehicles of the class of the shared vehicle;

B. is a nonresident who:

(1) has a driver's 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

(2) is at least the same age as that required of a resident to drive; or

C. is otherwise authorized by the state to drive vehicles of the class of the shared vehicle.

SECTION 5. [NEW MATERIAL] DISCLOSURES.--A car sharing program agreement shall disclose to the shared vehicle owner and the shared vehicle driver:

A. any right of the car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the car sharing

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

program resulting from a breach of the terms and conditions of the car sharing program agreement;

B. 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 car sharing program;

C. that the 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;

D. 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;

E. that the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle; and

F. an emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.

SECTION 6. [NEW MATERIAL] NOTIFICATIONS--LIEN STATUS--
SAFETY RECALLS.--

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

A. At the time a vehicle owner registers as a shared vehicle owner on a car sharing program, and prior to the time the shared vehicle owner makes a shared vehicle available for car sharing on the car sharing program, the car sharing program shall:

(1) notify the shared vehicle owner that, if the shared vehicle owner has a lien against the shared vehicle, the use of the shared vehicle through a car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder;

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

(3) notify the shared vehicle owner of the requirements pursuant to Paragraph (2) of Subsection B of this section.

B. If the shared vehicle owner has received an actual notice of a safety recall on the shared vehicle:

(1) prior to the time the shared vehicle owner makes a shared vehicle available for car sharing on the car sharing program, a shared vehicle owner shall not make a vehicle available as a shared vehicle on a car sharing program until the safety recall repair has been made;

(2) while the shared vehicle is made available on the car sharing program, the shared vehicle owner shall

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

remove the shared vehicle as available on the 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; and

(3) while the shared vehicle is being used in the possession of a shared vehicle driver, as soon as practicably possible after receiving the notice of the safety recall, the shared vehicle owner shall notify the car sharing program about the safety recall so that the shared vehicle owner may address the safety recall repair.

SECTION 7. [NEW MATERIAL] RECORD RETENTION.--

A. A car sharing program shall collect and verify records pertaining to the use of a vehicle, including times used, fees paid by the shared vehicle driver and revenues received by the shared vehicle owner and provide that information upon 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. The car sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

B. A car sharing program shall keep a record of the:

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

.213536.3

underscoring material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight
delete = → bold, red, highlight, strikethrough

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

(3) date and place of issuance of the driver's license.

SECTION 8. A new section of the Municipal Airport Law is enacted to read:

"[NEW MATERIAL] CONCESSION FEE FOR A RENTAL CAR COMPANY OR CAR SHARING PROGRAM TO OPERATE AT A PUBLIC AIRPORT.--

A. To operate at a public airport, a rental car company or car sharing program shall enter into a concession fee agreement with the public entity that operates the public airport.

B. As used in this section, "car sharing program" means "car sharing program" as defined in the Peer-to-Peer Car Sharing Act."

SECTION 9. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] INSURANCE REQUIREMENTS--PEER-TO-PEER CAR SHARING PROGRAMS.--

A. A car sharing program shall assume liability for a shared vehicle owner for any bodily injury or property damage to third parties or uninsured and underinsured motorists or personal injury protection losses during the car sharing period in an amount stated in the car sharing program agreement, which

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

amount shall not be less than the minimum requirements set forth in the Mandatory Financial Responsibility Act; provided that the assumption of liability shall not apply if the shared vehicle owner made an intentional or fraudulent material misrepresentation to the car sharing program before the car sharing period in which the loss occurred.

B. A 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 shall:

(1) recognize that a shared vehicle insured under the policy is made available and used through a car sharing program; and

(2) provide insurance coverage in amounts no less than the minimum amounts set forth in the Mandatory Financial Responsibility Act.

C. The insurance policy required pursuant to Subsection B of this section may be satisfied by a motor vehicle liability insurance policy that meets or exceeds the requirements of the Mandatory Financial Responsibility Act and is maintained by a:

- (1) shared vehicle owner;
- (2) shared vehicle driver; or
- (3) car sharing program.

D. If an insurance policy described in Subsection C

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

of this section is used to satisfy the requirement pursuant to Subsection B of this section, that policy shall be primary during each car sharing period.

E. Nothing in this section shall limit:

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

(2) the ability of the car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

F. 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 personal motor vehicle liability insurance policy. Nothing in this section invalidates or limits 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.

G. Except as provided in Subsection H of this section, a motor vehicle insurer shall not deny, cancel, void,

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

terminate, rescind or nonrenew a policy of personal private passenger automobile liability insurance of a shared vehicle owner solely on the basis that vehicle covered under the policy has been made available for sharing through a car sharing program.

H. A motor vehicle insurer may deny, cancel, void, terminate, rescind or nonrenew a policy of personal private passenger automobile liability insurance covering a vehicle that has been made available for sharing through a car sharing program if the applicant or policyholder of the policy of personal private passenger automobile liability insurance fails to provide complete and accurate information about the use of a shared vehicle through the car sharing program as requested by the motor vehicle insurer during the application or renewal process of the policy of personal private passenger automobile liability insurance.

I. A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek contribution against the motor vehicle insurer of the car sharing program if the claim is:

(1) made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period; and

(2) excluded under the terms of its policy.

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

J. A car sharing program shall assume primary liability for a claim when the SJC→~~claim~~ car sharing program←SJC is, in whole or in part, providing the insurance required pursuant to this section and:

(1) a dispute exists as to who was in control of the shared vehicle at the time of the incident giving rise to a claim; and

(2) the car sharing program does not have available, did not retain or fails to provide the information required pursuant to Section 7 of the Peer-to-Peer Car Sharing Act.

K. A shared vehicle owner's or shared vehicle driver's insurer shall indemnify the car sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy once it is determined that the shared vehicle owner or shared vehicle driver was in control of the shared vehicle at the time of the incident giving rise to the claim.

L. If the insurance maintained by a shared vehicle owner or a shared vehicle driver has lapsed or does not provide the required coverage, the insurance maintained by the car sharing program shall provide the coverage required by this section, beginning with the first dollar of a claim, and shall have the duty to defend such claim.

M. Coverage under a motor vehicle liability

.213536.3

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

insurance policy maintained by a car sharing program shall not be dependent on a personal automobile insurer first denying a claim, nor shall a personal motor vehicle liability insurance policy be required to first deny a claim.

N. As used in this section, "car sharing period", "car sharing program", "shared vehicle", "shared vehicle driver" and "shared vehicle owner" have the same meanings as used in the Peer-to-Peer Car Sharing Act."

SECTION 10. REPEAL.--Section 7-14A-3.1 NMSA 1978 (being Laws 1993, Chapter 359, Section 1, as amended) is repealed.

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.