

1 SENATE BILL 556

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

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

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

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

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

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

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1 a car sharing program;

2 B. "car sharing delivery period" means the period
3 of time during which a shared vehicle is being delivered to the
4 location of the car sharing start time, if applicable, as
5 documented by the governing car sharing program agreement;

6 C. "car sharing period" means the period of time
7 that commences with the car sharing delivery period or, if
8 there is no car sharing delivery period, that commences with
9 the car sharing start time and in either case ends at the car
10 sharing termination time;

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

15 E. "car sharing program agreement" means the terms
16 and conditions applicable to a shared vehicle owner and a
17 shared vehicle driver that govern the use of a shared vehicle
18 through a car sharing program;

19 F. "car sharing start time" means the time the
20 shared vehicle becomes subject to the control of the shared
21 vehicle driver at or after the time the reservation of a shared
22 vehicle is scheduled to begin as documented in the records of a
23 car sharing program;

24 G. "car sharing termination time" means:

25 (1) the time the shared vehicle is returned to

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1 the location designated by the shared vehicle owner through a
2 car sharing program; and

3 (2) the earliest of the following:

4 (a) the expiration of the agreed period
5 of time established for the use of a shared vehicle in the
6 governing car sharing program agreement;

7 (b) the intent to terminate the use of
8 the shared vehicle is verifiably communicated by the shared
9 vehicle driver to the shared vehicle owner using the car
10 sharing program; or

11 (c) the shared vehicle owner or the
12 shared vehicle owner's authorized designee takes possession and
13 control of the shared vehicle;

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

16 I. "shared vehicle driver" means an individual who
17 has been authorized to drive the shared vehicle by the shared
18 vehicle owner under a car sharing program agreement; and

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

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

25 A. A car sharing program shall ensure that, during

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1 each car sharing period, the shared vehicle owner and the
2 shared vehicle driver are insured under a motor vehicle
3 insurance policy pursuant to Section 9 of this 2019 act.

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

10 C. A car sharing program shall have sole
11 responsibility for any equipment such as a global positioning
12 system or other special equipment that is put in or on the
13 shared vehicle to monitor or facilitate the car sharing
14 transaction and shall agree to indemnify and hold harmless the
15 shared vehicle owner for any damage to or theft of such
16 equipment during the car sharing period not caused by the
17 shared vehicle owner. The car sharing program has the right to
18 seek indemnity from the shared vehicle driver for any loss or
19 damage to such equipment that occurs during the car sharing
20 period.

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

25 A. holds a driver's license that authorizes the

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1 driver to operate vehicles of the class of the shared vehicle;

2 B. is a nonresident who:

3 (1) has a driver's license issued by the state
4 or country of the driver's residence that authorizes the driver
5 in that state or country to drive vehicles of the class of the
6 shared vehicle; and

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

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

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

14 A. any right of the car sharing program to seek
15 indemnification from the shared vehicle owner or the shared
16 vehicle driver for economic loss sustained by the car sharing
17 program resulting from a breach of the terms and conditions of
18 the car sharing program agreement;

19 B. that a motor vehicle liability insurance policy
20 issued to the shared vehicle owner for the shared vehicle or to
21 the shared vehicle driver does not provide a defense or
22 indemnification for any claim asserted by the car sharing
23 program;

24 C. that the car sharing program's insurance
25 coverage on the shared vehicle owner and the shared vehicle

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1 driver is in effect only during each car sharing period and
2 that, for any use of the shared vehicle by the shared vehicle
3 driver after the car sharing termination time, the shared
4 vehicle driver and the shared vehicle owner may not have
5 insurance coverage;

6 D. the daily rate, fees and, if applicable, any
7 insurance or protection package costs that are charged to the
8 shared vehicle owner or the shared vehicle driver;

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

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

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

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

22 (1) notify the shared vehicle owner that, if
23 the shared vehicle owner has a lien against the shared vehicle,
24 the use of the shared vehicle through a car sharing program,
25 including use without physical damage coverage, may violate the

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1 terms of the contract with the lienholder;

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

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

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

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

15 (2) while the shared vehicle is made available
16 on the car sharing program, the shared vehicle owner shall
17 remove the shared vehicle as available on the car sharing
18 program as soon as practicably possible after receiving the
19 notice of the safety recall and until the safety recall repair
20 has been made; and

21 (3) while the shared vehicle is being used in
22 the possession of a shared vehicle driver, as soon as
23 practicably possible after receiving the notice of the safety
24 recall, the shared vehicle owner shall notify the car sharing
25 program about the safety recall so that the shared vehicle

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1 owner may address the safety recall repair.

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

3 A. A car sharing program shall collect and verify
4 records pertaining to the use of a vehicle, including times
5 used, fees paid by the shared vehicle driver and revenues
6 received by the shared vehicle owner and provide that
7 information upon request to the shared vehicle owner, the
8 shared vehicle owner's insurer or the shared vehicle driver's
9 insurer to facilitate a claim coverage investigation. The car
10 sharing program shall retain the records for a time period not
11 less than the applicable personal injury statute of
12 limitations.

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

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

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

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

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

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

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

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

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

10 "NEW MATERIAL INSURANCE REQUIREMENTS--PEER-TO-PEER CAR
11 SHARING PROGRAMS.--

12 A. A car sharing program shall assume liability for
13 a shared vehicle owner for any bodily injury or property damage
14 to third parties or uninsured and underinsured motorists or
15 personal injury protection losses during the car sharing period
16 in an amount stated in the car sharing program agreement, which
17 amount shall not be less than the minimum requirements set
18 forth in the Mandatory Financial Responsibility Act; provided
19 that the assumption of liability shall not apply if the shared
20 vehicle owner made an intentional or fraudulent material
21 misrepresentation to the car sharing program before the car
22 sharing period in which the loss occurred.

23 B. A car sharing program shall ensure that, during
24 each car sharing period, the shared vehicle owner and the
25 shared vehicle driver are insured under a motor vehicle

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1 liability insurance policy that shall:

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

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

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

13 (1) shared vehicle owner;

14 (2) shared vehicle driver; or

15 (3) car sharing program.

16 D. If an insurance policy described in Subsection C
17 of this section is used to satisfy the requirement pursuant to
18 Subsection B of this section, that policy shall be primary
19 during each car sharing period.

20 E. Nothing in this section shall limit:

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

25 (2) the ability of the car sharing program to,

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

5 F. An authorized insurer that writes motor vehicle
6 liability insurance in the state may exclude any and all
7 coverage and the duty to defend or indemnify for any claim
8 afforded under a shared vehicle owner's personal motor vehicle
9 liability insurance policy. Nothing in this section
10 invalidates or limits an exclusion contained in a motor vehicle
11 liability insurance policy, including any insurance policy in
12 use or approved for use that excludes coverage for motor
13 vehicles made available for rent, sharing or hire or for any
14 business use.

15 G. Except as provided in Subsection H of this
16 section, a motor vehicle insurer shall not deny, cancel, void,
17 terminate, rescind or nonrenew a policy of personal private
18 passenger automobile liability insurance of a shared vehicle
19 owner solely on the basis that vehicle covered under the policy
20 has been made available for sharing through a car sharing
21 program.

22 H. A motor vehicle insurer may deny, cancel, void,
23 terminate, rescind or nonrenew a policy of personal private
24 passenger automobile liability insurance covering a vehicle
25 that has been made available for sharing through a car sharing

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1 program if the applicant or policyholder of the policy of
2 personal private passenger automobile liability insurance fails
3 to provide complete and accurate information about the use of a
4 shared vehicle through the car sharing program as requested by
5 the motor vehicle insurer during the application or renewal
6 process of the policy of personal private passenger automobile
7 liability insurance.

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

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

16 (2) excluded under the terms of its policy.

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

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

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

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1 Act.

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

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

15 M. Coverage under a motor vehicle liability
16 insurance policy maintained by a car sharing program shall not
17 be dependent on a personal automobile insurer first denying a
18 claim, nor shall a personal motor vehicle liability insurance
19 policy be required to first deny a claim.

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

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

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