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Bill Analysis

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Primary Sponsors: Sens. Hottinger and Dolan

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SUMMARY

- Authorizes noncommercial motor vehicle rentals between vehicle owners and other licensed drivers through a peer-to-peer car sharing program and peer-to-peer car sharing agreements.
- Establishes requirements and responsibilities that apply to a peer-to-peer car sharing program pertaining to information that must be gathered from participants in the program, the disclosures that must be made to participants, and procedures when a safety recall is issued on a participating motor vehicle.
- Requires a peer-to-peer car sharing program to collect, verify, and maintain certain records pertaining to the use of each shared vehicle in the program.
- Makes a violation of the regulations concerning a peer-to-peer car sharing program subject to the applicable penalties associated with a violation of the Consumer Sales Practices Law, unless the program is provided false information and relies on that information in good faith.
- Makes any similar violation of an agreement between a motor vehicle leasing dealer and the lessee or a motor vehicle renting dealer and the renter subject to the applicable penalties associated with a violation of the Consumer Sales Practices Law, unless the dealer is provided false information and relies on the information in good faith.
- Authorizes the operator of a public-use airport to adopt reasonable standards, regulations, procedures, and fees and requires the peer-to-peer car sharing program, shared vehicle owner, and shared vehicle driver to comply with them.
- Makes a general statement that the General Assembly does not intend to limit or restrict an insurer's ability to exclude coverage or underwrite any insurance policy as it relates to peer-to-peer car sharing.

- Establishes certain specific insurance requirements, such as minimum coverage limits, and makes peer-to-peer car sharing program ultimately responsible for ensuring that insurance requirements are met.
- Specifies that any technology platform, including a transportation network company or a peer-to-peer car sharing program, is a vendor for purposes of collecting and remitting sales taxes.

DETAILED ANALYSIS

Peer-to-peer car sharing

The bill authorizes noncommercial motor vehicle¹ rentals between vehicle owners and other licensed drivers in what is known as “peer-to-peer car sharing.” The vehicle owners and licensed drivers are connected through a peer-to-peer car sharing program, which is an electronically based business platform that enables vehicle sharing for financial consideration.² The service is in some ways similar to Airbnb, but for motor vehicles.

Basic parameters of the program

The bill outlines basic requirements for a peer-to-peer car sharing program operating in Ohio. As part of the basic requirements for operation, a program must collect information from any participant in the program, including all of the following:

1. The name and address of the shared vehicle owner and shared vehicle driver;
2. The driver’s license number and state of issuance for the shared vehicle driver;
3. The name, address, and driver’s license information for any other person who will operate the shared vehicle during the car sharing period;
4. Any motor vehicle insurance information carried by the shared vehicle owner and shared vehicle driver;
5. Whether the shared vehicle owner knows of any outstanding safety recalls on the shared vehicle; and
6. Verification of current vehicle registration for the shared vehicle.³

The program is not permitted to allow a peer-to-peer car sharing program agreement through its platform if the person operating the shared vehicle does not have a valid driver’s license or if the shared vehicle is not properly registered.⁴

¹ For purposes of peer-to-peer car sharing, a “noncommercial motor vehicle” is a motor vehicle that is registered as a passenger car (or another state’s equivalent registration), is used as a personal vehicle and not for business or profit, and is not huge (does not carry over one ton). R.C. 4516.01(G).

² R.C. 4516.01(H) and (I).

³ R.C. 4516.02(A).

⁴ R.C. 4516.02(B) and (C).

In addition to the general information about participants in the program, the peer-to-peer car sharing program must collect, verify, and maintain records pertaining to the use of each shared vehicle enrolled in the program. The records must include information about the dates, times, and duration of time that the shared vehicle is in use through the program and that the shared vehicle driver possesses the shared vehicle through the program. The records also must include any fees or financial consideration paid by a shared vehicle driver, any revenues or other financial consideration received by a shared vehicle owner, and any other similar, pertinent information. The program must be capable of providing such records, on request, to any shared vehicle owner, shared vehicle driver, insurer, or law enforcement for purposes of facilitating an investigation of a claim, incident, or accident. The records must be retained for at least three years.⁵

Peer-to-peer car sharing agreement

The contract at the center of the peer-to-peer car sharing arrangement is the peer-to-peer car sharing agreement. A peer-to-peer car sharing program, a shared vehicle owner, and the shared vehicle driver are all parties to the agreement. The agreement sets forth the parameters of peer-to-peer car sharing, including the location(s) for drop-off and pick-up of the vehicle, the date and time for drop-off and pick-up, whether the time the shared vehicle owner spends delivering the vehicle is paid, and the daily rate, fees, and any insurance costs for the insurance provided by the program (see **“Insurance”** below).⁶ In addition to the basic parameters, as a part of the agreement, the program must make a variety of disclosures to the shared vehicle owner and the shared vehicle driver. The disclosures include any right of the program to seek indemnification from the shared vehicle owner or the shared vehicle driver, any insurance coverage or lack of insurance coverage that might occur based on whether the car sharing period is in effect or whose insurance is being used at the time, and emergency contact information.⁷

Equipment and recalls

The bill specifies that the peer-to-peer car sharing program is responsible for any equipment, including GPS or program-specific equipment that facilitates peer-to-peer car sharing, that is installed in the vehicle, unless the shared vehicle driver causes damage to the equipment.⁸ Generally, the shared vehicle owner is responsible for addressing any safety recall repairs on the shared vehicle. If a safety recall applies to a shared vehicle, the owner must remove the vehicle from the program. Or, if the vehicle is in operation, the owner must notify the program so that the car sharing period can be terminated and the vehicle returned to the owner for repair. The program, in addition to checking for outstanding recalls on the shared vehicle before the shared vehicle is enrolled in the program, must establish commercially reasonable procedures to check for outstanding recalls after the initial registration of a vehicle

⁵ R.C. 4516.02(D) through (F).

⁶ R.C. 4516.01(A) through (D) and (J) and 4516.03.

⁷ R.C. 4516.03.

⁸ R.C. 4516.04.

with the program. The program also must provide notice to each shared vehicle owner of the owner's responsibilities regarding safety recalls.⁹

Operation at airports

The bill authorizes the operator of a public-use airport to adopt reasonable standards, regulations, procedures, and fees that apply to peer-to-peer car sharing programs. Additionally, the operator is permitted to enter into agreements, including concession agreements, with a peer-to-peer car sharing program. In turn, a peer-to-peer car sharing program, a shared vehicle owner, and a shared vehicle driver must comply with the standards, regulations, procedures, and agreements that are adopted and pay all fees in a timely manner.¹⁰

Penalties and the Consumer Sales Practices Law

Peer-to-peer car sharing

The bill specifies that peer-to-peer car sharing (in general) and a peer-to-peer car sharing program agreement (in particular) is a consumer transaction, and thus, makes peer-to-peer car sharing subject to the Uniform Commercial Code (U.C.C.), specifically as it relates to consumer sales practices. For purposes of the Consumer Sales Practices Law, the peer-to-peer car sharing program is considered the "supplier" and the shared vehicle owner and the shared vehicle driver are considered "consumers."¹¹ By placing peer-to-peer car sharing programs in the purview of the U.C.C., the programs must comply with general business, contract, and advertising practices (for instance, the peer-to-peer car sharing program agreement cannot specify that the motor vehicle being shared is a luxury vehicle if the motor vehicle is actually a low-cost small compact vehicle).¹²

Additionally, the bill specifies that any violation of the requirements and regulations pertaining to peer-to-peer car sharing in Ohio are subject to the applicable civil enforcement procedures associated with a violation of the Consumer Sales Practices Law.¹³ Under those procedures, the Attorney General may bring an action for injunction or a declaratory judgment in which civil penalties may be imposed. In addition the Law authorizes a consumer to bring a private cause of action. The specific remedies, fines, and procedures are established in current law.¹⁴

The bill specifies, however, that a peer-to-peer car sharing program is not liable under the Consumer Sales Practices Law if the violation of that Law resulted from a shared vehicle owner or shared vehicle driver providing false, misleading, or inaccurate information to the program and the program relied on the information in good faith. (For instance, if the program verified the registration provided by a shared vehicle owner for one shared vehicle, but the

⁹ R.C. 4516.05.

¹⁰ R.C. 4516.07.

¹¹ R.C. 1345.01, not in the bill.

¹² R.C. 4516.06(A).

¹³ R.C. 4516.06(B).

¹⁴ Chapter 1345 of the Revised Code.

shared vehicle owner swaps out which vehicle is provided to the shared vehicle driver without the program's knowledge, the program would not be liable for the shared vehicle owner's deception.)¹⁵

Motor vehicle leasing and renting dealers

The bill extends the provisions related to the peer-to-peer car sharing program being subject to the U.C.C. and the Consumer Sales Practices Law to motor vehicle leasing dealers, motor vehicle renting dealers, and the agreements between such dealers and their lessees and renters. Additionally, the immunity extended to a program when the program relies on false information in good faith is extended to the dealers when they rely in good faith on false information provided by a lessee or renter.¹⁶ Such dealers are already likely subject to the U.C.C. and Consumer Sales Practices Law under current federal law and it is unclear whether this provision in the bill affects their current duties or current remedies for lessees and renters.

Insurance

General statements

The bill makes several general statements pertaining to insurance as it applies to a peer-to-peer car sharing program. One such statement conveys that it is not the intent of the General Assembly to either limit or restrict an insurer's ability to exclude insurance coverage from an insurance policy or an insurer's ability to underwrite an insurance policy.¹⁷

Additionally, the statements convey that none of the specific insurance requirements specified by the bill limit the liability of a peer-to-peer car sharing program for its injurious actions or omissions, limit the ability of the program to seek indemnity from a shared vehicle owner or shared vehicle driver, or create, imply, or otherwise grant insurance coverage that is not found in any motor-vehicle liability policy or other policy of insurance.¹⁸

Assumption of liability

Under the bill, a peer-to-peer car sharing program assumes the liability of a shared vehicle owner for any death, bodily injury, or property damage to a third party or an uninsured or underinsured motorist that is proximately caused by the operation of a shared vehicle during the car sharing period. The amount of liability must be stated in the peer-to-peer car sharing program agreement and cannot be less than the following, which are the minimum amounts required under the Proof of Financial Responsibility Law:

1. \$25,000 because of bodily injury to or death of one person in any one accident;
 2. \$50,000 because of bodily injury or death of two or more persons in any one accident;
- and

¹⁵ R.C. 4516.06(C).

¹⁶ R.C. 4549.65(C).

¹⁷ R.C. 4516.08.

¹⁸ R.C. 4516.12.

3. \$25,000 because of injury to property of others in any one accident.¹⁹

The assumption of liability does not apply, however, if either of the following occurs:

1. The shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the program regarding the vehicle owner's motor-vehicle liability policy (or other proof of financial responsibility) or the type or condition of the shared vehicle; or
2. The shared vehicle owner and the shared vehicle driver conspire to have the shared vehicle driver fail to return the shared vehicle, in violation of the car sharing agreement.²⁰

A peer-to-peer car sharing program must maintain at least \$1,000,000 because of bodily injury to or death of one or more persons or injury to the property of others in any one accident in which the program might become liable.²¹

Motor vehicle insurance

The bill requires a peer-to-peer car sharing program to ensure that, during each car sharing period, the shared vehicle owner and shared vehicle driver are each covered by a motor-vehicle liability policy or other proof of financial responsibility that recognizes their status as a shared vehicle owner or shared vehicle driver and provides coverage for the operation of the shared vehicle during the car sharing period. The policy must be maintained in the liability amounts specified above – the minimum amounts required under the Proof of Financial Responsibility Law.²² The insurance requirement may be satisfied by any of the following or combination thereof:

1. A motor-vehicle liability policy or other proof of financial responsibility that is maintained by the shared vehicle owner;
2. A policy or other proof that is maintained by the shared vehicle driver;
3. A policy or other proof that is maintained by the peer-to-peer car sharing program.²³

If the owner or driver of a shared vehicle does not provide the required minimum coverage, the bill provides that insurance maintained by the program must provide such coverage beginning with the first dollar of the claim and must defend the claim. The program's policy or other proof of financial responsibility cannot require the owner's or driver's policy to first deny a claim.²⁴

¹⁹ R.C. 4516.09(A) and 4516.10(A)(1).

²⁰ R.C. 4516.09(B).

²¹ R.C. 4516.11(C).

²² R.C. 4516.10(A)(1).

²³ R.C. 4516.10(A)(2)

²⁴ R.C. 4516.10(A)(3).

Additionally, if the program is providing at least part of the required insurance coverage and a dispute exists as to who was operating the shared vehicle at the time of the loss (and the program either does not have or cannot quickly produce records showing who was operating the vehicle at the time of the loss), the program must assume liability for that disputed claim. The program may seek indemnity from a shared vehicle owner, however, if the owner is determined to have been the operator of the shared vehicle at the time of the loss.²⁵

The bill declares that a policy that meets the bill's insurance requirements satisfies Ohio's proof of financial responsibility requirements for motor vehicles.²⁶ The program must examine any motor-vehicle liability policy or proof of financial responsibility held by the shared vehicle owner and the shared vehicle driver to determine whether that policy or proof provides for or excludes coverage for peer-to-peer car sharing. Additionally, the program is authorized to require increased limits of insurance beyond the minimum set by law.²⁷

Sales taxes

The bill specifies that the operator of any technology platform that connects a consumer with another person who is providing a service subject to the sales tax, including a transportation network company (e.g., Uber or Lyft) or a peer-to-peer car sharing program, is a vendor for purposes of collecting and remitting sales taxes. Under current law, such services (i.e., transportation network company services) are subject to the sales tax; however, it is unclear who is responsible for paying those taxes.²⁸

HISTORY

Action	Date
Introduced	06-10-19

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²⁵ R.C. 4516.11(A) and (B).

²⁶ R.C. 4516.10(B).

²⁷ R.C. 4516.10(C).

²⁸ R.C. 5739.01(C).