SENATE BILL 19-090

CONCERNING THE OPERATION OF PEER-TO-PEER MOTOR VEHICLE SHARING BUSINESSES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill regulates peer-to-peer car sharing programs, including the following:

- Requires the shared car to be covered by insurance from the owner, driver, or program;
- Makes the insurance that satisfies the required coverage the primary insurance;
Requires the car sharing program to notify the car owner that sharing the car may violate any lien on the car;

Authorizes the shared car owner's insurer to exclude coverage when the car is being used in a car sharing program, and gives the insurer a right of contribution for any claims made as a result of the car sharing;

Prohibits an insurer from refusing to insure a shared car outside the sharing solely because the car covered under the policy has been made available for car sharing unless the car owner fails to provide complete and accurate information;

Sets record-keeping requirements;

Clarifies that the car sharing program and a shared car owner are covered by the exemption set forth in federal law exempting rental companies from vicarious liability based on ownership of the car;

Authorizes a car sharing program to be the named insured for a shared car;

Requires the program to make certain disclosures and provide an emergency telephone number;

Requires the program to verify that the driver is licensed to drive and keep records of this verification;

Makes the program responsible for any equipment installed on the car for sharing purposes; and

Requires the program and the car owner, when there is a safety recall on the car, to remove the car from the program until the car is repaired.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add part 12 to article 1 of title 6 as follows:

PART 12

PEER-TO-PEER CAR SHARING ACT

6-1-1201. Short title. The short title of this part 12 is the "COLORADO PEER-TO-PEER CAR SHARING ACT".

6-1-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Car" means a motor vehicle as defined in section...
(2) "Car sharing" means the authorized use of a shared car by persons other than the shared car's owner, facilitated by a car sharing program.

(3) (a) "Car sharing agreement" means the terms and conditions that apply to a shared car owner and a shared car driver and that govern the use of a shared car.

(b) "Car sharing agreement" excludes a rental agreement as defined in section 6-1-201.

(4) (a) "Car sharing program" means a person that is in the business of operating an online platform to connect third-party vehicle owners with third-party vehicle drivers to enable peer-to-peer car sharing within Colorado.

(b) "Car sharing program" excludes:

(I) The registered owner of the car involved in car sharing facilitated by a car sharing program; and

(II) A lessor as defined in section 6-1-201.

(5) "Delivery period" means the time when a shared car is being delivered to the location of the car sharing start time, as documented by the governing car sharing agreement.

(6) (a) "Shared car" means a motor vehicle that is available for sharing through a car sharing program but is not used exclusively for car sharing.

(b) "Shared car" excludes a rental motor vehicle as defined in section 6-1-201.

(7) (a) "Shared car driver" means an individual who has been authorized to drive the shared car by a car sharing program.
PROGRAM UNDER A CAR SHARING AGREEMENT.

(b) "SHARED CAR DRIVER" EXCLUDES A LESSEE AS DEFINED IN SECTION 6-1-201.

(8) "SHARED CAR OWNER" MEANS A PERSON THAT MAKES A SHARED CAR AVAILABLE FOR SHARING TO SHARED CAR DRIVERS THROUGH A CAR SHARING PROGRAM.

(9) "SHARING PERIOD" MEANS THE TIME THAT BEGINS AT THE SHARING START TIME AND ENDS AT THE SHARING TERMINATION TIME.

(10) "SHARING START TIME" MEANS THE TIME WHEN A SHARED CAR DRIVER TAKES POSSESSION AND CONTROL OF THE SHARED CAR. THE SHARING START TIME MAY BE AT OR AFTER THE TIME THE RESERVATION OF A SHARED CAR IS SCHEDULED TO BEGIN UNDER A CAR SHARING AGREEMENT.

(11) "SHARING TERMINATION TIME" MEANS:

(a) THE TIME WHEN THE SHARED CAR IS RETURNED TO THE LOCATION DESIGNATED BY THE SHARED CAR OWNER THROUGH A CAR SHARING PROGRAM; AND

(b) THE EARLIEST OF THE FOLLOWING EVENTS:

(I) THE EXPIRATION OF THE AGREED PERIOD OF TIME ESTABLISHED FOR THE USE OF A SHARED CAR IN THE GOVERNING CAR SHARING AGREEMENT;

(II) THE INTENT TO TERMINATE THE USE OF THE SHARED CAR IS VERIFIABLY COMMUNICATED BY THE SHARED CAR DRIVER TO THE SHARED CAR OWNER THROUGH THE CAR SHARING PROGRAM; OR

(III) THE SHARED CAR OWNER, OR THE SHARED CAR OWNER'S AUTHORIZED DESIGNEE, TAKES POSSESSION AND CONTROL OF THE SHARED CAR.
6-1-1203. Insurance coverage during car sharing period. (1) A car sharing program shall ensure that, during each sharing period, the shared car is insured under an automobile liability insurance policy that:
(a) recognizes that the car insured under the policy is a shared car; and
(b) provides insurance coverage that is not less than the minimum amount of financial responsibility required by Article 7 of Title 42.
(2) The financial responsibility required in subsection (1) of this section may be satisfied by automobile liability insurance that is at least the minimum amount of financial responsibility required by Article 7 of Title 42 and that is maintained by any one or a combination of the following:
(a) a shared car owner;
(b) a shared car driver; or
(c) a car sharing program.
(3) The insurance described in subsection (2) of this section that satisfies the insurance requirement in subsection (1) of this section is the primary coverage during the sharing period.
(4) If the insurance that complies with subsection (1) of this section is provided by the shared car driver or shared car owner, a car sharing program shall maintain insurance that provides coverage meeting the requirements of this section and that covers a lapse in or lack of coverage of the shared car driver's or shared car owner's insurance, beginning with the first dollar of a claim and including a duty to defend the claim.
(5) Coverage under an automobile liability insurance policy maintained by the car sharing program does not depend on a personal automobile liability insurer first denying or being required to deny a claim.

(6) This section does not:

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

(b) Limit the ability of the car sharing program to contract for indemnification from the shared car owner or the shared car driver for economic loss sustained by the car sharing program caused by a breach of the terms and conditions of the car sharing agreement.

6-1-1204. Notification of implications of lien. When a car owner registers as a shared car owner on a car sharing program and before the shared car is made available for car sharing, the car sharing program shall notify the shared car owner that, if the shared car has a lien against it, the use of the shared car through a car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

6-1-1205. Liability - exclusions for personal automobile liability insurance policy - indemnification. (1) (a) Except as provided in subsection (1)(b) of this section, a car sharing program shall assume the liability of a shared car owner for any bodily injury or property damage to third parties, or
(b) A CAR SHARING PROGRAM DOES NOT ASSUME LIABILITY UNDER THIS SUBSECTION (1) FOR ANY BODILY INJURY OR PROPERTY DAMAGE CAUSED BY THE SHARED CAR OWNER MAKING AN INTENTIONAL OR FRAUDULENT MATERIAL MISREPRESENTATION TO THE CAR SHARING PROGRAM BEFORE OR DURING THE SHARING PERIOD IN WHICH THE LOSS OCCURRED.

(2) AN AUTHORIZED INSURER MAY EXCLUDE COVERAGE AND THE DUTY TO DEFEND OR INDEMNIFY FOR ANY CLAIM UNDER A SHARED CAR OWNER'S PERSONAL AUTOMOBILE LIABILITY INSURANCE POLICY. THIS PART 12 DOES NOT INVALIDATE OR LIMIT AN EXCLUSION CONTAINED IN AN AUTOMOBILE LIABILITY INSURANCE POLICY, INCLUDING ANY INSURANCE POLICY THAT EXCLUDES COVERAGE FOR MOTOR VEHICLES MADE AVAILABLE FOR RENT, SHARING, HIRE, OR BUSINESS USE.

(3) AN AUTOMOBILE INSURER OF THE SHARED CAR OWNER THAT DEFENDS OR INDEMNIFIES A SHARED CAR CLAIM HAS THE RIGHT TO CONTRIBUTION AGAINST THE INSURER OF THE SHARED CAR PROGRAM IF THE CLAIM IS:

(a) MADE AGAINST THE SHARED CAR OWNER OR THE SHARED CAR DRIVER FOR DAMAGES OCCURRING DURING THE SHARING PERIOD; AND

(b) EXCLUDED UNDER THE TERMS OF THE SHARED CAR OWNER'S INSURANCE POLICY.

6-1-1206. Prohibition on cancellation of coverage for car
sharing - contribution against indemnification. (1) Except as
provided in subsection (2) of this section, an automobile insurer
shall not refuse to issue or renew, deny, cancel, void, terminate,
or rescind a policy of personal private automobile liability
insurance of a shared car owner solely on the basis that the car
covered under the policy has been made available for car
sharing.

(2) An automobile insurer may refuse to issue or renew,
deny, cancel, void, terminate, or rescind a policy of personal
private automobile liability insurance covering a shared car if
the applicant or policyholder fails to provide complete and
accurate information about the use of the shared car through
the car sharing program as requested by the automobile insurer
during the application or renewal process.

6-1-1207. Record keeping. A car sharing program shall
collect and verify records concerning the use of a vehicle,
including times used, fees paid by the shared car driver, and
revenues received by the shared car owner. A car sharing
program shall provide these records upon request to the shared
car owner; to facilitate a claim investigation, to the shared car
owner's insurer or the shared car driver's insurer; or as
required by an airport concession agreement. The car sharing
program shall retain these records for at least the duration of
the applicable personal injury statute of limitations.

6-1-1208. Federal law - vicarious liability. A car sharing
program and a shared car owner are exempt from vicarious
liability in accordance with 49 U.S.C. sec. 30106 and under any
STATE OR LOCAL LAW THAT IMPOSES LIABILITY BASED ONLY ON VEHICLE
OWNERSHIP.

6-1-1209. Insurable interest. A CAR SHARING PROGRAM SHALL
HAVE AN INSURABLE INTEREST IN A SHARED CAR DURING THE SHARING
PERIOD. THIS SECTION DOES NOT CREATE LIABILITY FOR A CAR SHARING
PROGRAM FOR FAILURE TO MAINTAIN THE INSURANCE COVERAGE
REQUIRED IN SECTION 6-1-1203 IF INSURANCE COVERAGE IS MAINTAINED
IN COMPLIANCE WITH SECTION 6-1-1203 BY THE SHARED CAR DRIVER OR
THE SHARED CAR OWNER.

6-1-1210. Required disclosures and notices. (1) A CAR SHARING
PROGRAM SHALL, FOR EACH SHARED CAR PARTICIPATING IN A CAR
SHARING AGREEMENT ON ITS PLATFORM, DO ALL OF THE FOLLOWING:

(a) PROVIDE THE SHARED CAR OWNER AND THE SHARED CAR
DRIVER WITH THE TERMS AND CONDITIONS OF THE CAR SHARING
AGREEMENT;

(b) DISCLOSE TO THE SHARED CAR DRIVER ANY COSTS OR FEES
THAT ARE CHARGED TO THE SHARED CAR DRIVER UNDER THE CAR SHARING
AGREEMENT;

(c) DISCLOSE TO THE SHARED CAR OWNER ANY COSTS OR FEES
THAT ARE CHARGED TO THE SHARED CAR OWNER UNDER THE CAR SHARING
AGREEMENT;

(d) PROVIDE AN EMERGENCY TELEPHONE NUMBER FOR A PERSON
CAPABLE OF FACILITATING ROADSIDE ASSISTANCE TO THE SHARED CAR
DRIVER;

(e) DISCLOSE ANY RIGHT OF THE CAR SHARING PROGRAM TO SEEK
INDEMNIFICATION FROM THE SHARED CAR OWNER OR THE SHARED CAR
DRIVER FOR ECONOMIC LOSS SUSTAINED BY THE CAR SHARING PROGRAM
CAUSED BY A BREACH OF THE CAR SHARING AGREEMENT;

(f) DISCLOSE THAT AN AUTOMOBILE LIABILITY INSURANCE POLICY
ISSUED TO THE SHARED CAR OWNER FOR THE SHARED CAR OR TO THE
SHARED CAR DRIVER DOES NOT PROVIDE A DEFENSE OR INDEMNIFICATION
FOR ANY CLAIM ASSERTED BY THE CAR SHARING PROGRAM;

(g) DISCLOSE THAT THE CAR SHARING PROGRAM'S INSURANCE
COVERAGE ON THE SHARED CAR OWNER AND THE SHARED CAR DRIVER IS
IN EFFECT ONLY DURING EACH SHARING PERIOD AND THAT THE SHARED
CAR MAY NOT HAVE INSURANCE COVERAGE FOR USE OF THE SHARED CAR
BY THE SHARED CAR DRIVER AFTER THE SHARING TERMINATION TIME;

(h) DISCLOSE ANY INSURANCE OR PROTECTION PACKAGE COSTS
THAT ARE CHARGED TO THE SHARED CAR OWNER OR THE SHARED CAR
DRIVER; AND

(i) DISCLOSE THAT THE SHARED CAR OWNER'S AUTOMOBILE
LIABILITY INSURANCE MIGHT NOT PROVIDE COVERAGE FOR A SHARED CAR.

6-1-1211. Driver's license verification and data retention.

(1) A CAR SHARING PROGRAM SHALL NOT ENTER INTO A CAR SHARING
AGREEMENT WITH A CAR SHARING DRIVER UNLESS THE DRIVER:

(a) HOLDS A DRIVER'S LICENSE, ISSUED UNDER ARTICLE 2 OF TITLE
42, THAT AUTHORIZES THE DRIVER TO OPERATE CARS OF THE CLASS OF THE
SHARED CAR; OR

(b) IS A NONRESIDENT WHO IS EXEMPT FROM LICENSURE UNDER
SECTION 42-2-102.

(2) A CAR SHARING PROGRAM SHALL KEEP A RECORD OF:

(a) THE NAME AND ADDRESS OF THE SHARED CAR DRIVER;

(b) THE NUMBER OF THE DRIVER'S LICENSE OF EACH SHARED CAR
DRIVER; AND
(c) The date and place of issuance of the driver's license.

6-1-1212. Responsibility for equipment. A car sharing program is responsible for any equipment, including a GPS system, that is put in or on the car to monitor or facilitate the car sharing transaction. A car sharing program shall indemnify and hold harmless the shared car owner for any damage to or theft of the equipment during the sharing period, unless caused by the shared car owner. The car sharing program has the right to be indemnified from the shared car driver for any loss or damage to the equipment that occurs during the sharing period.

6-1-1213. Safety recalls. (1) When a shared car owner registers a shared car with a car sharing program and before the shared car is available for car sharing, the car sharing program shall:

(a) Verify that the shared car does not have any open safety recalls for which the repairs have not been made; and

(b) Notify the shared car owner of the requirements under subsection (2) of this section.

(2) If the shared car owner has actual notice of a safety recall on the shared car, a shared car owner shall not make the shared car available with a car sharing program until the safety recall repair has been made.

(3) If a shared car owner has actual notice of a safety recall on a shared car while available for sharing with a car sharing program, the shared car owner shall remove the shared car's availability with the car sharing program:

(a) As soon as practicable, but no later than seventy-two
(b) Until the safety recall repair has been made.

(4) If a shared car owner has actual notice of a safety recall during the sharing period, the shared car owner shall notify both the shared car driver and the car sharing program about the safety recall.

6-1-1214. Operation at airports. (1) If an airport operator within Colorado requests that a car sharing program enter into an airport concession agreement, a car sharing platform shall enter into an agreement before enabling car sharing within fifteen miles of the terminal of that airport.

(2) A shared car owner offering three or more shared cars to shared car drivers within fifteen miles of the terminal of an airport shall enter into an airport concession agreement upon request by the airport.

(3) An airport concession agreement may impose the same taxes and fees as are imposed on other rental car programs operating at that airport.

(4) If a car sharing program or shared car owner violates this section, the affected airport may petition a court for the following and the court may award the following from the violator:

(a) An injunction prohibiting the violator from car sharing in Colorado;

(b) Compensatory damages; and

(c) Punitive damages.

SECTION 2. Act subject to petition - effective date -
applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to car sharing that occurs on or after the applicable effective date of this act.