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 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 THE EARLIEST OF THE FOLLOWING EVENTS:

(a) THE EXPIRATION OF THE AGREED PERIOD OF TIME ESTABLISHED FOR THE USE OF A SHARED CAR IN THE GOVERNING CAR SHARING AGREEMENT IF THE SHARED CAR IS DELIVERED TO THE LOCATION AGREED UPON IN THE AGREEMENT;

(b) WHEN THE SHARED CAR IS RETURNED TO AN ALTERNATIVE LOCATION AS AGREED UPON BY THE SHARED CAR OWNER AND SHARED CAR DRIVER AS COMMUNICATED THROUGH A CAR SHARING PROGRAM; OR

(c) 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) 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 UNINSURED AND UNDERINSURED MOTORIST OR PERSONAL INJURY PROTECTION LOSSES, DURING THE SHARING PERIOD UP TO AN AMOUNT STATED IN THE CAR SHARING AGREEMENT, BUT NOT LESS THAN THE MINIMUM AMOUNT OF FINANCIAL RESPONSIBILITY REQUIRED BY ARTICLE 7 OF TITLE 42.

(b) The assumption of liability under subsection (1)(a) of this section does not apply to a shared car owner if:

(I) The shared car owner makes an intentional or fraudulent material misrepresentation to or omission to the car sharing program before the sharing period when the loss occurred; or

(II) The shared car owner acts in concert with a shared car driver who fails to return the shared car in accordance with the car sharing agreement.

(c) Notwithstanding subsection (1)(b) of this section, the definition of "sharing termination time" in section 6-1-1202 (11), or the amount of liability coverage stated in the car sharing agreement, the assumption of liability under subsection (1)(a) of this section in the amount required by article 7 of title 42 applies to any bodily injury or property damage suffered by innocent third parties for injuries or losses during the sharing period.

(2) A car sharing program shall ensure that, during each sharing period, the shared car owner and the shared car driver are insured under an automobile liability insurance policy that:
(a) (I) Recognizes that the shared car insured under the policy is made available through and used through a car sharing program; or

(II) Does not exclude use of a shared car by a shared car driver; and

(b) Provides insurance coverage under a:

(I) Commercial liability policy issued to the car sharing program that is not less than three times the minimum amount of financial responsibility required by Article 7 of Title 42; or

(II) Personal liability policy issued to the shared car driver that is not less than the minimum amount of financial responsibility required by Article 7 of Title 42.

(3) The financial responsibility required in subsection (2) of this section may be satisfied by automobile liability insurance that is maintained by any one or a combination of the following:

(a) A shared car driver; or

(b) A car sharing program.

(4) The insurance described in subsection (3) of this section that satisfies the insurance requirement in subsection (2) of this section is the primary coverage during the sharing period.

(5) (a) If the insurance that complies with subsection (2) 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.

(b) THE INSURANCE REQUIRED BY THIS SUBSECTION (5) MAY BE PROCURED FROM:

(I) AN INSURER LICENSED UNDER TITLE 10; OR

(II) A SURPLUS LINES INSURER AUTHORIZED UNDER ARTICLE 5 OF TITLE 10 THAT HAS A CREDIT RATING OF NO LESS THAN:

(A) "A-" FROM A.M. BEST COMPANY, INC.;

(B) "A" FROM DEMOTECH, INC.; OR

(C) A SIMILAR RATING FROM ANOTHER RATING AGENCY IF BOTH THE RATING AND AGENCY ARE RECOGNIZED BY THE COMMISSIONER OF INSURANCE BY RULE UNDER SECTION 10-5-117.

(6) 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.

(7) 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) 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.

(2) 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 (3) of this section, an automobile insurer
shall not refuse to issue or renew, deny, cancel, void, terminate,
OR RESCIND A POLICY OF 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 INSURANCE COMPANY SHALL NOT EXCLUDE OTHERWISE APPLICABLE UNINSURED OR UNDERINSURED MOTORIST COVERAGE FROM A SHARED CAR DRIVER'S OR PASSENGER'S PERSONAL AUTOMOBILE INSURANCE POLICY BECAUSE OF THE PERSON'S PARTICIPATION IN CAR SHARING.

(3)(a) AN AUTOMOBILE INSURER MAY REFUSE TO ISSUE OR RENEW, DENY, CANCEL, VOID, TERMINATE, OR RESCIND A POLICY OF AUTOMOBILE LIABILITY INSURANCE COVERING A SHARED CAR IF THE APPLICANT OR POLICYHOLDER FAILS TO PROVIDE COMPLETE AND ACCURATE INFORMATION ABOUT THE SHARED CAR OWNER'S PARTICIPATION WITH THE SHARED CAR IN A CAR SHARING PROGRAM AS REQUESTED BY THE AUTOMOBILE INSURER DURING THE APPLICATION OR RENEWAL PROCESS.

(b) AN AUTOMOBILE INSURER MAY LIMIT THE NUMBER OF SHARED CARS IT WILL INSURE.

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. (1) 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.

(2) A car sharing program may own and maintain, as the named insured, one or more policies of automobile liability insurance that provide coverage in the amount of, in excess of, or optional to the amount of coverage required in this part 12. The coverage may include coverage for:

(a) Liability assumed by the car sharing program under a car sharing agreement;

(b) The liability of the shared car owner;

(c) Damage or loss to the shared car; or

(d) The liability of the shared car driver.

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;
(i) Disclose that the shared car owner's automobile liability insurance might not provide coverage for a shared car; and

(j) Disclose to the shared car driver any conditions in which the shared car driver is required to maintain a personal automobile liability policy as the primary coverage for the shared car in order to drive 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. Shared car 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 hours, after receiving the notice of the safety recall; and

(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. Enabling operation at airport. (1) A car sharing program shall enter into an airport concession agreement...
BEFORE ENABLING CAR SHARING AT THE AIRPORT, UNLESS THE AIRPORT
EXPLICITLY AND IN WRITING WAIVES THE RIGHT TO REQUIRE AN
AGREEMENT.

(2) A CAR SHARING PROGRAM IS ENABLING CAR SHARING AT AN
AIRPORT IF THE CAR SHARING PROGRAM OR A SHARED CAR OWNER USES
THE CAR SHARING PROGRAM TO:

(a) List vehicles parked on airport property or at airport
facilities;

(b) Contract for transportation to or from airport
facilities;

(c) Facilitate the use of a shared car to transport airport
passengers on or off of airport property; or

(d) Promote or market a shared car to transport airport
passengers on or off of airport property.

(3) An airport concession agreement may impose the taxes
and fees that are imposed on other concessionaires operating at
the airport.

(4) If a car sharing program fails to or refuses to enter
into an airport concession agreement, the affected airport may
seek an injunction prohibiting the car sharing program from
operating at the airport and may seek damages and punitive
damages against the car sharing program.

SECTION 2. Act subject to petition - effective date. This act
takes effect January 1, 2020; 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 the ninety-day period
after final adjournment of the general assembly, 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.