

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2379

As Amended by House Committee on
Transportation

Brief*

HB 2379, as amended, would enact the Peer-to-Peer (or P2P) Vehicle Sharing Program Act.

The bill would be effective and in force from and after January 1, 2022, and its publication in the statute book.

Definitions (New Section 2)

The bill would establish several definitions associated with P2P vehicle sharing, including:

- “Peer-to-peer vehicle sharing,” to mean the authorized use of a shared vehicle by an individual other than the shared vehicle’s owner through a P2P program.
 - P2P vehicle sharing would not mean rental or lease of a motor vehicle for the purposes of law applicable to an excise tax on certain lease or rental vehicles; and
 - Would not include the use of a vehicle that is used for demonstration purposes or a leased, temporarily loaned or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of KSA 8-2401;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Peer-to-peer vehicle sharing program,” to mean a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration.
 - P2P vehicle sharing program would not mean a rental car company; a lessor; or a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle; and
 - Would not include the use of a vehicle that is used for demonstration purposes or a leased, temporarily loaned or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of KSA 8-2401;

- “Vehicle sharing program agreement,” to mean the terms and conditions applicable to a shared vehicle owner, a shared vehicle driver, and a P2P vehicle sharing program that govern the use of a shared vehicle through a P2P vehicle sharing program.
 - Vehicle sharing program agreement would not include a rental agreement; and
 - Would not include a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of KSA 8-2401;

- “Shared vehicle,” to mean a vehicle that is available for sharing through a P2P vehicle sharing program.
 - Shared vehicle would not mean a rental car or rental commercial-type vehicle; and
 - Would not include a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle

owned by a new or used vehicle dealer licensed under the provisions of KSA 8-2401;

- “Shared vehicle driver,” to mean the individual authorized to drive the shared vehicle by the shared vehicle owner under a vehicle sharing program agreement.
 - Shared vehicle driver would not include a lessee; and
 - Would not include the operator of a vehicle that is used for demonstration purposes or the operator of a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of KSA 8-2401;
- “Shared vehicle owner,” to mean the registered owner, or person or entity designated by the owner, of a vehicle made available for sharing to shared vehicle drivers through a P2P vehicle sharing program.
 - Shared vehicle owner would not include a person or entity in the business of providing rental vehicles to the public, a leasing company, or a rental car company; and
 - Would not include an owner of a vehicle that is used for demonstration purposes or a leased, temporarily loaned or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of KSA 8-2401;
- “Vehicle sharing delivery period,” to mean the period of time during which a shared vehicle is being delivered to the location of the vehicle sharing start time, if applicable, as documented by the governing vehicle sharing program agreement;

- “Vehicle sharing period,” to mean the period of time that commences with the vehicle sharing delivery period or, if there is no vehicle sharing delivery period, that commences with the vehicle sharing starting time and, in either case, that ends at the vehicle sharing termination time; and
- “Vehicle sharing termination time,” to mean the earliest of the following:
 - Expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the vehicle sharing program agreement if the shared vehicle is delivered to the location agreed upon in the vehicle sharing program agreement;
 - When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner (owner) and shared vehicle driver (driver) as communicated through a P2P vehicle sharing program and such alternatively agreed upon location is incorporated into the vehicle sharing program agreement; or
 - When the registered shared vehicle owner or the shared vehicle owner’s authorized designee takes possession and control of the shared vehicle.

Liability Coverage (New Section 3)

The bill would require, with exceptions specified in the bill, a P2P vehicle sharing program to assume liability of an owner for bodily injury or property damage to third parties for uninsured and underinsured motorist or personal injury protection losses during the vehicle sharing period in amounts stated in the P2P vehicle sharing program agreement. The bill would require coverage to be not less than the coverage required in the Kansas Automobile Injury Reparations Act (KAIRA).

Notwithstanding the definition of “vehicle sharing termination time,” a P2P vehicle sharing program would not assume owner liability when:

- An owner makes an intentional or fraudulent material misrepresentation or omission of fact to the P2P vehicle sharing program before the vehicle sharing period in which the loss occurred; or
- Acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the vehicle sharing program agreement.

However, the assumption of liability would apply to bodily injury, property damage, uninsured and underinsured motorist, or personal injury protection losses by damaged third parties as required by the KAIRA.

The bill would require a P2P vehicle sharing program to ensure that, during each vehicle sharing period, the owner and the driver are insured under a motor vehicle liability insurance policy that provides coverage in amounts no less than those prescribed in KAIRA. The policy must:

- Recognize that the vehicle insured under the policy has been made available as a shared vehicle and is used through a P2P vehicle sharing program; or

- Not exclude the use of the vehicle by a shared vehicle driver.

The bill would provide the requirement for motor vehicle liability insurance could be satisfied by such insurance maintained by:

- An owner;
- A driver;
- A P2P vehicle sharing program; or
- A shared vehicle owner or a shared vehicle driver and a P2P vehicle sharing program.

Insurance satisfying this requirement would be considered as primary during each vehicle sharing period and if a claim occurs in another state with insurance policy coverage amounts that exceed the minimum amounts set forth in state law during the vehicle sharing period, the coverage described in the bill would satisfy the difference in minimum coverage amounts, up to the applicable policy limits.

The insurer or P2P vehicle sharing program would assume primary liability for a claim when it is, in whole or in part, providing the insurance required by the bill and in these additional instances:

- A dispute exists as to who was in control of the shared vehicle at the time of the loss or as to whether the shared vehicle was returned to the alternatively agreed-upon location; and
- The P2P vehicle sharing program does not have available, did not retain, or fails to provide information required under recordkeeping provisions in the bill (New Section 6).

The bill would also require, if the insurance maintained by an owner or driver has lapsed or does not provide the required coverage, insurance maintained by the P2P vehicle sharing program to provide such coverage beginning with the first dollar of the claim and have the duty to defend such claim. The bill would state coverage under the P2P vehicle sharing program insurance shall not be dependent on another motor vehicle insurer first denying a claim nor shall another motor vehicle insurance policy be required to first deny a claim.

The bill would state that nothing in the section pertaining to liability coverage shall be construed to:

- Limit the liability of the P2P vehicle sharing program for any act or omission of the program itself that results in injury to any person as a result of using a shared vehicle through the program; or
- Limit the ability of the P2P vehicle sharing program to contractually seek indemnification from the owner or the driver for economic loss sustained by the program resulting from a breach of the terms and conditions of the vehicle sharing program agreement.

Lienholder Notice (New Section 4)

The bill would require, between the time that a vehicle owner registers as a shared vehicle owner on a P2P vehicle sharing program and the time the owner makes a vehicle available as a shared vehicle on the program, the program to notify the owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through such program, including use without physical damage coverage, could violate the terms of the contract with the lienholder.

Exclusions, Liability Coverage (New Section 5)

The bill would permit an authorized insurer writing motor vehicle liability insurance in Kansas to exclude any and all coverage and the duty to defend or indemnify for any claim afforded under an owner's motor vehicle liability insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage, as defined in KAIRA;
- Uninsured and underinsured motorist coverage;
- Medical benefits coverage, as defined in KAIRA;
- Comprehensive physical damage coverage; and
- Collision physical damage coverage.

The bill would further state nothing in this section (coverage exclusions) 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, hire, or any business use; invalidates, limits, or restricts an insurer's ability to underwrite any insurance policy; or invalidates, limits, or restricts an insurer's ability to cancel and non-renew insurance policies.

Recordkeeping (New Section 6)

The bill would require P2P vehicle sharing programs to collect and verify records pertaining to the use of a vehicle, including, but not limited to:

- The times used;

- Vehicle sharing period pick up and drop off locations;
- Fees paid by the shared vehicle driver; and
- Revenues received by the shared vehicle owner.

The bill would also require the program to provide this information, upon request, to the owner, the owner's insurer, or the driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation. The bill would require the program to retain the records for a time period not less than the applicable personal injury statute of limitations.

Vicarious Liability, Exemption (New Section 7)

The bill would exempt a P2P vehicle sharing program and a shared vehicle owner from vicarious liability in accordance with 49 USC § 30106 (provisions of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users – applying to rented or leased motor vehicle safety and financial responsibility) and under any state or local law that imposes liability solely based on vehicle ownership.

Indemnification (New Section 8)

The bill would provide that 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 recovery against the insurer of the P2P vehicle sharing program if the claim is:

- Made against the owner or the driver for loss or injury that occurs during the vehicle sharing period; and
- Excluded under the terms of its policy.

Insurable Interest (New Section 9)

The bill would provide, notwithstanding any any other law, statute, rule, or regulation to the contrary, a P2P vehicle sharing program shall have an insurable interest in a shared vehicle during the vehicle sharing period. The bill would further state nothing in this section (insurable interest) shall be construed to require a P2P program to maintain the coverage mandated by provisions of the bill relating to liability coverage.

The bill would permit a P2P vehicle sharing program to own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for:

- Liabilities assumed by the P2P program under a P2P vehicle sharing program agreement;
- Any liability of the owner;
- Damage or loss to the shared vehicle; or
- Any liability of the driver.

Disclosures to Shared Vehicle Owner, Driver (New Section 10)

The bill would require every vehicle sharing program agreement made in Kansas to disclose the following information to the owner and driver, as appropriate:

- Any right of the P2P vehicle sharing program to seek indemnification from the owner or driver for economic loss sustained by the P2P program resulting from a breach of the terms and conditions of the P2P vehicle sharing program agreement;
- A motor vehicle liability insurance policy issued to the owner for the shared vehicle or to the driver

does not provide a defense or indemnification for any claim asserted by the P2P vehicle sharing program;

- The P2P vehicle sharing program's insurance coverage on the owner and the driver is in effect only during each vehicle sharing period and that, for any use of the shared vehicle by the driver after the vehicle sharing termination time, the driver and the owner may not have insurance coverage;
- The daily rate, fees and, if applicable, any insurance or protection costs that are charged to the shared vehicle owner or the shared vehicle driver;
- The owner's motor vehicle liability insurance may not provide coverage for a shared vehicle; and
- If there are conditions under which a driver must maintain a personal motor vehicle liability insurance policy with certain applicable coverage limits on a primary basis in order to reserve a shared motor vehicle.

The bill would also require every vehicle sharing program agreement made in Kansas to provide an emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.

Driver's License, Data Retention (New Section 11)

The bill would prohibit a P2P vehicle sharing program from entering into a P2P vehicle sharing program agreement with a driver unless the driver who will operate the shared vehicle:

- Holds a driver's license issued by the state of Kansas to drive vehicles of the class of the shared vehicle;
- Is a nonresident who:
 - Has a driver's license issued by the state or country of the driver's residence that authorizes the driver to drive vehicles of the class of the shared vehicle; and
 - Is at least the legal age required of a resident to drive in Kansas; or
 - Otherwise is specifically authorized by the State of Kansas to drive vehicles of the class of the shared vehicle.

The bill would also require P2P vehicle sharing programs to maintain a record of the name, address, driver's license number, and place of issuance of the driver's license of the driver and any other person who will also drive the shared vehicle.

Equipment Responsibility (New Section 12)

The bill would place sole responsibility on a P2P vehicle sharing program for any equipment, such as a GPS system or other special equipment, that is installed in or on the shared vehicle to monitor or facilitate the vehicle sharing transaction. The bill also would require the P2P program to agree to indemnify and hold harmless the owner for any damage to or theft of such equipment during the vehicle sharing period the owner did not cause. The P2P program would have the right to seek indemnity from the driver from any loss or damage to such equipment that occurs during the sharing period.

Safety Recalls (New Section 13)

Between the time a vehicle owner registers as a shared vehicle owner on a P2P vehicle sharing program and when the owner makes a vehicle available as a shared vehicle on the P2P program, the bill would require the P2P program to verify the shared vehicle does not have any outstanding safety recalls on the vehicle and notify the shared vehicle owner of the following requirements:

- If a vehicle owner has received an actual notice of a safety recall, the owner may not make such vehicle available as a shared vehicle on a P2P vehicle sharing program until the safety recall repair has been made;
- If an owner receives actual notice of a safety recall on a shared vehicle while the shared vehicle is available on the P2P vehicle sharing program, the owner must remove the shared vehicle from the P2P program as soon as practicable after receiving the notice and must not replace it on the program until the safety recall repair has been made; and
- If an owner receives an actual notice of a safety recall while the shared vehicle is being used and is in the possession of a driver, as soon as practicable after receiving such notice, the owner shall notify the P2P vehicle sharing program about the safety recall, so the shared vehicle owner may address the repair.

Definition Amendments (Section 14)

The bill would amend the definitions section of the Kansas Collision Damage Waiver Act to add the following exclusions:

- “Lessor” would not include a P2P vehicle sharing program or a shared vehicle owner;
- “Lessee” would not include a shared vehicle driver;
- “Rental agreement” would not include a vehicle sharing program agreement; and
- “Rental motor vehicle” would not include a shared vehicle.

Background

The bill was introduced by the House Committee on Insurance and Pensions on behalf of a representative of Turo Inc. [Note: The bill is similar to, but has differences from, 2020 SB 352 and 2020 Sub. for SB 282.]

House Committee on Transportation

In the House Committee hearing, a representative of Turo Inc. provided **proponent** testimony. The conferee indicated the bill represents national model legislation that takes a balanced approach to P2P car sharing regulation, establishes P2P car sharing as its own unique industry, and has provisions to ensure coverage for all parties involved in a car sharing transaction. A representative of TechNet provided written-only **proponent** testimony, stating P2P car sharing creates convenient, affordable, and environmentally friendly on-demand access to vehicles for individuals without cars.

A representative of the Kansas Automobile Dealers Association (KADA) provided neutral testimony, stating the bill could introduce uncertainty into their industry, and requesting the bill be amended to exempt those subject to the Vehicle Dealers and Manufacturers Licensing Act.

No **opponent** testimony was provided.

The House Committee made the following amendments, which were described as reflecting recent changes to the model act of the National Council of Insurance Legislators and addressing KADA concerns:

- Amended definitions to exempt owners, operators and vehicles used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a licensed new or used vehicle dealer; and to make additional exclusions;
- Amended provisions relating to insurance requirements;
- Amended provisions relating to primary liability;
- Removed language requiring a shared vehicle's insurer to indemnify the P2P vehicle sharing program to the extent of its obligation under any applicable insurance policy if it is determined the owner was in control of the shared vehicle at the time of the loss;
- Added language stating nothing in Section 5 (exclusions, liability coverage) invalidates, limits or restricts an insurer's ability to underwrite any insurance policy or to cancel and non-renew insurance policies;
- Added language pertaining to recordkeeping;
- Amended language pertaining to indemnification; and
- Made technical amendments.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on the bill, as introduced, the Kansas Department of

Revenue (Department) states it could have to notify 1,600 customers if the vehicle rental excise tax is applicable in addition to sales tax; however, the Department does not indicate any additional funding would be required.

In addition, the Department states that, according to research published by the National Conference of State Legislatures (NCSL) in January 2020, eight states had approved peer-to-peer car sharing legislation, with one state approving a feasibility study on establishing a peer-to-peer car sharing regulatory framework. The NCSL reports the number of peer-to-peer car sharing members is unknown. The Department states that, according to industry data, peer-to-peer car rentals can run from \$20 to more than \$250 per day depending on the model of the vehicle. In calendar year 2020, almost 2.7 million vehicles were registered in Kansas.

The Insurance Department states the bill would result in an increase of premium taxes collected from insurance companies. The Insurance Department would retain 1 percent of any additional premium tax collected from enactment of the bill and the remainder would be remitted to the State General Fund; however, the fiscal effect cannot be estimated because the number of additional premium taxes that would be collected is unknown.

Any fiscal effect associated with enactment of the is not reflected in *The FY 2022 Governor's Budget Report*.

Peer-to-peer; vehicle sharing; agreements; insurance requirements; Peer-to-Peer Vehicle Sharing Program Act; liability