

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 282**

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

Sub. for SB 282 would create the Peer-to-Peer (P2P) Vehicle Sharing Program Act.

The bill would be effective and in force from and after January 1, 2021, and its publication in the statute book.

Definitions (Section 2)

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

- “P2P 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;
- “P2P 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;

*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>

- “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 vehicle;
- “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; 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 (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 assume owner liability applicable to bodily injury, property damage, uninsured and underinsured motorist, or personal injury protection losses by damaged third parties as required by the KAIRA 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.

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 further provide that 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. The 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; 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 (Section 6).

The bill would require the 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.

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 (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 (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 as 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.

Recordkeeping (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;
- 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 shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation. 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 (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 (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 contribution 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 (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 (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
- There may be 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 (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 or country of the driver's residence that authorizes the driver in that state or country 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 (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 (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.

Background

SB 282, as introduced by the Senate Committee on Federal and State Affairs, would have enacted the Patient's Right-to-Know Act. The bill was referred to the Senate Committee on Financial Institutions and Insurance (Senate Committee) and a hearing was held on January 29, 2020. The Senate Committee recommended a substitute bill incorporating modified provisions of SB 352 (relating to P2P vehicle sharing). The substitute bill does not include the bill's original provisions.

In the Senate Committee hearing on SB 352, representatives of Enterprise Holdings, the American Property Casualty Insurance Association (APCIA), Kansas Bankers Association, National Association of Mutual Insurance Companies (NAMIC), and State Farm Insurance Companies (State Farm) provided proponent testimony. The Enterprise Holdings representative stated the bill would provide a framework to recognize P2P car sharing arrangements and to protect Kansas consumers regarding issues of safety and insurance coverage. The representative further noted the bill provides transparency and a "level playing field" between P2P car sharing and other rental car providers. Proponents noted the bill is based on model legislation adopted by the National Conference of Insurance Legislators (NCOIL) in December 2019. Representatives of NAMIC and State Farm requested amendments, and the

APCIA representative requested the Senate Committee consider language changes to more closely mirror the NCOIL model. Written-only proponent testimony was provided by the Director of Airports, City of Wichita Airport Authority, and the Director of the Manhattan Regional Airport for the City of Manhattan.

Representatives of Allstate Insurance and its subsidiary, Avail, and of Turo appeared as opponents to the bill. Written-only opponent testimony was submitted by a representative of the Alliance for Automotive Innovation. Opponents generally requested removal of language relating to taxation and agreements with airport authorities that did not appear in the NCOIL model act. The Allstate/ Avail representative indicated the model act should not be modified in a manner that would prevent the growth of an emerging industry in Kansas.

Neutral testimony provided by a representative of the Kansas Automobile Dealers Association included a request for an amendment to specify the P2P Act would not apply to licensees under the Vehicle Dealers and Manufacturers Licensing Act.

At the time of Senate Committee action, the Enterprise Holdings representative provided a balloon amendment the representative stated reflected consensus language among parties to the bill.

The Senate Committee amended the bill to:

- Update five definitions to include provisions to exclude rental cars or rental vehicles;
- Add language in provisions applying to liability coverage requirements to address assumption of liability and also add language regarding P2P shared vehicle drivers;

- Remove language that would have made vehicle sharing program agreements subject to the retailers' sales tax and also remove language permitting, upon request of an airport, agreements with a P2P vehicle sharing program; and
- Make technical changes.

The balloon amendment was adopted and the contents of SB 282 removed, and the Committee recommended the amended contents of SB 352 be placed into Sub. for SB 282.

According to the fiscal note prepared by the Division of Budget on SB 352, as introduced, the Kansas Department of Revenue (Department) states additional expenditures of \$1,800 from the State General Fund in FY 2021 would be needed to update forms and publications. Also, the Department states that, according to research published by the National Conference of State Legislatures (NCSL) in January 2020, eight states have 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 2018, almost 2.7 million vehicles were registered in Kansas. Any fiscal effect associated with the bill is not reflected in *The FY 2021 Governor's Budget Report*.