

## **BILL ANALYSIS**

C.S.H.B. 113  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that peer-to-peer car sharing programs have become increasingly popular in Texas in recent years. The flexibility for car owners to provide their vehicles for rent to others not only provides for an efficient mode of transportation but also allows Texans to create new economic opportunities for themselves. However, concerns have been raised regarding the lack of uniform, statewide regulation for these services. There have been calls to implement consistent regulations to ensure proper insurance coverage for customers, car owners, and the peer-to-peer car sharing companies. C.S.H.B. 113 seeks to address this issue by establishing insurance coverage requirements for peer-to-peer car sharing programs that are based on model legislation adopted by the National Council of Insurance Legislators after negotiation with peer-to-peer car sharing companies, insurance companies, and traditional car rental companies.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 113 amends the Business & Commerce Code to provide for the statewide regulation of peer-to-peer car sharing programs. The bill defines "peer-to-peer car sharing program" as a business platform that connects owners with drivers to enable vehicle sharing for financial consideration and that is not a private passenger vehicle rental company 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.

C.S.H.B. 113 sets out the conditions under which a peer-to-peer car sharing program must assume an agreed-upon amount of liability of an owner for bodily injury or property damage to third parties or uninsured or underinsured motorist or personal injury protection losses by damaged third parties during the car sharing period, which is defined as the period of time beginning with the delivery period or, if there is no delivery period, the start time and ending at the termination time. The agreed-upon amount may not be less than the applicable amounts prescribed by certain statutory provisions governing insurance coverage. The bill establishes that the assumption of liability applies to the specified types of losses as required by those provisions notwithstanding the definition of "termination time."

C.S.H.B. 113 requires a peer-to-peer car sharing program to ensure that, during each car sharing period, the owner and the driver are insured under an automobile liability insurance policy that

meets the applicable requirements of the bill. The bill sets out the requirements for insurance maintained under the bill's provisions and establishes that coverage requirements may be satisfied by automobile insurance maintained by the owner, the driver, the peer-to-peer car sharing program, or any combination of the three. If a claim occurs in another state with minimum financial responsibility limits higher than the amounts established by the Texas Motor Vehicle Safety Responsibility Act during the car sharing period, the coverage maintained under the bill's provisions must satisfy the difference in minimum coverage amounts to the applicable policy limits.

C.S.H.B. 113 authorizes an automobile insurer to exclude any coverage and the duty to defend or indemnify for any claim afforded under an owner's automobile insurance policy during a car sharing period and sets out the conditions under which an insurer or peer-to-peer car sharing program providing coverage under the bill's provisions is required to assume primary liability for a claim. The bill provides for the use of a peer-to-peer car sharing program's insurance if, at the time of a claim, the automobile insurance maintained by an owner or driver has lapsed or does not provide the required coverage. The bill prohibits coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program from being dependent on another automobile insurer first denying a claim and establishes that another automobile insurance policy is not required to first deny a claim.

C.S.H.B. 113 establishes that a peer-to-peer car sharing program and an owner are not liable under a theory of vicarious liability in accordance with federal law or under any state or local law that imposes liability solely based on vehicle ownership. In addition, the bill does the following:

- authorizes an automobile insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of the insurer's policy to seek recovery against the peer-to-peer car sharing program's automobile insurer under certain conditions;
- establishes that a peer-to-peer car sharing program has an insurable interest in a shared vehicle during the car sharing period;
- authorizes a peer-to-peer car sharing service to own and maintain as the named insured one or more policies of automobile insurance that separately or in combination provide certain coverage; and
- establishes that its provisions expressly do not create a duty on a peer-to-peer car sharing program to maintain the coverage required by the bill.

C.S.H.B. 113 requires an insurance policy maintained by a peer-to-peer car sharing program that provides coverage for liability of the owner or liability of the driver to expressly provide liability coverage, without prior notice to the insurer, for all shared vehicles during the car sharing period, subject to any conditions or exclusions permitted by the bill. The bill authorizes an insurer authorized to engage in the business of insurance in Texas or an eligible surplus lines insurer to issue an insurance policy to a peer-to-peer car sharing program and sets out the conditions under which the program is not required to itemize or charge the owner or driver the amount payable as premium under such a policy that is allocable to coverage provided to the owner or driver.

C.S.H.B. 113 sets out required disclosures for each agreement entered into in Texas under a peer-to-peer car sharing program and requires such a program, when a person registers as an owner and before making a shared vehicle available for car sharing on the program, to provide written notice to the owner that, if the shared vehicle has a lien against it, the shared vehicle's use through the program, including use without physical damage coverage, may violate the terms of the contract with the lienholder. The bill prohibits a peer-to-peer car sharing program from entering into an agreement with a driver unless the driver who will operate the shared vehicle meets certain requirements, including a requirement to have a valid driver's license.

C.S.H.B. 113 provides for:

- the collection, verification, sharing, and retention of certain information relating to drivers and vehicles involved in a peer-to-peer car sharing program;
- the responsibility for any equipment used under the program to monitor or facilitate the car sharing transaction; and
- requirements relating to automobile safety recall protocols.

C.S.H.B. 113 applies to automobile insurance policies in Texas, including policies issued by a Lloyd's plan, a reciprocal or interinsurance exchange, or a county mutual insurance company. Nothing in the bill may be construed to do the following:

- limit the liability of a peer-to-peer car sharing program for any act or omission of the program itself that results in injury to a person as a result of the use of a shared vehicle through the program;
- limit the ability of a peer-to-peer car sharing program to, by contract, seek indemnification from the owner or driver for economic loss sustained by the program resulting from a breach of the agreement;
- have implications affecting construction of statutes outside the bill's provisions; or
- invalidate or limit an exclusion contained in an automobile insurance policy.

C.S.H.B. 113 authorizes the commissioner of insurance to adopt rules necessary to implement the bill's provisions.

C.S.H.B. 113 applies only to an automobile insurance policy delivered, issued for delivery, or renewed on or after January 1, 2022, and only to a peer-to-peer car sharing agreement entered into on or after that date.

#### **EFFECTIVE DATE**

September 1, 2021.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 113 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes an authorization for the commissioner of insurance to adopt rules necessary to implement the bill's provisions.

The substitute excludes from the definition of "peer-to-peer car sharing program" 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. The substitute revises the definition of "termination time" to specify that times alternatively agreed on by the owner and driver are incorporated into the agreement.

The substitute includes language prohibiting the amount of liability assumed by a peer-to-peer car sharing program for certain losses during the car sharing period from being less than the amount required for uninsured or underinsured motorist coverage or the maximum amount of required personal injury protection coverage, as applicable. The substitute includes a provision establishing the applicability of the assumption of liability with respect to certain statutory provisions governing insurance coverage.

The substitute includes a requirement for coverage maintained under the bill's provisions to satisfy the difference in minimum coverage amounts to the applicable policy limits if a claim occurs during the car sharing period in another state with higher minimum financial responsibility limits.

The substitute includes a requirement for an insurer or peer-to-peer car sharing program providing coverage under the bill's provisions to assume primary liability for a claim when a dispute exists as to whether the shared vehicle was returned to the alternatively agreed-upon location at the end of the car sharing period.

The substitute includes an insurer providing coverage under the bill's provisions as an entity that is required to assume primarily liability for a claim when a dispute exists as to who was in control of the shared vehicle at the time of the loss and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the necessary records to investigate the claim. The substitute does not include a requirement for a shared vehicle's insurer to indemnify the peer-to-peer car sharing program to the extent of its obligation, if any, under the applicable insurance policy if it is determined that the vehicle's owner was in control of the vehicle at the time of the loss.

The substitute includes the following:

- a requirement for certain insurance policies maintained by a peer-to-peer car sharing program to expressly provide liability coverage, without prior notice to the insurer, for all shared vehicles during the car sharing period;
- an authorization for an insurer authorized to engage in the business of insurance in Texas or an eligible surplus lines insurer to issue an insurance policy to a peer-to-peer car sharing program;
- a provision establishing the conditions under which a peer-to-peer car sharing program is not required to itemize or charge the owner or driver the amount payable as premium under such a policy that is allocable to coverage provided to the driver;
- a requirement for a peer-to-peer car sharing program to collect and verify records relating to car sharing period pick-up and drop-off locations; and
- a requirement for a peer-to-peer car sharing program to provide records related to the use of a shared vehicle to certain persons on request to facilitate a claim coverage settlement, negotiation, or litigation.

The substitute does not include protection package costs among the costs that must be disclosed in a peer-to-peer car sharing agreement.