WEST VIRGINIA CODE CHAPTER 17A ARTICLE 6F

WV Legislature

§17A-6F-1. Scope.

This article is intended to govern the intersection of peer-to-peer car services, the state-regulated business of insurance, and state and local taxation of the business transaction and the airport and airport authorities authority to regulate peer-to-peer car services provided to airport customers This article does not void, abrogate, restrict, or affect any requirements of §17A-6D-1 *et seq*. of this code relating to daily passenger rental car business or §17A-6A-1 *et seq*. of this code relating to motor vehicle dealers, distributors, wholesalers, and manufacturers.

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§17A-6F-2. Definitions.

As used in this article:

"Peer-to-peer car sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program. "Peer-to-peer car sharing" is not a "daily passenger rental car business" as licensed by the provisions of §17A-6D-1 *et seq*. of this code.

"Peer-to-peer car sharing program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. "Peer-to-peer car sharing program" does not mean 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. For purposes of this section, "hardware" does not mean a motor vehicle as defined by the provisions of §17A-1-1(b). "Peer-to-peer car sharing program" does not mean a "daily passenger rental car business" as licensed by the provisions of §17A-6D-1 *et seq*. of this code. "Peer-to-peer car sharing program" does not include a program provided to a business's own employees.

"Car sharing program agreement" means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program.

"Shared vehicle" means a vehicle that is available for sharing through a peer-to-peer car sharing program. "Shared vehicle" does not mean a rental car or a rental vehicle as used in a "daily passenger rental car business" licensed by the provisions of §17A-6D-1 *et seq*. of this code.

"Shared vehicle driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement.

"Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

"Car sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program agreement.

"Car sharing period" means the period of time that commences with the car sharing delivery period or, if there is no car sharing delivery period, that commences with the car sharing start time, and in either case ends at the car sharing termination time.

"Car sharing start time" means the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program.

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"Car sharing termination time" means the earliest of the following events:

The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement;

When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program, and which alternatively agreed upon location shall be incorporated into the car sharing program agreement; or

When the shared vehicle owner or the shared vehicle owner’s authorized designee, takes possession and control of the shared vehicle.

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§17A-6F-3. Insurance coverage during car sharing period.

(a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this section, of a shared vehicle owner for bodily injury or property damage to third parties and uninsured and underinsured motorist losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amounts may not be less than the minimum of applicable limits required by state law as set forth in §17D-4-2 and §33-6-31 of this code.

(b) Notwithstanding the definition of "car sharing termination time" as defined in this article, the assumption of liability under subsection (a) of this section does not apply to any shared vehicle owner when:

(1) A shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred; or

(2) Acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the car sharing program agreement.

(c) Notwithstanding the definition of "car sharing termination time" as defined in this article, the assumption of liability under subsection (a) of this section would apply to bodily injury, property damage, uninsured and underinsured motorist losses by damaged third parties in the same manner required by §17D-4-2 and §33-6-31 of this code.

(d) A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage which amounts may not be less than the amounts set forth in §17D-4-2 and §33-6-31 of this code and either:

(1) Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; or

(2) Does not exclude use of a shared vehicle by a shared vehicle driver.

(e) The insurance described under subsection (d) of this section may be satisfied by motor vehicle liability insurance maintained by:

(1) A shared vehicle owner;

(2) A shared vehicle driver;

(3) A peer-to-peer car sharing program; or

(4) A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

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(f) The insurance described in subsection (e) of this section that is satisfying the insurance requirement of subsection (d) of this section shall be the primary insurance during each car sharing period. If a claim occurs during the car sharing period in another state with minimum financial responsibility limits higher than required by §17D-4-2 of this code, the coverage maintained under subsection (e) of this section shall satisfy the minimum financial responsibility limits of such other state, up to the applicable policy limits that may exceed the minimum financial responsibility limits.

(g) The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsections (d) and (e) of this section shall assume primary liability for a claim when:

(1) A dispute exists as to who was in control of the shared motor 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 information required by §17A-6F-6 of this code; or

(2) A dispute exists as to whether the shared vehicle was returned to the alternatively agreed upon location as required by the definition of car sharing termination time as defined in §17A-6F-2 of this code.

(h) The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsection (g) of this section may seek indemnity from a shared vehicle owner if the shared vehicle owner is determined to have been the operator of the shared vehicle at the time of the loss.

(i) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (e) of this section has lapsed or does not provide the required coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage required by subsection (d) of this section beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances as set forth in this section.

(j) Coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program shall not be dependent on another automobile insurer first denying a claim nor shall another automobile insurance policy be required to first deny a claim.

(k) Nothing in this article may be interpreted as either limiting or restricting:

(1) The liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program; or

(2) The ability of the peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

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§17A-6F-4. Notification of implications of lien.

At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program, and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

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§17A-6F-5. Exclusions for personal vehicle liability insurance policy.

(a) A motor vehicle insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including, but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Uninsured and underinsured motorist coverage;

(3) Medical payments coverage;

(4) Comprehensive physical damage coverage; and

(5) Collision physical damage coverage.

(b) Nothing in this article may be construed as invalidating or limiting 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, or hire, or for any business use.

(c) Nothing in this article may be interpreted as either limiting or restricting an insurer's ability to exclude insurance coverage from any insurance policy or an insurer's ability to underwrite any insurance policy pursuant to § 33-6A-1 *et seq*. of this code.

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§17A-6F-6. Recordkeeping; use of vehicle in car sharing.

(a) A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, car sharing period pickup and drop-off locations, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner and provide that 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, settlement, negotiation, or litigation.

(b) The peer-to-peer car sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

WV Legislature

§17A-6F-7. Exemption; vicarious liability.

A peer-to-peer car sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. § 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

WV Legislature

§17A-6F-8. Contribution against indemnification.

A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program if the claim is:

(1) Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period; and

(2) Excluded under the terms of its policy.

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§17A-6F-9. Insurable interest.

(a) Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car sharing program has an insurable interest in a shared vehicle during the car sharing period.

(b) Nothing in this section creates liability on a peer-to-peer car sharing program to maintain the coverage mandated by this article.

(c) A peer-to-peer car sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for:

(1) Liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement;

(2) Any liability of the shared vehicle owner;

(3) Damage or loss to the shared motor vehicle; or

(4) Any liability of the shared vehicle driver.

WV Legislature

§17A-6F-10. Consumer protections for car sharing programs.

Each car sharing program agreement made in this state shall disclose to the shared vehicle owner and the shared vehicle driver, at a minimum:

(1) Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement;

(2) That a motor vehicle liability insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program;

(3) That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;

(4) The daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;

(5) That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle;

(6) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries; and

(7) If there are conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared motor vehicle.

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§17A-6F-11. Driver's license verification and data retention.

(a) A peer-to-peer car sharing program may not enter into a peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle:

(1) Holds a driver's license issued pursuant to the provisions of §17B-2-1 *et seq.* of this code, which authorizes the driver to operate a motor vehicle of the class of the shared vehicle; or

(2) Is a nonresident who:

(A) Has 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 a motor vehicle of the class of the shared vehicle; and

(B) Is at least the same age as that required of a resident of this state to operate a motor vehicle of the class of the shared vehicle; or

(3) Otherwise is specifically authorized by the applicable provisions of §17B-2-1 *et seq.* of this code to operate a motor vehicle of the class of the shared vehicle.

(b) A peer-to-peer car sharing program shall keep a record of:

(1) The name and address of the shared vehicle driver;

(2) The number of the driver's license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

(3) The place of issuance of the driver's license.

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§17A-6F-12. Responsibility for equipment of a shared vehicle.

A peer-to-peer car sharing program has sole responsibility for any equipment, such as a GPS system or other special equipment that is put in or on the vehicle to monitor or facilitate the car sharing transaction, and shall agree to indemnify and hold harmless the vehicle owner for any damage to or theft of the equipment during the sharing period not caused by the vehicle owner. The peer-to-peer car sharing program may seek indemnity from the shared vehicle driver for any loss or damage to the equipment that occurs during the sharing period.

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§17A-6F-13. Registration, notification, and automobile safety recalls.

(a) At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall:

(1) Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

(2) Notify the shared vehicle owner of the requirements of subsection (b) of this section; and

(3) Notify the shared vehicle owner that the shared vehicle owner's personal insurance may exclude peer-to-peer car sharing activity.

(b)(1) If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, a shared vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer car sharing program until the safety recall repair has been made.

(2) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car sharing program, the shared vehicle owner shall remove the shared vehicle as available on the peer-to-peer car sharing program, as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, as soon as practicably possible after receiving the notice of the safety recall, the shared vehicle owner shall notify the peer-to-peer car sharing program about the safety recall so that the shared vehicle owner may address the safety recall repair.

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§17A-6F-14. Regulation of peer-to-peer car sharing programs at airports and airport facilities.

(a) Airports or the airport authority in this state may regulate peer-to-peer vehicle rental activity provided to airport customers as set forth in this section.

(b) A peer-to-peer car sharing program shall, upon request of an airport or airport authority in this state, enter into an agreement with the airport or airport authority, which agreement may be a concession agreement, prior to:

(1) Listing shared vehicles parked on airport property or at airport facilities;

(2) Facilitating the use of shared vehicles to transport airport customers to or from airport property or airport facilities, regardless of whether that use is to be initiated or has a car sharing start time which occurs on or off of airport property or airport facilities; or

(3) Promoting or marketing shared vehicles to transport airport customers to or from airport property or airport facilities, regardless of whether that transportation is to be initiated or has a car sharing start time which occurs on or off of airport property or airport facilities.

(c) The agreement required in subsection (a) of this section shall set forth reasonable standards, regulations, procedures, and fees applicable to a peer-to-peer car sharing program that govern the activity of peer-to-peer car sharing on airport property or airport facilities.

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§17A-6F-15. Controlling authority; taxation and other requirements of a peer-to-peer car sharing program.

(a) Licensure, registration and qualification. A municipality, county or other local governmental entity, or special district may not require a peer-to-peer car sharing program to obtain a business license or any other similar authorization to operate within the jurisdiction, or subject a peer-to-peer car sharing program or a shared vehicle owner to any licensure requirement, fee, entry requirement, registration requirement, operating or operational requirement, or any other requirement.

(b) *Duty to collect tax.* A peer-to-peer car sharing program operating in this state pursuant to the provisions of this article shall collect and remit all state and municipal consumer sales and service and use taxes on all taxable sales of services to purchasers in this state. For the purposes of collection of tax required under §11-15A-6 and §11-15A-6b of this code, a "peer-to-peer car sharing program" is a remote seller, marketplace facilitator, or referrer that meets the requirements of §11-15A-1(b) of this code.

(c) A peer-to-peer car sharing program operating in this state pursuant to the provisions of this article is not subject to the collection and remittance requirements of the daily rental car passenger tax in §17A-6D-2 of this code.

(d) A peer-to-peer car sharing program operating in this state pursuant to the provisions of this article may collect the vehicle license cost recovery fee authorized by §17A-6D-16 of this code in the same manner as a daily passenger car rental business.

(e) *Limitations and interpretation*.

(1) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect imposition of the ad valorem property tax on tangible personal property of a peer-to-peer car sharing program or of a shared vehicle owner by any levying body.

(2) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect imposition of the state personal income tax or state corporation net income tax on a peer-to-peer car sharing program or a shared vehicle owner.

(3) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect imposition of the motor fuel excise tax on any taxable motor fuel or alternative fuel purchased by any peer-to-peer car sharing program, shared vehicle owner, or shared vehicle driver.

(4) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect the requirements of chapter 11 of this code for issuance of a business registration certificate for a peer-to-peer car sharing program.

(5) No provision of this section or this article may be interpreted to void, abrogate, restrict, or affect any requirement of state law with relation to licensure of drivers of motor vehicles.

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(6) Shared vehicle owners may not assert the exemption from the consumer sales and service tax and use tax, for purchases of tangible personal property and services directly used in the provision of services in §11-15-9 of this code.

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