

ONE HUNDRED SIXTH LEGISLATURE - SECOND SESSION - 2020
COMMITTEE STATEMENT
LB961

Hearing Date: Tuesday January 28, 2020
Committee On: Transportation and Telecommunications
Introducer: Friesen
One Liner: Adopt the Peer-to-Peer Vehicle Sharing Program Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Albrecht, Bostelman, Cavanaugh, DeBoer, Friesen, Geist, Hilgers, Hughes
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Curt Friesen
Ryan Thistlethwaite
Korby Gilbertson

Representing:

Introducer
Enterprise Holdings
American Property Casualty Insurers Assoc & League of NE Municipalities

Opponents:

William Dane
Vanessa Silke
Mark Johnston

Representing:

Turo, Gov't Affairs
Allstate / Avail
Nat'l Assoc of Mutual Insurance Companies

Neutral:

Jerry Stilmock

Representing:

NE Bankers Assoc

Summary of purpose and/or changes:

LB 961 would adopt the Peer-to-Peer Vehicle Sharing Program (PtPVSP). Following is a section-by-section summary.

Section 1. Creates the PtPVSP Act.

Section 2. Defined terms.

- (1) "Agreement" is one established through the peer-to-peer vehicle sharing program that is a contract between a program, a vehicle owner, and a driver, which contract establishes specific terms and conditions that govern the use of the vehicle;
 - (2) "Delivery period" is the period of time that a vehicle is delivered to the location of the start time;
 - (3) "Driver" is the person authorized to drive an owner's vehicle;
 - (4) "Owner" is the registered owner of a vehicle made available for the sharing program;
 - (5) "Peer-to-peer vehicle sharing program" or "program" means a person or entity that connects vehicle owners with vehicle drivers to facilitate the sharing of vehicles for consideration. A program is not a transportation network company.
 - (6) "Rental company" is an entity engaged in the business of facilitating vehicle rental transactions in Nebraska, but does not include an owner who makes no more than three vehicles available for sharing.
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- (7) "Rental transaction" means the transfer of possession of a vehicle for consideration without transfer of ownership.
- (8) "Sharing" means the authorized use of a vehicle by an individual other than an owner through a peer-to-peer vehicle sharing program.
- (9) "Sharing period" is the period of time that begins with the delivery period or start time and ends with the termination time.
- (10) "Start time" is the time the driver begins control of the vehicle or after the time the reservation is scheduled to begin as documented by the agreement.
- (11) "Termination time" means the earliest of the following:
- (a) the expiration of the agreed upon time for use of the vehicle pursuant to the agreement, if the vehicle is delivered to the location agreed upon in the agreement;
 - (b) when a vehicle is returned to a location alternatively agreed upon by the owner and driver as communicated through the program; or
 - (c) when an owner or his or her designee takes possession and control of a vehicle.
- (12) "Vehicle" means a personally-owned or rental company vehicle that is available for use through a program for a sharing period of 30 days or less which is registered as a private passenger vehicle, or a rental company vehicle under the laws of Nebraska or another state.

Section 3. This provision relates to motor vehicle liability insurance and responsibility for damages in the event of a loss or injury during a sharing period. During a sharing period, a program shall: (a) assume the liability of the owner for bodily injury or property damage to third parties, uninsured and underinsured motorist benefits, and personal injury protection losses in an amount stated in the agreement, but not less than the minimum statutory coverages, and (b) retain such liability regardless of a coverage lapse or absence of coverage.

Regardless of the termination time, a program shall not be liable when the owner makes a material, intentional, or fraudulent misrepresentation or omission to a program before the sharing period in which the loss occurred, or if the owner acts in concert with a driver who fails to return a vehicle pursuant to the agreement.

Section 4. This provision relates to financial responsibility for a vehicle during each sharing period. The program shall ensure that financial responsibility is no less than the statutory minimum amounts, and recognizes that the vehicle is made available and used through the program, or does not exclude use of the vehicle by a driver through the program. Financial responsibility may be satisfied by insurance or other means, voluntarily maintained by the owner, driver, program, or combination of those entities. Such financial responsibility would be the primary responsibility for losses during the sharing period. It will be the program's financial responsibility for claims if a dispute exists regarding who was in control of the vehicle at the time of the loss, or if the program does not have information required by Section 7 of the act relating to recordkeeping. The program would be indemnified by the owner's liability policy if the owner was determined to be in control of the vehicle at the time of the loss. If the owner or driver's policy of insurance has lapsed or does not provide the required financial responsibility, the program would provide the insurance beginning with the first dollar of the claim and have a duty to defend the claim, except if the owner had made a fraudulent misrepresentation about his or her insurance policy. The program's liability would not be subject to another insurer first denying a claim, and no insurer would be required to first deny a claim. Nothing in the Act would limit a program's liability for an act or omission of the program resulting in injury, or would limit a program, by contract, from seeking indemnification from an owner or driver for economic loss resulting from a breach of the contract.

Section 5. This section requires the program to notify an owner who registers a vehicle for use in the program and again prior to the time the vehicle is made available, of any lien against the vehicle and that such use may violate the terms of the contract with the lienholder.

Section 6. This section permits an insurer who writes motor vehicle insurance to exclude any and all coverage and the duty to indemnify for any claim afforded under the owner's policy, including but not limited to (a) liability coverage for bodily injury and property damage; (b) personal injury coverage; (c) uninsured and underinsured coverage; (d) medical payments coverage; (e) comprehensive physical damage coverage; and (f) collision damage. Nothing in the Act invalidates or limits any exclusion, including coverage for motor vehicles made available for rent, hire, or any business use, including sharing.

Section 7. This section relates to program requirements for recordkeeping. Programs would be required to collect records relating to sharing periods, fees paid by a driver, and revenues received by an owner. The program shall also provide, subject to privacy laws and the informed consent of the owner and driver, the records to the owner, the owner's insurer, and driver's insurer to facilitate a claim coverage investigation. The provision of notice of this section in the agreement shall constitute informed consent. Records would have to be retained for five years.

Section 8. This section provides that an insurer that defends a claim arising from operation of a vehicle that is excluded under the terms of its policy may seek contribution against a program if a claim is made against the owner or driver during the sharing period.

Section 9. This provision creates a statutory insurable interest for a program in vehicles during the sharing period. While nothing requires a program to maintain coverage on vehicles in the program, a program may own and maintain, as the named insured, policies on vehicles in the program.

Section 10. This provision extends the same federal protection against vicarious liability to a program and owner as the federal law provides to rental car companies.

Section 11. This provision requires certain disclosures by the program agreement relating to: (a) the right of the program to seek indemnification; (b) that the insurance policy issued to an owner or driver may not provide a defense or indemnity for a claim asserted by the program; (c) that a program's financial responsibility to an owner or driver is available only during the sharing period; (d) that for use of a vehicle after the termination time, a driver or owner may not have coverage; (e) the daily rate, fees, costs, and if applicable, insurance or protection package costs that are charged to the owner or driver; and (f) that an owner's motor vehicle liability insurance may not provide coverage for the vehicle. Each agreement shall disclose to each driver an emergency telephone number to provide roadside assistance information and other customer service inquiries, and any conditions under which a driver must maintain a personal automobile policy and required coverage limits in order to use an automobile in the program.

Section 12. This section provides responsibility for program-installed equipment on a vehicle to monitor or facilitate sharing and shall indemnify an owner regarding damage to or theft of the equipment during the sharing period not caused by the owner. A program has a right to seek indemnity against a driver if there is loss or damage to the equipment during the sharing period.

Section 13. This section relates to safety recalls of vehicles registered for the program. When a vehicle is registered by an owner for use by a program, the program shall: (a) verify that the vehicle does not have any safety recalls for which repairs were not made; and (b) notify the owner that no vehicle may be made available to the program when there are pending safety recalls. A program shall, in no less frequency than every 72 hours, verify that all vehicles available for use in the program are not subject to any open recalls for which repairs have not been made. An owner shall not make a vehicle available for use through a program if the owner has received notice of a safety recall unless repairs have been made. If notice is received by the owner after the vehicle is available for use in the program, the owner shall remove the vehicle from the program no later than 48 hours after receiving notice, and until the repair has been made. If such vehicle is in use by a driver, the owner must notify the program within 48 hours of receipt of notice of a safety recall so that the program can notify the driver and the vehicle can be removed from use until the repair has been made.

Section 14. This section relates to verification by the program of a valid operator's license by a driver. No agreement may be entered into unless a driver's license is held (a) by a driver licensed in the state for the class of vehicle being utilized; or (b) if the driver is a nonresident, the license was issued by the state or country of the driver's residence to drive vehicles of the class of vehicle being utilized, and is of at least the same age as that required of a resident. The program shall keep a record of the name and address of the driver, and the driver's license number and place of issuance.

Section 15. This section relates to the Uniform Deceptive Trade Practices Act. It provides that violations of the PtPVSP are violations of the Deceptive Trade Practices Act, and that a person injured by violations of Sections 11, 12, 13, or 14 of PtPVSP may bring a cause of action pursuant to the Act. For purposes of this section, the program and owner are

suppliers and the driver is the consumer. Consumers and the Attorney General may bring an action to enforce the Deceptive Trade Practices Act. A program is not liable for a violation if the violation is the result of false, misleading, or inaccurate information provided to the program by an owner or driver and the program reasonably relied on the information in good faith.

Section 16. This section relates to taxation. The provision provides that nothing in the PtPVSP shall be construed to affect the taxability of sharing pursuant to Chapter 77 or any local or municipal taxing authority.

Section 17. This section relates to notice and disclosure by a rental company or program. The provision allows notices to be posted electronically, in addition to other delivery mechanisms. It must be provided at or before the time it is part of the master or member agreement in effect at the time of the rental transaction or program agreement. A master or member agreement is a service (a) offered by a rental company or program that permits customers to bypass a retail service location and obtain a product or service directly; (b) where a rental company or program does not require customers to execute an agreement at the time of service; or (c) where a customer does not receive the terms and conditions at the time of service. Electronic or written acceptance shall be deemed valid. Acceptance shall remain effective until the time the acceptance is affirmatively withdrawn by the customer. A notice or disclosure must be of a display type that is generally consistent in appearance with the entirety of the communication in which it is contained.

Section 18. This section relates to an airport or airport authority's ability to require agreements from programs or car rental companies prior to operating at an airport. An agreement could be required prior to advertising, facilitating the use of vehicles, or promoting or marketing vehicles. The agreement would require similar standards, regulations, procedures, fees, and access requirements applicable to a program, an owner or rental company. If a program, owner, or rental company fails to enter into an agreement or engages in activity that would be prohibited without an agreement, the airport may seek an injunction and damages.

Section 19. This section relates to verification of a customer or driver's identity. This provision would allow customers to obtain possession of a vehicle without in-person contact and meet all of its obligations to inspect and compare the customer's driver's license if (1) at the time the customer enrolls in a program, the program or rental company requires verification that the customer is a licensed driver, or (2) prior to the customer taking possession of the vehicle, the rental company or program requires documentation that verifies the customer's identity.

Section 20. This section would amend Section 77-2703 relating to sales and use tax. It would provide that a sales tax would be collected on the rental of a vehicle made through a digital platform or other digital medium. The tax would be collected by the party facilitating the rental. Rental transaction is defined in Section 2 and would relate to transactions conducted under the PtPVSP Act.

Explanation of amendments:

The committee considered and adopted an amendment which accomplishes the following:

The committee amendment (AM 2324) substitutes for the bill. Major changes from the bill as introduced are as follows:

Section 1. No changes

Section 2. Defined Terms.

(1) "Agreement" is amended to strike language relating to rental companies;

The defined terms of "Rental transaction" and "Rental company" are stricken.

(5) "Peer-to-peer vehicle sharing program or program" is amended to substitute the language "business platform" for "person or entity" and inserts "financial" before "consideration." It also clarifies that a program is not a transportation network company or a rental car company.

(8) "Vehicle" is amended to strike a reference to a rental company vehicle as it relates to a sharing period.

Section 3. Clarifying language is inserted relating to liability.

Sections 4, 5, and 6. No changes

Section 7. In a provision relating to records collection and verification requirements for programs, it adds a provision relating to sharing period and drop-off locations, and requires records collection for four years as opposed to five years in the introduced bill.

Sections 8, 9, 10, 11, and 12. No changes

Section 13. In this provision relating to safety recall requirements, language is stricken relating to a program's responsibility to verify every 72 hours whether any vehicle in the program was subject to open safety recalls for which repairs have not been made. Language is also stricken relating to a 48-hour shot clock for the program to remove a vehicle subject to safety recall from the program after receiving actual notice of the recall. It also removes a provision that requires the owner of a vehicle to notify the program upon receipt of a safety recall within 48 hours.

Section 14. No changes

Section 15. This provision relates to airport authorities (original section 18) and provides that nothing in the Act shall limit the powers of an airport authority under Nebraska law.

The provisions of original sections 15 (Uniform Deceptive Trade Practices Act), 16 (Taxation), 17 (Notice requirements for rental car companies), 19 (Verification of identity) and 20 (Sales and use taxes relating to a Peer-to-Peer transaction) are stricken in the committee amendment.

The amendment provides an operative date of January 1, 2021.

Curt Friesen, Chairperson