Peer-to-Peer Vehicle Sharing – Insurance Language Only - Draft, 10-2-2019

AN ACT concerning transportation.

Be it enacted by the [Legislature of the State of ____]:

[DRAFTING NOTE: PART ONE IS INTENDED TO CREATE A NEW SECTION OF INSURANCE STATUTE APPLICABLE ONLY TO PEER-TO-PEER SHARING ACTIVITY]

Title [insert insurance title] is amended by adding new [appropriate Section/Chapter/etc.] as follows:

Chapter 1. Short Title

This Article may be cited as the Peer-to-Peer Vehicle Sharing Program Act.

Chapter 2. Definitions

Unless incorporated by express reference, the definitions in this Chapter apply to this Insurance Title exclusively.

(a) “Peer-to-Peer Vehicle Sharing” or “Sharing” means the authorized use of Peer-to-Peer Vehicle by an individual other than Peer-to-Peer Vehicle Owner through Peer-to-Peer Car Sharing Program.

(b) “Peer-to-Peer Vehicle Sharing Program” or “Program” means a person or entity that connects Peer-to-Peer Vehicle Owners with Peer-to-Peer Vehicle Drivers to facilitate the sharing of Peer-to-Peer Vehicles for consideration. Program is not a Transportation Network Company as defined in [INSERT STATUTORY CITATION FOR TNC DEFINITION].

(c) “Peer-to-Peer Vehicle Sharing Program Agreement” or “Agreement” means an agreement established through Program that serves as a contract between Program, Owner, and Driver and describes the specific terms and conditions of the Agreement that govern the use of Peer-to-Peer Vehicle facilitated by Program, including the Sharing Period and location or locations for transfer of control of Vehicle.
(d) “Peer-to-Peer Vehicle” or “Vehicle” means a personal motor vehicle that is available for use through Peer-to-Peer Vehicle Sharing Program for a Sharing Period of 30 days or less which is registered as a private passenger vehicle under the laws of this or another State.

(e) “Peer-to-Peer Vehicle Driver” or “Driver” means an individual who has been authorized to drive Peer-to-Peer Vehicle by Peer-to-Peer Vehicle Owner under Peer-to-Peer Vehicle Sharing Program Agreement.

(f) “Peer-to-Peer Vehicle Owner” or “Owner” means the registered owner of Peer-to-Peer Vehicle made available for sharing facilitated by Peer-to-Peer Vehicle Sharing Program.

(g) “Peer-to-Peer Vehicle Delivery Period” or “Delivery Period” means the period of time during which Peer-to-Peer Vehicle is being delivered to the location of Peer-to-Peer Vehicle Start Time, if applicable, as documented by Peer-to-Peer Vehicle Sharing Program Agreement.

(h) “Peer-to-Peer Vehicle Sharing Period” or “Sharing Period” means the period of time that commences with Peer-to-Peer Vehicle Delivery Period or, if there is no Peer-to-Peer Vehicle Delivery Period, that commences with Peer-to-Peer Vehicle Sharing Start Time and, in either case, ends at Peer-to-Peer Sharing Termination Time.

(i) “Peer-to-Peer Vehicle Sharing Start Time” or “Start Time” means the time when Peer-to-Peer Vehicle becomes subject to the control of Peer-to-Peer Vehicle Driver at or after the time the reservation of Peer-to-Peer Vehicle Sharing Program Agreement is scheduled to begin as documented in the records of Peer-to-Peer Vehicle Sharing Program.

(j) “Peer-to-Peer Vehicle Sharing Termination Time” or “Termination Time” means the earliest of the following events:

1. The expiration of the agreed upon period of time established for the use of Peer-to-Peer Vehicle according to the terms of Vehicle Sharing Program Agreement, if Peer-to-Peer Vehicle is delivered to the location agreed upon in Peer-to-Peer Vehicle Sharing Program Agreement;

2. When Peer-to-Peer Vehicle is returned to a location as alternatively agreed upon by Peer-to-Peer Vehicle Owner and Peer-to-Peer Vehicle Driver as communicated through Peer-to-Peer Vehicle Sharing Program; or
(3) When Peer-to-Peer Vehicle Owner, or authorized designee, takes possession and control of Peer-to-Peer Vehicle.

Chapter 3. Program Liability

Sec. 1. Liability During Peer-to-Peer Vehicle Sharing Period

(a) Notwithstanding any other provision of law, or any provision in Owner’s policy of motor vehicle liability insurance, in the event of a loss or injury that occurs during Sharing Period, Program shall:

(1) Assume the liability of Owner for any bodily injury or property damage to third parties, uninsured and underinsured motorist benefits, and personal injury protection losses during Sharing Period in an amount stated in Agreement, and which amount may not be less than those set forth in (state’s minimum required financial responsibility statute(s));

(2) Retain such liability irrespective of a lapse in, or otherwise absence of, any coverage under which Program is insured; and

(b) Notwithstanding the definition of “Peer-to-Peer Vehicle Sharing Termination Time” as set forth in Chapter 2 of this Act, Program shall not be liable when Owner:

(1) Makes a material, intentional or fraudulent misrepresentation, or material, intentional or fraudulent omission, to Program before Sharing Period in which the loss occurred, or

(2) Acts in concert with Driver who fails to return Vehicle pursuant to the terms of Agreement.

Sec. 2. Required Coverage

(a) Program shall ensure that, during each Sharing Period, financial responsibility for Vehicle is provided in amounts no less than the minimum amounts set forth in [insert citation to applicable statute establishing state minimum coverage], that:

(1) Recognizes that Vehicle is made available and used through Program; or

(2) Does not exclude use of Vehicle by Driver through Program.

(b) The financial responsibility required under subsection (a) may be satisfied by motor
vehicle liability insurance, or other acceptable means of demonstrating financial
responsibility in this State, voluntarily maintained by:

(1) Owner;

(2) Driver;

(3) Program; or

(4) Any combination of Owner, Driver, and Program.

(c) The financial responsibility required in subsection (a), satisfied pursuant to
subsection (b), shall be primary for losses during Sharing Period.

(d) Program shall:

(1) Afford primary financial responsibility for a claim when it is in whole or in part
providing the financial responsibility required under Section 1 if:
   (i) A dispute exists as to who was in control of Vehicle at the time of the
   loss; and
   (ii) Program does not have available, did not retain, or fails to provide
   the information required by Section 5 of this Act; and

(2) Be indemnified by Owner’s personal policy of motor vehicle liability
insurance to the extent of such policy’s obligation, if any, if it is determined that
Owner was in control of Vehicle at the time of the loss.

(e) If insurance maintained by Owner or Driver in accordance with subsection (b) has
lapsed or does not provide the required financial responsibility, Program, or its insurer,
shall provide the coverage required by subsection (a) beginning with the first dollar of a
claim and have the duty to defend such claim except under circumstances as set forth
in Chapter 3, Section (1)(b).

(f) Financial responsibility maintained by 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.

(j) Nothing in this Chapter:
(1) Limits the liability of Program for any act or omission of Program itself that results in injury to any person as a result of the use of Vehicle through Program; or

(2) Limits the ability of Program to, by contract, seek indemnification from Owner or Driver for economic loss sustained by Program resulting from a breach of the terms and conditions of Agreement.

Sec. 3. Notification of Implications of Lien

At the time Owner registers Vehicle for use through Program and again prior to the time Owner makes Vehicle available for use through Program, Program shall notify Owner that, if Vehicle has a lien against it, the use of Vehicle through Program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Sec. 4. Exclusions in Motor Vehicle Liability Insurance Policies

(a) An authorized 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 Owner’s motor vehicle liability insurance policy, including but not limited to:

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

   (2) personal injury protection coverage as defined in [cite statute];

   (3) uninsured and underinsured motorist coverage;

   (4) medical payments coverage;

   (5) comprehensive physical damage coverage; and

   (6) collision physical damage coverage.

(b) Nothing in this Article 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, hire or for any business use, including Peer-to-Peer Vehicle Sharing.
Sec. 5. Recordkeeping
(a) Program shall collect and verify records pertaining to the use of Vehicle, including but not limited to Sharing Periods, fees paid by Driver, and revenues received by Owner.

(b) Pursuant to all applicable federal and state privacy obligations, and after receiving the informed consent of Owner and Driver, Program shall provide the information collected pursuant to subsection (a) upon request to Owner, Owner’s insurer, and Driver’s insurer to facilitate a claim coverage investigation. Providing notice of this Section in the Program Agreement shall constitute informed consent.

(c) Program shall retain the records required in this Section 5 for a time period not less than [insert the longer of the applicable property damage or personal injury statute of limitations] years.

Sec. 6. Contribution against Indemnification
A motor vehicle insurer that defends or indemnifies a claim arising from the operation of Vehicle that is excluded under the terms of its policy shall have the right to seek contribution against Program if the claim is made against Owner or Driver for loss or injury that occurs during Sharing Period.

Sec. 7. Insurable Interest
(a) Notwithstanding any other law, statute, rule or regulation to the contrary, Program shall have an insurable interest in Vehicle during Sharing Period.

(b) Nothing in this section shall impose liability on Program to maintain the coverage mandated by this Chapter 3, Sec. 1.

(c) 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 Program under Agreement;
   (2) Liability of Owner;
   (3) Damage or loss to Vehicle; or
(4) Liability of Driver.

**Sec. 8. Vicarious Liability**

Program and Owner shall be exempt from vicarious liability in accordance with 49 U.S.C. Section 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

**Chapter 4. Program Obligations**

**Sec. 1. Disclosures**

(a) Each Agreement made in this State shall disclose to Owner and Driver:

(1) Any right of Program to seek indemnification from Owner or Driver for economic loss sustained by Program resulting from a breach of the terms and conditions of Agreement;

(2) That a motor vehicle liability insurance policy issued to Owner for Vehicle, or to Driver may not provide defense or indemnity for any claim asserted by Program;

(3) That Program’s financial responsibility afforded to Owner and Driver is available only during Sharing Period;

(4) That, for any use of Vehicle by Driver after Termination Time, Driver and Owner may not have coverage;

(5) The daily rate, fees, costs, and, if applicable, any insurance or protection package costs that are charged to Owner or Driver; and

(6) That Owner’s motor vehicle liability insurance may not provide coverage for Vehicle.

(b) Each Agreement made in this State shall disclose to Driver:

(1) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.
(2) Any conditions under which Driver must maintain a personal automobile insurance policy, and any required coverage limits, on a primary basis in order to use Vehicle through Program.

Sec. 2. Responsibility for Equipment

Program shall have sole responsibility for any equipment, such as a GPS system or other special equipment that is put in or on Vehicle to monitor or facilitate Sharing and shall agree to indemnify and hold harmless Owner for any damage to or theft of such system or equipment during Sharing Period not caused by Owner. Program has the right to seek indemnity from Driver for any loss or damage to such system or equipment that occurs during Sharing Period.

Sec. 3. Automobile Safety Recalls

(a) Program shall:

(1) At the time Owner registers Vehicle for use in Program, and prior to the time when Owner makes Vehicle available for use in Program, Program shall:

   (i) Verify that Vehicle does not have any safety recalls for which the repairs have not been made; and

   (ii) Notify Owner of the requirements under subsection (b) of this Section 4.

(2) Program shall periodically, and in no case less frequently than once in each 72-hour period, verify that Vehicle(s) available for use through Program are not subject to an open safety recall for which repairs have not been made.

(b) Owner shall:

(1) Not make Vehicle available for use through Program if Owner has received notice of a safety recall on Vehicle until the safety recall repair has been made.

(2) Upon receipt of notice of a safety recall on Vehicle when such Vehicle is available for use through Program, remove Vehicle from availability as soon as practicably possible, and in no case more than 48 hours, after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) Upon receipt of notice of a safety recall on Vehicle, and in no case more than 48 hours after such receipt, when such Vehicle is in the possession of
Driver, notify Program of the safety recall so that Program may notify Driver and Vehicle can be removed from use until Owner effects the necessary safety recall repair.

Sec. 4. Driver License Verification and Retention

[DRAFTING NOTE: IF A RENTAL STATUTE REGARDING DRIVER LICENSE VERIFICATION EXISTS, AMEND SUCH STATUTE TO INCLUDE PEER-TO-PEER PROGRAM OBLIGATION AND DISREGARD THIS SECTION 4. IF NO SUCH RENTAL STATUTE EXISTS, INCLUDE THE FOLLOWING SECTION IN THIS NEW PEER-TO-PEER CHAPTER.]

(a) Program may not enter into Agreement with Driver unless every Driver of Vehicle:

(1) Holds a driver license issued in this State authorizing Driver to operate vehicles of the class of Vehicle; or

(2) Is a nonresident who:

   (i) Has a driver license issued by the state or country of Driver’s residence that authorizes Driver in that state or country to drive vehicles of the class of Vehicle; and

   (ii) Is at least the same age as that required of a resident to drive in this State.

(b) Program shall keep a record of:

(1) The name and address of Driver;

(2) The driver license number and place of issuance for every Driver who will operate Vehicle.

Sec. 5. Consumer Transactions

[DRAFTING NOTE: THE FOLLOWING SECTION 5 IS INTENDED TO EXPRESSLY CAUSE SHARING AND THE AGREEMENT TO BE CLASSIFIED AS CONSUMER TRANSACTIONS UNDER THE CONSUMER DECEPTION/UNFAIR TRADE PRACTICES LAWS OF THE APPLICABLE STATE. TO THE EXTENT APPLICABLE, REVISE IN ACCORDANCE WITH THE APPROPRIATE LANGUAGE USED IN THOSE LAWS.]

(a) Sharing and Agreement are a consumer transaction for the purposes of [INSERT STATUTORY CITATION TO CONSUMER DECEPTION/UNFAIR TRADE PRACTICES LAWS]. Program and Owner are the suppliers and Driver is the consumer for the purposes of those sections.
(b) Any violation of [INSERT CITATION TO SECTIONS OF P2P LEGISLATION REGARDING, AT LEAST, PROGRAM’S OBLIGATIONS REGARDING COLLECTING INFORMATION, MAKING DISCLOSURES, RECORDKEEPING, SAFETY RECALLS, AND RESPONSIBILITY FOR EQUIPMENT] is deemed an unfair or deceptive act in violation of [INSERT STATUTORY CITATION TO CONSUMER DECEPTION/UNFAIR TRADE PRACTICES LAWS]. A person injured by a violation of these sections has a cause of action and is entitled to the same relief available to a consumer under [INSERT STATUTORY CITATION TO CONSUMER DECEPTION/UNFAIR TRADE PRACTICES LAWS], and all the powers and remedies available to the attorney general to enforce [INSERT STATUTORY CITATION TO CONSUMER DECEPTION/UNFAIR TRADE PRACTICES LAWS] are available to the attorney general to enforce [INSERT STATUTORY CITATION TO SECTIONS OF P2P LEGISLATION REGARDING, AT LEAST, PROGRAM’S OBLIGATIONS REGARDING COLLECTING INFORMATION, MAKING DISCLOSURES, RECORDKEEPING, SAFETY RECALLS, AND RESPONSIBILITY FOR EQUIPMENT].

(c) Program is not liable for a violation under [INSERT STATUTORY CITATION TO CONSUMER DECEPTION/UNFAIR TRADE PRACTICES LAWS] when the violation is the result of false, misleading, or inaccurate information provided to Program by Owner or Driver and Program reasonably relied on that information in good faith.

Section 6. [DRAFTING NOTE: TO THE EXTENT THAT THERE ARE ADDITIONAL STATE-SPECIFIC STATUTES APPLICABLE TO A RENTAL TRANSACTION/RENTAL VEHICLE/RENTAL COMPANY WITH REGARD TO CONSUMER PROTECTIONS, CREATE PARALLEL REQUIREMENTS IN ADDITIONAL SECTIONS TO THIS CHAPTER FOR PEER-TO-PEER. EXAMPLES: DAMAGE WAIVER LIMITATIONS, PRICING DISCLOSURE, AGE LIMITATIONS, REQUIRED NOTICES, LIMITED LINES INSURANCE LICENSE]

Chapter 5. Limitation

Nothing in this Chapter [cite new Peer-to-Peer Vehicle Sharing Act] shall be construed to affect the taxability of Peer-to-Peer Vehicle Sharing pursuant to [site relevant tax chapter(s)].

Chapter 6. Enactment

This Act shall take effect on the day that occurs 180 days after the date on which the Act becomes law.