HOUSE DOCKET, NO. 3192 FILED ON: 1/20/2023

HOUSE . . . . . No. 1018

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act further regulating the rental of motor vehicles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Sean Garballey	*23rd Middlesex*	*1/20/2023*

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HOUSE . . . . . No. 1018

By Representative Garballey of Arlington, a petition (accompanied by bill, House, No. 1018) of Sean Garballey for legislation to further regulate the rental of motor vehicles. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *712* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act further regulating the rental of motor vehicles.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 90 of the General Laws is hereby amended by adding the following 3 sections:

Section 63. As used in sections 63 to 65, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Motor vehicle" shall: (1) have the same meaning as in section 1 of chapter 90; (2) have a gross weight rating of 10,000 pounds or less; and (3) shall not include a “commercial motor vehicle” as defined in section 1 of chapter 90F.

“Rental facilitator", any person having any right, access, ability, or authority to offer, reserve, book, arrange for, remarket, distribute, broker, resell, coordinate, or otherwise facilitate

rental of a motor vehicle to a renter, whether directly or indirectly, through an Internet transaction or any other means whatsoever.

"Vehicle rental transaction", the transfer of possession of a motor vehicle, for a consideration, without the transfer of ownership of such motor vehicle, whether directly or indirectly, through a rental facilitator or otherwise.

Section 64. (a) Vehicle rental transactions shall be subject to all statutory and regulatory obligations for private passenger motor vehicle rental vehicles, transactions, and companies including, but not limited to compliance with sections 11 and 12, section 20E, section 32C section 32, section 32E1/2, section 32E3/4, section 32E7/8 of chapter 90; section 2 of chapter 64I and section 92A of chapter 266.

(b) If the rental of a motor vehicle is offered, reserved, booked, arranged for, or otherwise facilitated in whole or in part by a rental facilitator, the rental facilitator shall: (i) demand and collect all applicable taxes and fees from the renter, and (ii) shall remit the tax to the state. If a rental facilitator required to collect and remit a tax under this chapter fails to make a return, no assessment shall be made except against the rental facilitator.

Section 65. (a) Rental facilitators, upon request of an airport, including but not limited to any entity responsible for regulating commerce at such airport within the commonwealth, enter into an agreement, which agreement may be a concession agreement, prior to: (i) listing, publishing or advertising rental vehicles parked on airport property or at airport facilities; (ii) facilitating the rental of vehicles to transport airport customers to or from airport property or airport facilities, regardless of whether that use is to be initiated on or off of airport property or airport facilities; or (iii) promoting or marketing the rental of vehicles to transport airport

customers to or from airport property or airport facilities, regardless of whether that transportation is to be initiated on or off of airport property or airport facilities.

(b) The agreement described in subsection (a) shall set forth the same or reasonably similar standards, regulations, procedures, fees, and access requirements applicable to all vehicle rental transactions conducted at airport.

(c) If a rental facilitator: (i) fails or refuses to enter into an agreement described in subsection (a) after request by an airport, or (ii) performs, participates in, or undertakes any of the actions set forth in subsection (a) before entering into an agreement described in said subsection (a) after request by an airport, the affected airport may seek an injunction prohibiting operations at the airport and may also seek damages against rental facilitator.

SECTION 2. Subsection (a) of section 168 of chapter 175 of the General Laws, as most recently amended by section 79 of chapter 358 of the acts of 2020, is hereby amended by striking out the definitions of “Personal vehicle sharing” and "Personal vehicle sharing program”.

SECTION 3. Subsection (b) of said chapter 168 of said chapter 175, as most recently amended by section 80 of said chapter 358, is hereby amended by striking out the words “The commissioner may, upon the payment of the fee prescribed by section 14, issue to any suitable persons aged 18 or older, a license to act as a special insurance broker to negotiate, continue or renew contracts of insurance against any of the hazards specified in section 47, except as specified in clause Fifteenth thereof, and except accident and health, workers’ compensation, compulsory motor vehicle liability, with the exception of both motor vehicle policies for transportation network vehicles and any contracts that directly or indirectly provide insurance or other forms of protection, including , without limitation, collision damage waivers, for vehicles

and vehicle drivers engaged. In personal vehicle sharing through a personal vehicle sharing program, and life insurance on property or interests in the commonwealth with an unauthorized company upon the following condition" and inserting in place thereof the following words:- The commissioner may, upon the payment of the fee prescribed by section 14, issue to any suitable persons aged 18 or older, a license to act as a special insurance broker to negotiate, continue or renew contracts of insurance against any of the hazards specified in section 47, except as specified in clause Fifteenth thereof, and except accident and health, workers' compensation, compulsory motor vehicle liability with the exception of motor vehicle policies for transportation network vehicles, and life insurance on property or interests. In the commonwealth with an unauthorized company upon the following conditions:.

SECTION 4. Said section 168 of said chapter 175, as amended by section 81 of said chapter 358, is hereby further amended by striking out subsections (i) and (j) and inserting in place thereof the following subsection:-

(i) The commissioner may promulgate regulations as necessary to implement this section.

SECTION 6. Chapter 175 of the General Laws is hereby amended by adding the following 8 sections:-

Section 230. As used in sections 1 to 7 inclusive, the following words shall, unless the context requires otherwise, have the following meanings:-

"Peer-to-peer car sharing" , 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 shall not include rental car or rental activity as defined in section 32E1/2 of chapter 90.

"Peer-to-peer car sharing program", 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 rental car company as defined in section 32E1/2 of chapter 90.

This Act is intended to govern the intersection of peer-to-peer car services and the state-regulated business of insurance. Nothing in this Act shall be construed to extend beyond insurance or have any implications for other provisions of the code of this state, including but not limited to, those related to motor vehicle regulation, airport regulation, or taxation.

"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. Car sharing program agreement shall not include rental car agreement, or similar, as defined in section 32E1/2 of said chapter 90.

"Shared vehicle", a vehicle that is available for sharing through a peer-to-peer car sharing program. Shared vehicle shall not include rental car or rental vehicle as defined in section 32E1/2 of said chapter 90

"Shared vehicle driver", 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", 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 “, 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” , 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”, 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.

“Car sharing termination time” , the earliest of the following events:

(1) 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;

(2) 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; or

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

Section 231. (a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this chapter, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection

losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than those set forth in sections 34A to 34R, inclusive of chapter 90.

(b) Notwithstanding the definition of "Car sharing termination time" as set forth in section 230 and this section , the assumption of liability under this subsection 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 car sharing program agreement.

(c) Notwithstanding the definition of "car sharing termination time" as set forth in section 1 or 2 of this section, the assumption of liability under subsection (a) of this section would apply to bodily injury, property damage, uninsured and underinsured motorist or personal injury protection losses by damaged third parties required by section 34A to 34N, inclusive of chapter 90.

(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 in amounts no less than the minimum amounts set forth in section34M of Chapter 90 and:

(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) 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) both a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

(f) The insurance described in subsection (e) that is satisfying the insurance requirement of subsection (d) shall be primary during each car sharing period.

(g) The peer-to-peer car sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under subsections (d) and (e) and:

(1) a dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

(2) the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by section 234.

The shared motor vehicle's insurer shall indemnify the car sharing program to the extent of its obligation under, if any, the applicable insurance policy, if it is determined that the shared motor vehicle's owner was in control of the shared motor vehicle at the time of the loss.

(h) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (e) 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) beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances as set forth in clause (1) of paragraph (b) of section 230.

(i) 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.

(j) Nothing in this chapter shall :

(1) limit 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) limit 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.

Section 232. 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.

Section 233. (a) An authorized insurer that writes motor vehicle liability insurance in the commonwealth 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:

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

(ii) personal injury protection coverage as defined in section 34M of chapter 90;

(iii) uninsured and underinsured motorist coverage;

(1) medical payments coverage;

(2) comprehensive physical damage coverage; and

(3) collision physical damage coverage

(b) Nothing in this section shall invalidate or limit 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.

Section 234. 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, 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. 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.

Section 235. A peer-to-peer car sharing program and a shared vehicle owner shall be exempt from vicarious liability in accordance with 49 U.S.C. § 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

Section 236. 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 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.

Section 237. (a) Notwithstanding the. provisions of any law, rule or regulation to the contrary, a peer-to-peer car sharing program shall have an insurable interest in a shared vehicle during the car sharing period.

(b) Nothing in this section shall establish liability on a peer-to-peer car sharing program to maintain the coverage set forth in section 230.

(c) A peer–to–peer car sharing program may own and maintain as the named insured 1 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; or

(3) damage or loss to the shared motor vehicle; or any liability of the shared vehicle driver.

Section 238. Each car sharing program agreement made in the commonwealth shall disclose to the shared vehicle owner and the shared vehicle driver:

(a) 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;

(b) 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;

(c) 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;

(d) 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;

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

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

(g) 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.

Section 239. (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 under section 8 of chapter 90 that authorizes the driver to operate vehicles of the class of the shared vehicle; or

(2) is a nonresident who:

(i) 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 vehicles of the class of the shared vehicle; and

(ii) is at least the same age as that required of a resident to drive; or

(3) otherwise is specifically authorized to drive vehicles 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.

Section 240. A peer-to-peer car sharing program shall have 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 such equipment during the sharing period not caused by the vehicle owner. The peer- to-peer car sharing program has the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that occurs during the sharing period.

Section 241. (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 under subsection (b).

(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.

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.

SECTION 7. This act shall take effect July 1, 2023.