

SENATE No. 2236

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

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 relative to peer-to-peer car sharing.

PETITION OF:

NAME:

Barry R. Finegold

DISTRICT/ADDRESS:

Second Essex and Middlesex

SENATE No. 2236

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 2236) of Barry R. Finegold for legislation relative to peer-to-peer car sharing. Transportation.

The Commonwealth of Massachusetts

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

An Act relative to peer-to-peer car sharing.

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

1 SECTION 1. The General Laws, as appearing in the 2022 Official Edition, are hereby
2 amended by inserting after chapter 90J the following chapter:-

3 CHAPTER 90K. Personal Vehicle Sharing Companies

4 Section 1. Definitions

5 As used in this chapter, the following words shall have the following meanings unless the
6 context clearly requires otherwise:-

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

10 “Car sharing period”, the period of time that commences with the car sharing delivery
11 period or, if there is no car sharing delivery period, that commences with the car sharing start
12 time and in either case ends at the car sharing termination time.

13 “Car sharing program agreement”, the terms and conditions applicable to a shared vehicle
14 owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer
15 car sharing program; provided, however, that a car sharing program agreement shall not include
16 a rental car agreement, as defined in section 32E½ of chapter 90.

17 “Car sharing start time”, the time when the shared vehicle becomes subject to the control
18 of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to
19 begin as documented in the records of a peer-to-peer car sharing program.

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

21 (1) the expiration of the agreed upon period of time established for the use of a shared
22 vehicle according to the terms of the car sharing program agreement if the shared vehicle is
23 delivered to a location agreed upon in a car sharing program agreement;

24 (2) when the shared vehicle is returned to a location as alternatively agreed upon by the
25 shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car
26 sharing program; provided, however, that the alternatively agreed upon location shall be
27 incorporated into the car sharing program agreement; or

28 (3) when the shared vehicle owner or the shared vehicle owner’s designee takes
29 possession and control of the shared vehicle.

30 “Peer-to-peer car sharing”, the authorized use of a vehicle by an individual other than the
31 vehicle’s owner through a peer-to-peer car sharing program; provided, however, that peer-to-
32 peer car sharing does not include a rental car or rental activity as defined in section 32E½ of
33 chapter 90.

34 “Peer-to-peer car sharing program”, a business platform that connect vehicle owners with
35 licensed drivers to enable the sharing of vehicles for financial consideration; provided, however,
36 that a peer-to-peer car sharing program does not include a rental car company as defined in
37 section 32E½ of chapter 90.

38 “Shared vehicle”, a vehicle that is available for sharing through a peer-to-peer car sharing
39 program; provided, however, that a shared vehicle does not include a rental car or rental vehicle
40 as defined in section 32E½ of chapter 90.

41 “Shared vehicle driver”, an individual who has been authorized to drive the shared
42 vehicle by the shared vehicle owner under a car sharing program agreement.

43 “Shared vehicle owner”, the registered owner, or a person or entity designated by the
44 registered owner, of a vehicle made available for sharing to shared vehicle drivers through a
45 peer-to-peer car sharing program.

46 Section 2. Assumption of Liability

47 (a) A peer-to-peer car sharing program shall assume liability, except as provided in
48 subsection (b) of this section, from a shared vehicle owner for bodily injury, property damage to
49 third parties, uninsured and underinsured motorists or personal injury protection losses during

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

52 (b) Notwithstanding the definition of “car sharing termination time” as set forth in section
53 1 of this chapter, the assumption of liability under subsection (a) of this section shall not apply to
54 any shared vehicle owner if a shared vehicle owner:

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

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

59 (c) Notwithstanding the definition of “car sharing termination time” as set forth in section
60 1 of this chapter, the assumption of liability under subsection (a) of this section shall apply to
61 bodily injury, property damage, uninsured and underinsured motorists or personal injury
62 protection losses caused to damaged third parties required by section 34A to 34N, inclusive of
63 Chapter 90.

64 (d) A peer-to-peer car sharing program shall ensure that, during each car sharing period,
65 the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability
66 insurance policy that provides insurance coverage in amounts no less than the minimum amounts
67 set forth in section 34M of Chapter 90 and:

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

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

71 (e) The insurance described under subsection (d) may be satisfied by motor vehicle
72 liability insurance maintained by any of the following, alone or in combination:

- 73 (1) A shared vehicle owner;
- 74 (2) A shared vehicle driver; or
- 75 (3) A peer-to-peer car sharing program.

76 (f) The insurance required pursuant to subsection (d) shall be primary during each car
77 sharing period and, in the event that a claim occurs in another state with minimum financial
78 responsibility limits higher than those set forth in sections 34A to 34R, inclusive, of chapter 90
79 during the car sharing period, the coverage maintained pursuant to subsection (d) shall satisfy the
80 difference in minimum coverage amounts, up to the applicable policy limits.

81 (g) The insurer, insurers or peer-to-peer car sharing program providing coverage under
82 subsection (d) shall assume primary liability for a claim when:

83 (1) a dispute exists as to who was in control of the shared motor vehicle at the time of the
84 loss and the peer-to-peer car sharing program does not have available, did not retain or fails to
85 provide any applicable information as required by section 5 of this chapter; or

86 (2) a dispute exists as to whether the shared vehicle was returned to the alternatively
87 agreed upon location incorporated into the car sharing program agreement, provided that any
88 information retained pursuant to section 5 of this chapter is insufficient to resolve said dispute.

89 (h) If insurance maintained by a shared vehicle owner or shared vehicle driver in
90 accordance with subsection (e) has lapsed or does not provide the required coverage, insurance
91 maintained by a peer-to-peer car sharing program shall provide the coverage required by

92 subsection (d) beginning with the first dollar of a claim and have the duty to defend such claim
93 except under circumstances as set forth in subsection (b).

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

97 (j) Nothing in this section shall be construed to:

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

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

105 Section 3. Notice to Shared Vehicle Owners Regarding Liens

106 At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer
107 car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle
108 available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing
109 program shall provide clear and conspicuous notice to the shared vehicle owner that, if the
110 shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car
111 sharing program, including use without physical damage coverage, may violate the terms of the
112 contract with the lienholder.

113 Section 4. Rights of Authorized Insurers

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

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

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

120 (3) uninsured and underinsured motorist coverage;

121 (4) medical payments coverage;

122 (5) comprehensive physical damage coverage; and

123 (6) collision physical damage coverage.

124 (b) Nothing in this chapter shall be construed to:

125 (1) invalidate or limit an exclusion contained in a motor vehicle liability insurance policy,
126 including any insurance policy in use or approved for use that excludes coverage for motor
127 vehicles made available for rent, sharing or hire or for any business use, except as provided for
128 under existing law;

129 (2) invalidate, limit or restrict an insurer's ability under existing law to underwrite any
130 insurance policy; or

131 (3) invalidate, limit or restrict an insurer's ability under existing law to cancel or non-
132 renew policies.

133 Section 5. Retention of Records

134 (a) A peer-to-peer car sharing program shall collect and verify records pertaining to the
135 use of a vehicle, including, but not limited to: (1) times used; (2) car sharing period pick up and
136 drop off locations; (3) fees paid by the shared vehicle driver; and (4) revenues received by the
137 shared vehicle owner.

138 (b) A peer-to-peer car sharing program shall provide that information upon request to: (1)
139 the shared vehicle owner; (2) the shared vehicle owner's insurer; (3) or the shared vehicle
140 driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation.

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

143 Section 6. Vicarious Liability

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

147 Section 7. Recovery of Excluded Damages

148 A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that
149 is excluded under the terms of its policy shall have the right to seek recovery against the motor
150 vehicle insurer of the peer-to peer car sharing program if the claim is made against the shared

151 vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing
152 period.

153 Section 8. Peer-to-Peer Car Sharing Program Insurable Interest

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

157 (b) Nothing in this section shall be construed to impose liability on a peer-to-peer car
158 sharing program to maintain the coverage mandated by section 2 of this chapter, provided that
159 the applicable coverage is maintained individually or in conjunction pursuant to subsections (d)
160 and (e) of said section 2.

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

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

165 (2) any liability of the shared vehicle owner;

166 (3) damage or loss to the shared motor vehicle; or

167 (4) any liability of the shared vehicle driver.

168 Section 9. Notice to Shared Vehicle Owners and Drivers

169 At the time of each car sharing program agreement made in this commonwealth, the peer-
170 to-peer car sharing program shall disclose to both the shared vehicle owner and the shared
171 vehicle driver in a clear and conspicuous notice:

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

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

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

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

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

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

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

192 Section 10. Licensing of Shared Vehicle Drivers

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

195 (1) holds a valid driver's license issued under section 8 of chapter 90 which authorizes
196 the driver to operate vehicles of the class of the shared vehicle; or

197 (2) is a nonresident of this commonwealth who:

198 (i) is at least the same age as that required of a resident of this commonwealth to driver
199 and has a driver's license issued by the state or country of the driver's residence that authorizes
200 the driver in that state or country to drive vehicles of the class of the shared vehicle; or

201 (ii) otherwise is specifically authorized by this commonwealth to drive vehicles of the
202 class of the shared vehicle.

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

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

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

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

208 (c) A peer-to-peer car sharing program maintaining records pursuant to subsection (b)
209 shall take reasonable precautions to ensure the security and privacy of personally identifiable
210 information related to a shared vehicle owner or a shared vehicle driver.

211 Section 11. Peer-to-Peer Car Sharing Program Equipment

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

219 Section 12. Shared Vehicle Safety Recalls

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

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

226 (2) notify the shared vehicle owner of the requirements under subsection (b) of this
227 section.

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

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

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

240 Section 13. Additional Regulations & Limitations

241 (a) The commissioner of insurance shall have the authority to promulgate rules that are
242 not inconsistent with and necessary to administer and enforce the provisions of this chapter.

243 (b) This chapter is intended to govern the intersection of peer-to-peer car services and the
244 business of insurance as regulated in this commonwealth. Nothing in this chapter shall be
245 construed to extend beyond the regulation of insurance or have any implications for other
246 provisions of the General Laws, including but not limited to, those related to motor vehicle
247 regulation, airport regulation, or taxation.

248 SECTION 2. Section 1 shall take effect 18 months after the passage of this act.