

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2022 REGULAR SESSION
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Amend printed copy of **HB 490/GA**

On page 3, after line 7, insert the following:

"➔SECTION 2. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ
AS FOLLOWS:

(1) As used in Sections 2 to 6 of this Act, unless the context requires otherwise:

(a) "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;

(b) "Car sharing period" means the period of time that commences with the following and ends at the car sharing termination time:

1. The car sharing delivery period; or

2. If there is no car sharing delivery period, the car sharing start time;

(c) "Car sharing program agreement":

1. 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; and

2. Does not include rental or lease agreements entered with persons operating under a U-Drive-It certificate as defined in KRS 281.010;

(d) "Car sharing start time" means the time when the shared vehicle becomes subject

Amendment No. SFA 1

Rep. Sen. Rick Girdler

Committee Amendment

Floor Amendment

Adopted: _____

Rejected: _____

Signed: _____

LRC Drafter: _____

Date: _____

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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;

(e) "Car sharing termination time" means the earliest of the following:

1. The expiration of the agreed-upon period of time established for use of a shared vehicle according to the terms of a 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, which alternatively agreed upon location shall be incorporated into the car sharing program agreement; or
3. When the shared vehicle owner takes possession and control of the shared vehicle;

(f) "Peer-to-peer car sharing":

1. Means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program; and
2. Does not:
 - a. Include the operation of a U-Drive-It as defined in KRS 281.010; or
 - b. Involve the sale or provision of rental vehicle insurance as defined in KRS 304.9-020;

(g) "Peer-to-peer car sharing program":

1. Means a business platform that connects shared vehicle owners with shared vehicle drivers to enable the sharing of motor vehicles for financial consideration; and

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2. Does not include a:

a. U-Drive-It as defined in KRS 281.010;

b. Motor vehicle renting company as defined in KRS 281.687;

c. Rental vehicle agent as defined in KRS 304.9-020; or

d. Service provider that 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;

(h) "Shared vehicle":

1. Means a motor vehicle that is available for car sharing through a peer-to-peer car sharing program; and

2. Does not include a motor vehicle leased or rented by a person operating under a U-Drive-It certificate as defined in KRS 281.010;

(i) "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; and

(j) "Shared vehicle owner":

1. Means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program; and

2. Does not include a:

a. Person operating a U-Drive-It as defined in KRS 281.010;

b. Motor vehicle renting company as defined in KRS 281.687; or

c. Rental vehicle agent as defined in KRS 304.9-020.

(2) A peer-to-peer car sharing program doing business in this state shall comply with Sections 3 and 4 of this Act.

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➔ SECTION 3. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

(1) (a) A peer-to-peer car sharing program shall assume the liability, except as provided in paragraph (b)1. of this subsection, of a shared vehicle owner for bodily injury and property damage to third parties and basic reparation benefits losses during the car sharing period in an amount stated in the car sharing program agreement, which amount shall not be less than:

1. For bodily injury and property damage to third parties, the amounts set forth in KRS 304.39-110; and

2. For basic reparation benefits, the amount set forth in KRS 304.39-020(2).

(b) Notwithstanding the definition of "car sharing termination time" set forth in Section 2 of this Act, the assumption of liability required under paragraph (a) of this subsection:

1. Shall not apply when a shared vehicle owner:

a. 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 accident occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the car sharing program agreement; and

2. Shall apply to bodily injury, property damage, and basic reparation benefits losses by damaged third parties required under KRS 304.39-080.

(2) (a) 1. 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 covered under a motor vehicle liability insurance policy that:

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- one (1) motor vehicle liability insurance policy as permitted under paragraph (b)1.d. of this subsection, the order of priority of coverage shall be as follows, unless one (1) policy contains a provision affirmatively stating that the policy's coverage is primary and thereby is primary during the car sharing period:
- a. A policy maintained by the shared vehicle driver is first in priority;
 - b. A policy maintained by the peer-to-peer car sharing program is next in priority; and
 - c. A policy maintained by the shared vehicle owner is last in priority; and
3. If coverage is applicable through more than one (1) motor vehicle liability insurance policy as permitted under paragraph (b)1.d. of this subsection and more than one (1) of those policies contain a provision affirmatively stating that the policy's coverage is primary, the order of priority of coverage shall be as described in subparagraph 2.a. to c. of this paragraph.
- (d) The insurer, insurers, or peer-to-peer car sharing program providing coverage under paragraph (a) or (b) of this subsection shall assume primary liability for a claim if a dispute exists as to:
1. Who was in control of the shared vehicle at the time of the accident and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required under subsection (2) of Section 4 of this Act; or
 2. Whether the shared vehicle was returned to the alternatively agreed upon location as required under subsection (1)(e)2. of Section 2 of this Act.
- (e) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with paragraph (b) of this subsection 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 paragraph (a) of this subsection beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances set forth in subsection (1)(b)1. of this section.

(3) Coverage under a motor vehicle insurance policy maintained by a peer-to-peer car sharing program shall not be dependent upon another motor vehicle insurer first denying a claim nor shall another motor vehicle insurance policy be required to first deny a claim.

(4) Nothing in this section shall be construed to:

(a) Limit the liability of a 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;

(b) Limit the ability of a 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;

(c) Invalidate or limit an exclusion contained in a motor vehicle liability insurance policy, including any 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; or

(d) Invalidate, limit, or restrict an insurer's ability under existing law to:

1. Underwrite any insurance policy; or

2. Cancel and non-renew policies.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

(1) At the time when a motor 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 sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall:

- (a) Notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the motor vehicle as a 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;
- (b) Verify that the shared vehicle does not have any safety recalls for which the repairs have not been made; and
- (c) Notify the shared vehicle owner of the requirements under Section 5 of this Act.

(2) (a) A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a shared vehicle, including but not limited to:

- 1. Times used;
- 2. Car sharing period pickup and drop-off locations;
- 3. Fees paid by the shared vehicle driver; and
- 4. Revenues received by the shared vehicle owner.

(b) The peer-to-peer car sharing program shall provide the information collected under paragraph (a) of this subsection, upon request, to the following to facilitate a claim coverage investigation, settlement, negotiation, or litigation:

- 1. The shared vehicle owner;
- 2. The shared vehicle owner's insurer; and
- 3. The shared vehicle driver's insurer.

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

(3) Each car sharing program agreement made in this state 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 shall be 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) Whether there are conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.
- (4) (a) A peer-to-peer car sharing program shall not enter into a car sharing program agreement with a potential shared vehicle driver unless the driver:
- 1. Holds a driver's license issued under the laws of this state that authorizes the

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driver to operate vehicles of the class of the shared vehicle;

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 vehicles of the class of the shared vehicle; and

b. Is at least the same age as that required of a resident to drive in this state; or

3. Is otherwise authorized under the laws of this state 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 each shared vehicle driver;

2. The driver's license number of each shared vehicle driver; and

3. The place of issuance of the driver's license of each shared vehicle driver.

(5) (a) A peer-to-peer car sharing program shall:

1. Have sole responsibility for any equipment, such as a global positioning system (GPS) or other special equipment, that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car sharing; and

2. Agree to indemnify and hold harmless the shared vehicle owner for any damage to or theft of the equipment during the car sharing period not caused by the shared vehicle owner.

(b) A peer-to-peer car sharing program may seek indemnification from the shared vehicle driver for any loss or damage to the equipment that occurs during the car sharing period.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

- (1) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle, the shared vehicle owner shall:
- (a) Remove the shared vehicle as available on the peer-to-peer car sharing program as soon as practicably possible after receiving the notice; and
- (b) Not make the shared vehicle available on the 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 while the shared vehicle is in the possession of a shared vehicle driver, the shared vehicle owner shall notify the peer-to-peer car sharing program as soon as practicably possible after receiving the notice so that the shared vehicle owner may address the safety recall repair.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

A peer-to-peer car sharing program and a shared vehicle owner shall be exempt from vicarious liability:

- (1) Consistent with 49 U.S.C. sec. 30106; and
- (2) Except as provided in KRS 304.39-080, under any state or local law that imposes liability solely based on vehicle ownership.

➔SECTION 7. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section, the following have the same meaning as in Section 2 of this Act:
- (a) "Car sharing period";
- (b) "Peer-to-peer car sharing program";
- (c) "Shared vehicle";
- (d) "Shared vehicle driver"; and
- (e) "Shared vehicle owner."

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(2) 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 a shared vehicle owner's policy for accidents involving the shared vehicle that occur during a car sharing period, including but not limited to:

(a) Security for payment of tort liabilities under KRS 304.39-110;

(b) Uninsured motorist coverage under KRS 304.20-020;

(c) Underinsured motorist coverage under KRS 304.39-320;

(d) Basic reparation benefits as defined in KRS 304.39-020;

(e) Medical payments coverage;

(f) Comprehensive property damage coverage; and

(g) Collision property damage coverage.

(3) An insurer that defends or indemnifies a claim against a shared vehicle shall have the right to seek recovery against the insurer that issued a motor vehicle liability insurance policy under subsection (2) of Section 3 of this Act to the peer-to-peer car sharing program if:

(a) The claim is made against the shared vehicle owner or shared vehicle driver for damages that result from an accident occurring during the car sharing period; and

(b) Coverage for the claim is excluded under the terms of the insurer's policy.

➔SECTION 8. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, the following have the same meaning as in Section 2 of this Act:

(a) "Car sharing period";

(b) "Car sharing program agreement";

(c) "Peer-to-peer car sharing program";

(d) "Shared vehicle";

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- (e) "Shared vehicle driver"; and**
- (f) "Shared vehicle owner."**
- (2) Notwithstanding any other provision of this subtitle, a peer-to-peer car sharing program shall have an insurable interest in a shared vehicle during the car sharing period, which shall include owning and maintaining, as the named insured, one (1) or more policies of motor vehicle liability insurance that provides coverage for:**
- (a) Liabilities assumed by the peer-to-peer car sharing program under a car sharing program agreement;**
- (b) Any liability of the shared vehicle owner or shared vehicle driver; and**
- (c) Damage or loss to the shared vehicle.**
- (3) Nothing in this section creates liability on a peer-to-peer car sharing program to maintain the coverage required under Section 3 of this Act.**

➔Section 9. KRS 138.462 is amended to read as follows:

As used in KRS 138.463 and 138.4631, unless the context requires otherwise:

- (1) "Cabinet" means the Transportation Cabinet;
- (2) "Rent" and "rental" means a contract, **other than a car sharing program agreement as defined in Section 2 of this Act**, supported by a consideration, for the use of a motor vehicle for a period of less than three hundred sixty-five (365) days;
- (3) "Lease" and "leasing" means a contract, **other than a car sharing program agreement as defined in Section 2 of this Act**, supported by a consideration, for the use of a motor vehicle for a period of three hundred sixty-five (365) days or more; and
- (4) "Gross rental charge" means the amount paid by a customer for time and mileage only.

➔Section 10. KRS 186.630 is amended to read as follows:

- (1) No person shall rent a motor vehicle to any other person if the latter is not licensed, unless he is a nonresident whose home state or country does not require that an operator be

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licensed.

- (2) No person shall rent a motor vehicle to another until he has inspected the operator's license of the person to whom the vehicle is to be rented and compared and verified the signature on the license with the signature of that person written in his presence.
- (3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle rented, the name and address of the person to whom the vehicle is rented, the number of his license and the date and place of issuance of his license. That record shall be open to inspection by any police officer or employee of the cabinet.

(4) This section shall not apply to peer-to-peer car sharing as defined in Section 2 of this Act.

➔Section 11. Sections 2 to 10 of this Act take effect on January 1, 2023."