

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
Enrolled

Senate Bill 743

(Senator Middleton)

Finance

Economic Matters

Peer-to-Peer Car Sharing Programs

This bill establishes (1) a regulatory framework for peer-to-peer car sharing in the State, including insurance requirements; (2) a sales and use tax rate of 8% for sales and charges related to peer-to-peer car sharing for two years only; and (3) related study and/or reporting requirements for the Consumer Protection Division of the Office of the Attorney General (OAG), the Motor Vehicle Administration (MVA), and the Comptroller's Office. The Insurance Commissioner may adopt regulations to implement the bill, as specified. **The bill generally takes effect July 1, 2018; however, safety and inspection requirements take effect January 1, 2019. The sales and use tax provision terminates June 30, 2020.**

Fiscal Summary

State Effect: General fund revenues increase, potentially significantly, from sales and use tax revenues in FY 2019 and 2020. Special fund revenues for the Maryland Insurance Administration (MIA) increase, likely minimally, from rate and form filing fees and license fees beginning in FY 2019. Transportation Trust Fund (TTF) revenues increase to the extent that peer-to-peer car sharing programs enter into concession fee agreements with the Maryland Aviation Administration (MAA) to operate at State airports; however, any such impact cannot be reliably estimated. The bill's penalty provisions, including imposition of existing penalties, do not have a material impact on State finances or operations. Affected State agencies can handle the bill's requirements using existing resources.

Local Effect: The bill's penalty provisions, including imposition of existing penalties, do not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

The bill establishes numerous definitions related to “peer-to-peer car sharing,” which is defined as the authorized use of a motor vehicle by an individual other than the vehicle’s owner through a peer-to-peer car sharing program. “Peer-to-peer car sharing program” means a platform that is in the business of connecting vehicle owners with drivers to enable the sharing of motor vehicles for financial consideration. “Car sharing period” means the period of time during which a car is being shared through the peer-to-peer car sharing program, and the bill specifies when this period officially begins and ends.

Applicability of State Laws Governing Rental Vehicles

A peer-to-peer car sharing program may not be considered to be a rental vehicle company or motor vehicle rental company. As such, the vehicles rented through a peer-to-peer car sharing program are not considered rental vehicles and, therefore, are not subject to the State laws governing rental vehicles. Additionally, the use of a shared motor vehicle does not constitute a commercial use of the vehicle, as specified.

Peer-to-peer Car Sharing Agreements, Fees, and Disclosures

A peer-to-peer car sharing program agreement must state (1) the daily rate, fees, any insurance costs, and any protection package costs that are charged to the shared vehicle owner or driver and (2) the car sharing period. A car sharing program may not charge a driver for the use of a shared motor vehicle after the car sharing period. In addition to any remedies otherwise available, a violation of these requirements is considered an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA).

A car sharing program may charge a shared vehicle driver a separately stated fee to recover specified costs paid to a government entity that are incurred by the program. If a rate is advertised by the car sharing program, these fees must be clearly disclosed.

All car sharing program agreements must also disclose other specified information to the shared vehicle owner and driver. For example, the agreement must disclose (1) the right of the program to seek indemnification from the shared vehicle owner or shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the agreement and (2) that the owner’s or driver’s motor vehicle liability insurance policies do not provide a defense to this indemnification.

When a vehicle owner registers a vehicle on a car sharing program, and before that vehicle is shared, the program must notify the owner that, if the shared motor vehicle has a lien against it, the use of the motor vehicle through the program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Limited Lines License Required for the Offer and Sale of Insurance

Before a peer-to-peer car sharing program, its employees, or its authorized representatives may sell insurance in connection with, and incidental to, the reservation of a shared motor vehicle, the program must hold a limited lines license. The Insurance Commissioner must issue a limited lines license to a program that (1) pays existing fees for licensure as an insurance producer; (2) submits any additionally required information to the Commissioner; and (3) meets numerous other specified requirements, including filing the insurance policies with and having them approved by the Commissioner and providing a training program to employees and authorized representatives who will sell insurance on behalf of the program. Such a limited lines license is subject to the same term and renewal conditions as an insurance producer license.

The Commissioner may refuse to issue a limited lines license or suspend, revoke, or refuse to renew a license under specified circumstances. For example, the Commissioner may do so if a program, its employees, or its authorized representatives have (1) willfully violated the Insurance Article or another State law that relates to insurance or (2) offered or sold unapproved insurance products. In addition or instead, the Commissioner may impose a penalty of at least \$100 and as much as \$2,500 for each violation and require restitution to be made to any person that has suffered financial injury because of a violation.

A limited lines license to sell insurance in connection with a peer-to-peer car sharing program authorizes the offering and sale of insurance in the manner specified by the bill. The license also authorizes any employee or authorized representative of the peer-to-peer car sharing program who receives training to act on behalf of, and under the supervision of, the program to offer and sell insurance. The acts of an employee or authorized representative related to the offering and sale of insurance are considered the acts of the program.

A program that holds a limited lines license must maintain a register containing the names of each employee or authorized representative who offers limited lines insurance on behalf of the program and the business addresses of all locations where the insurance is sold. The register must be submitted to the Commissioner for inspection in the manner required by the Commissioner.

The bill establishes additional requirements related to (1) compensation for employees and authorized representatives who sell insurance on behalf of a peer-to-peer car sharing

program and (2) the segregation of premiums collected from a driver who purchases such insurance from a peer-to-peer car sharing program.

Any insurance sold under the limited lines license is primary to any other valid and collectible coverage except for mandatory minimum security coverage, as discussed below.

Insurance Requirements for Shared Vehicles

The peer-to-peer car sharing program must assume the liability of the *owner* of a shared vehicle during a car sharing period. The security provided by the car sharing program in assuming the liability of the owner must meet or exceed the State's mandatory minimum security requirements and be stated in the car sharing program agreement. Generally, this assumption of liability does *not* apply if the shared vehicle owner made an intentional or fraudulent material misrepresentation to the program before the car sharing period in which a loss occurred; however, any injured person who did not participate in the misrepresentation is still covered by the program.

During a peer-to-peer car sharing period, the car sharing program must have an insurable interest in the shared motor vehicle and must ensure that both the shared vehicle owner and shared vehicle driver are insured under a policy that (1) recognizes that the vehicle is being used through a peer-to-peer car sharing program and (2) provides the mandatory minimum security requirements. This policy must be *primary* with respect to the shared vehicle driver, but it may be *secondary* if the vehicle is being used as a replacement vehicle. If the policy is made secondary in this manner, the car sharing agreement must contain a specified notice to inform the owner and driver. Even so, the policy must be *primary* if the driver's insurance has lapsed or is otherwise not in force. This insurance requirement may be satisfied by motor vehicle liability insurance maintained by a shared vehicle owner, car sharing program, or both.

A peer-to-peer car sharing program is expressly authorized to own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides the required minimum coverage. The coverage can include liabilities assumed by the program, damage to or loss of the shared vehicle, and any liability of the shared vehicle owner or driver. This insurance must be issued by an authorized insurer or surplus lines insurer, as specified, and must generally pay claims on a first dollar basis. Consumer complaints against a surplus lines insurer are subject to the Commissioner's existing authority to regulate surplus lines insurance.

Any offer by a car sharing program to provide coverage to a shared vehicle driver in the amount of, in excess of, or optional to the minimum coverage required must be considered the sale or offer of insurance through the limited lines license.

Rights and Obligations of Other Insurers

The Maryland Automobile Insurance Fund and other authorized insurers in the State may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's personal motor vehicle liability insurance policy for any loss or injury that occurs during the car sharing period. An insurer may not deny, cancel, void, terminate, rescind, or nonrenew a personal motor vehicle liability insurance policy of a shared vehicle owner solely because a motor vehicle covered under the policy has been made available through a peer-to-peer car sharing program. However, an insurer may deny, cancel, void, terminate, rescind, or nonrenew the policy if an applicant or policyholder fails to provide complete and accurate information about the use of the motor vehicle through a peer-to-peer car sharing program.

An insurer may offer to provide coverage for damages incurred as a result of the loss of use of a shared motor vehicle that sustains collision damage while rented by the insured. If a private passenger motor vehicle insurance policy issued, sold, or delivered in the State includes collision coverage, that coverage must include any passenger car that is used by an insured for a 30-day period or less under a peer-to-peer car sharing agreement. If the policy includes comprehensive coverage, it must include any replacement vehicle utilized through a peer-to-peer car sharing agreement.

An insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy has the right to seek contribution against the insurer of the peer-to-peer car sharing program if the claim is made against the shared vehicle owner or driver for loss or injury that occurs during the car sharing period and is excluded under the terms of its policy.

Collision Damage Waivers

The Consumer Protection Division of OAG must develop a form for collision damage waivers for peer-to-peer car sharing programs and make that waiver available to such programs in the State. The waiver must meet specified requirements that are substantially similar to the collision damage waiver for rental vehicles. A peer-to-peer car sharing program may not deliver or issue an agreement in the State that contains a collision damage waiver unless it is the waiver form provided by the division.

Authorized Drivers

A peer-to-peer car sharing program may not enter into an agreement with a shared vehicle driver unless the driver who will operate the shared motor vehicle (1) holds a driver's license issued by MVA to drive the class of vehicle being rented; (2) is a nonresident who has and keeps an appropriate driver's license from his or her state or country of origin and

is at least the same age as that required of a resident to drive; or (3) otherwise is specifically authorized by law to drive vehicles of the class of the shared motor vehicle. A car sharing program must keep records with specified information about the driver and shared motor vehicle. Any police officer or authorized representative of MVA may inspect the records.

General Prohibitions and Requirements

If a car sharing program knows that the vehicle's odometer does not correctly record accumulated mileage, the program may not, with intent to defraud, enter into an agreement with a driver for which any charge is based on distance traveled. Moreover, a car sharing program may not enter into an agreement with a driver for which any charge is based on the distance traveled and deceive that driver as to the distance traveled during the car sharing period. A person who violates this prohibition is subject to up to six months imprisonment and/or a fine of up to \$500.

A person may not allow a driver to operate a shared motor vehicle if the person knows that the driver is under the influence of alcohol, impaired by alcohol, impaired by a drug, or impaired by a controlled dangerous substance.

In order to operate at an airport in the State, a peer-to-peer car sharing program must have a concession fee agreement with MAA.

Safety and Inspection Requirements

At the time a vehicle is registered as a shared motor vehicle on a peer-to-peer car sharing program, and prior to the time when vehicle is made available for car sharing, a peer-to-peer car sharing program must verify that the vehicle does not have any safety recalls for which the repairs have not been made and notify the vehicle owner about the requirements established by the bill related to safety recalls of shared motor vehicles. Specifically, if a shared vehicle owner receives an actual notice of a safety recall on the motor vehicle, the vehicle may not be made available on the program until the safety recall repair has been made. The bill also establishes a timeline for addressing needed repairs when a safety recall notice is received for a vehicle that is already on the car sharing program or is being shared.

At the time a vehicle is registered as a shared motor vehicle, and prior to the time when the vehicle is made available for car sharing, a program must also (1) verify the age of the vehicle; (2) request the owner to provide the date of the last State inspection, or the general time period of the last State inspection; (3) disclose the inspection information on its website for the shared vehicle; and (4) notify the shared vehicle owner about the requirements established by the bill related to the age of the vehicle. Specifically, a shared vehicle owner may only share a motor vehicle that is more than 10 years old through a car

sharing program if the motor vehicle receives regular safety inspections in the manner specified by the bill.

These provisions take effect January 1, 2019.

Taxation of Peer-to-peer Car Sharing

The sales and use tax for sales and charges made in connection with a shared motor vehicle used for peer-to-peer car sharing and made available on a peer-to-peer car sharing program is 8%. This provision terminates June 30, 2020.

Study and Reporting Requirements

By December 31, 2019, the Consumer Protection Division of OAG must report to specified committees of the General Assembly on the number and nature of complaints received relating to peer-to-peer car sharing programs, including complaints regarding the safety of shared motor vehicles.

By December 31, 2019, both MVA and the Comptroller's Office must independently identify and compile information that could assist the General Assembly in determining a fair and equitable State taxation on sales and charges made in connection with a shared motor vehicle used for peer-to-peer car sharing and made available on a peer-to-peer car sharing program, as specified.

Current Law:

Required Security

Maryland law requires an owner of a motor vehicle that is required to be registered in the State to maintain insurance for the vehicle during the registration period. The security required must provide at least the payment of claims:

- for bodily injury or death arising from an accident of up to \$30,000 for any one person and up to \$60,000 for any two or more persons;
- for property of others damaged or destroyed in an accident of up to \$15,000;
- unless waived or exempt by Chapters 425 and 426 of 2016, for personal injury protection of \$2,500 per person; and
- for uninsured motorist coverage (unless waived, the amount equals the amount of liability coverage provided under the policy; if waived, the amount equals the minimum required insurance for liability coverage).

The Maryland Vehicle Law and Rental Vehicles

The Maryland Vehicle Law governs rental vehicles. Generally, a violation of the Maryland Vehicle Law is a misdemeanor that carries a fine of up to \$500.

A rental vehicle must maintain the minimum security required by law. For a replacement vehicle (which is a type of rental vehicle that is loaned out to or rented temporarily by a person while the person's own vehicle is not in use because of a breakdown, repair, etc.), the security requirement may also be met if the rented vehicle's coverage is secondary to the person's personal insurance coverage, if the personal coverage maintains the required security. If applicable, this information must be disclosed to a renter in a specified manner.

A person may not rent a motor vehicle, trailer, or semitrailer to any other person unless the individual who will operate the rented vehicle either (1) holds a driver's license issued by MVA to drive or tow the class of vehicle being rented or (2) is a nonresident who has and keeps an appropriate driver's license from his or her state or country of origin and is at least the same age required of a resident to drive or tow the class of vehicle being rented. The lessor of the rented vehicle or the agent must inspect a renter's license to ensure it is valid and appropriate for the vehicle being rented. Each person who rents a motor vehicle to another person must keep specified records of the transaction, including the renter's name, address, and driver's license number. MVA or any police officer may inspect these records.

Taxation of Rental Vehicles

An 11.5% tax rate is imposed on short-term passenger car and recreational vehicle rentals and an 8% rate is applied to certain short-term truck rentals. Of this revenue, 45% accrues to TTF, while the remaining 55% accrues to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund.

Limited Lines Insurance and Surplus Lines Insurance

Generally, an insurance producer may not sell, solicit, or negotiate any insurance without a license in the kind of insurance for which the person intends to act as an insurance producer. However, MIA issues limited lines licenses for certain restricted kinds of insurance, which authorize insurance producers to sell just that insurance. For example, rental vehicle insurance may be sold in the State as one of eight authorized limited lines.

The Insurance Article authorizes the purchase of insurance from an unauthorized insurer as a surplus line if specified conditions are met. Primarily, the type of insurance being sought must not be available in the State.

Insurance Producers

An “insurance producer” is a person licensed by MIA to sell insurance in the State on behalf of an insurer. The license fee is \$54 initially and \$54 every two years for renewal. Each producer license expires every two years, (1) for an individual, on the last day of the month in which the holder of the license was born and (2) for a business, on the same day the license was first issued. An individual applying for the license must be of good character and trustworthy and meet any education requirements specified by law and set by the Insurance Commissioner.

Unfair and Deceptive Trade Practices

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division of OAG is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: Peer-to-peer car sharing programs, such as Turo and Getaround, are becoming more popular in the State as alternatives to traditional vehicle rentals from companies like Enterprise and Hertz. Similar to how Airbnb allows a person to rent his or her home directly to customers using the Airbnb program, personal vehicle rental programs allow a vehicle owner to rent his or her private vehicle to another person through an online financial transaction. In some cases, the renter may pick up the vehicle directly from the owner’s home, while in others, both parties may arrange another location to pick up and drop off the vehicle. The financial transaction takes place between the vehicle owner and the renter with the personal vehicle rental program acting as a broker, which guarantees some level of protection for, and good faith between, the vehicle owner and the renter.

Currently, Turo is the most common peer-to-peer car sharing program that operates in the State. In the same manner required by the bill, Turo maintains a commercial insurance policy that acts as *primary* for the vehicle owner and *secondary* for the vehicle driver in the event of an accident while a car is being shared through its program.

State Revenues: Under current law, unless otherwise specified, sales and use tax revenue accrues to the general fund. Thus, general fund revenues increase, potentially significantly, in fiscal 2019 and 2020 only, from the 8% sales and use tax applied to charges made in connection with a shared motor vehicle used for peer-to-peer car sharing and made available on a peer-to-peer car sharing program. Any such impact cannot be reliably estimated at this time as information on the prevalence of peer-to-peer car sharing in the State and its related costs is not readily available. Revenues are not assumed beyond fiscal 2020 as the bill's sales and use tax provision terminates June 30, 2020. However, the bill requires MVA and the Comptroller's Office, by December 21, 2019, to report specified information to the General Assembly to determine a fair and equitable State taxation on shared motor vehicle used for peer-to-peer car sharing in a peer-to-peer car sharing program.

MIA special fund revenues increase, beginning in fiscal 2019, from (1) insurance producer license fees as peer-to-peer car sharing programs must obtain limited lines licenses and (2) rate and form filing fees as insurers alter forms and policies to accommodate peer-to-peer car sharing, as appropriate. Any such impact cannot be reliably estimated but is expected to be minimal due to the small number of peer-to-peer car sharing programs operating in the State at this time.

TTF revenues increase to the extent that MAA enters a concession fee agreement with peer-to-peer car sharing programs to allow the programs to operate at State airports; however, any such impact cannot be reliably estimated because it depends on (1) whether peer-to-peer car sharing programs seek to enter such agreements with MAA and (2) what cost or fee MAA would charge such programs.

Additional Information

Prior Introductions: None.

Cross File: HB 1045 (Delegate Davis) - Economic Matters.

Information Source(s): Maryland Department of Transportation; Maryland Insurance Administration; Maryland Automobile Insurance Fund; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2018
md/jc Third Reader - April 4, 2018
Revised - Amendment(s) - April 4, 2018
Enrolled - April 23, 2018

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