

## Background

As the transportation and mobility solutions continue to evolve, Enterprise Holdings, Inc. welcomes the new participants into the transportation market. We appreciate the need to continually evolve our business model to adapt to changes in technology and consumer demand, but, also recognize that consumers expect a standard set of rules across all platforms. Those consistent rules ensure that consumers, airports, local governments, and others, are kept whole while ensuring that everyone benefits from advances in technology that allow consumers to rent vehicles in new and innovative ways.

One emerging business model (refer to as peer-to-peer vehicle sharing) allows individuals or small rental companies to make their vehicles available to be rented by a platform that, in turn, handles all the traditional functions of a rental car company. Contracts, insurance, payments, terms and conditions, customer service, and nearly everything else relating to the transaction are handled by the platform after the owner makes the car available for use. As a condition of listing their vehicle, owners are required to perform certain jobs handled by traditional rental car company employees, such as cleaning the vehicles and ensuring maintenance is performed. In return for making their car available to be rented on the platform, owners receive a percentage of the daily rental rate charged to consumers

Over the past two years, legislation has been introduced in numerous states that would define the basic rules that apply to what has been described as peer-to-peer vehicle sharing. While many see that practice as a simply car rental, the legislation provides clarity for all parties as to the rules that apply to these transactions. The goal of the legislation is to ensure that consumers, local governments, airports, and other affected parties are treated the same regardless of how the car is rented. To provide a level of uniformity between states, there are also model acts that cover insurance provisions as well as a comprehensive act that covers many of the issues discussed above.

## Model Acts

**American Property Casualty Insurance Association (APCIA) Model [INSURANCE] Act** – Reflects consensus view on insurance coverage rules

- Defines peer-to-peer car sharing and related terms as a distinct from rental car statutes.
- Ensures that the owner and driver are covered by insurance that provides coverage no less than the state MFR. Provides that the platform is required to provide coverage if it has lapsed or doesn't provide the required level of coverage.
- Provides notice to the owner that use of a vehicle with a lien on the platform may violate the terms of the contract with the lienholder.
- Requires the platform to collect and verify records pertaining to the use of the vehicle. Includes a requirement to verify and maintain records with regards to driver licenses.
- Provides an exemption from vicarious liability in accordance with federal law.
- States that a platform has an insurable interest in the vehicle during the sharing period
- Requires each car sharing agreement to disclose various items, including, the platform's right to seek indemnification, details with regards to the insurance coverage, daily rate and fees,

emergency telephone number, and conditions under which a driver must maintain a policy with certain coverage limits.

- States that the platform has sole responsibility for any equipment placed in the vehicle to monitor or facilitate the car sharing transaction.
- Prohibits making a shared vehicle available if it has a safety recall. After initial registration, the obligation is on the shared vehicle owner to notify the platform of the recall.

**Comprehensive Peer to Peer Model Act** – Drawing upon APCIA model insurance act rules, this model act addresses airport and taxation rules in addition to the insurance rules addressed in the APCIA act

- **Insurance Provisions** – The provisions of the Act are substantially similar to those contained in the APCIA model. Provisions ensure no gaps in insurance and clarify obligations should bodily or property injury occur during the rental of a vehicle.
  - Defines peer-to-peer vehicle sharing and related terms for purposes of insurance. To avoid any unintended consequences, the language ensures that the definitions in the Peer-to-Peer Vehicle Sharing Act are limited to the Insurance Title.
    - The sharing period is limited to 30 days which is consistent with rental car laws.
  - In the case of any loss or injury, the platform assumes the liability of the owner of the car in an amount stated in the agreement.
  - The platform must ensure that financial responsibility for the vehicle is provided in amounts no less than the state MFR. If insurance maintained by owner or driver has lapsed or does not provide the required coverage, the platform or its insurer must provide the coverage beginning with the first dollar of the claim.
  - Provides notice to the owner that use of a vehicle with a lien on the platform may violate the terms of the contract with the lienholder.
  - Allows insurers to exclude coverage and the duty to defend for specific claims.
  - Requires the platform to collect and verify records relating to use of the vehicle.
  - States that a platform has an insurable interest in the vehicle during the sharing period
  - Provides an exemption from vicarious liability in accordance with federal law.
- **Platform Obligations** - The Act also imposes obligations on the platform that are also substantially similar to those proposed by APCIA. Those disclose of pertinent terms, rates, and requirement to ensure that the platform is actively checking to ensure that any vehicle with an active safety recall are removed from the platform.
  - Requires each agreement to disclose various items, including, the platform’s right to seek indemnification, details with regards to the insurance coverage, daily rate and fees, emergency telephone number, and conditions under which a driver must maintain a policy with certain coverage limits.
  - States that the platform has sole responsibility for any equipment placed in the vehicle to monitor or facilitate the car sharing transaction.
  - Upon initial registration, requires the platform to verify that a vehicle does not have any safety recalls. Platforms are required to check at least every 72 hours to verify that

vehicles available for use on the platform are not subject to a recall. Owners are similarly prohibited from making a vehicle available for use if they have received notice of an unrepaired safety recall, and, required to notify the platform of that recall.

- Requires the platform to verify and retain records of driver license information.
- Consumer Issues – The provisions of the model act ensure that consumers receive the same level of protection regardless of whether they rent vehicles through an app, or, via a traditional brick and mortar rental car location. Accordingly, the Act seeks to:
  - Clarify that car sharing agreements are to be classified as consumer transactions and subject to the consumer deception / unfair trade practices laws of the applicable state.
  - To the extent that there are additional consumer protections in state-specific statutes relating to rental transactions, parallel requirements are created for peer-to-peer vehicle sharing.
  - To the extent that there are existing state specific statutes applicable to rental vehicle disclosures and signage requirements, add provision allow for electronic notice and disclosure.
  - If a rental company or platform facilitates the rental or sharing of a vehicle in a manner that allows a consumer to obtain possession without in person contact, the company or platform shall be deemed to have met all obligations to physically inspect and company a customer’s drivers license.
- Airports - The model act codifies what is commonly recognized – airports have clear jurisdiction over what happens on their property, including when and where cars can be rented on the premises. To provide that clarity, the Act provides the following:
  - Upon request of an airport, a platform shall enter into a concession agreement prior to listing, marketing, or facilitating the use of vehicles on airport property or at airport facilities. The agreement must set forth reasonable standard, regulations, procedures, and fees.
- Taxes – The model act contains provisions to protect owners from unexpected tax liability and ensures that state and local governments do not lose out of revenue simply because a car is rented via a mobile app. To accomplish that goal, the model act provides:
  - Each state sales tax, state and local rental tax, and/or any other taxes/fees that are owed on rental transactions apply to peer-to-peer vehicle sharing transactions.
  - The platform is obligated to collect and remit those taxes and fees and no additional obligation falls on the vehicle owner.
  - Owners have the option of recouping any sales tax paid on the purchase of the vehicle at the time of purchase through claiming a tax credit in the amount of sales tax collected on the rentals (capped at the amount of tax paid on the purchase).

## State Action

### **Colorado [SB 90]**

- **Insurance:** Contains definitions and insurance provisions based upon the APCIA Model Act. Mandates that MFR must be provided and that the insurance company providing coverage to the platform must be primary.
- **Disclosures:** Includes disclosures and notices, including costs and fees charged to the driver under the agreement.
- **Recalls:** Prohibits making a shared vehicle available if it has a safety recall. After initial registration, the obligation is on the shared vehicle owner to notify the platform of the recall.
- **Vicarious liability:** Includes exemption from vicarious liability pursuant to federal law.
- **Airports:** Airport language requiring car sharing programs to enter into an airport concession agreement before enabling car sharing at the airport, unless explicitly waived in writing.
- **Taxes:** Apply as a result of being defined as a “vendor”

### **Indiana [HEA 1362]**

- **Insurance:** Contains definitions and insurance provisions based upon the APCIA Model Act. Mandates that MFR must be provided and that the insurance company providing coverage to the platform must be primary.
- **Disclosures:** Includes disclosures and notices, including costs and fees charged to the driver under the agreement.
- **Recalls:** Prohibits making a shared vehicle available if it has a safety recall. After initial registration, the obligation is on the shared vehicle owner to notify the platform of the recall.
- **Airports:** Prohibits local governments, aside from airports, from enacting a law to regulate personal vehicle sharing. Airports are authorized to enact or enforce an ordinance, resolution, policy, or rule to regulate vehicle sharing.
- **Taxes:** Expressly applies sales and use tax by stating that sharing of vehicles is a retail transaction if the sharing occurs more than 15 days in a calendar year.

**HB 1001 (2019)** “Specifies that sharing of passenger motor vehicles and trucks through a peer to peer vehicle sharing program is a retail transaction subject to the state gross retail and use tax if sharing

occurs more than 15 days in a calendar year. Provides that the exemption for the purchase of a new motor vehicle that is acquired for resale, rental, or leasing in the ordinary course of the person's business does not apply to a vehicle purchased for sharing through a peer to peer vehicle sharing program. Provides that vehicle sharing through a peer to peer vehicle sharing program is exempt from the auto rental excise tax and a county supplemental auto rental excise tax unless an ordinance is adopted to impose the county tax. Limits the county supplemental tax rate to 1%. Imposes a vehicle sharing excise tax at a 2% tax rate."

### Ohio

- **Insurance:** Contains definitions and insurance provisions based upon the APCIA Model Act. Mandates that insurance coverage of at least \$25k for bodily injury of one person, \$50k for bodily injury of two or more persons, and \$25k for property damage be provided (State MFR) and requires the platform shall provide the required coverage if it is not provided by the driver or owner.
- **Disclosures:** Includes disclosures and notices, including costs and fees charged to the driver under the agreement.
- **Recalls:** Prohibits making a shared vehicle available if it has a safety recall. After initial registration, the obligation is on the shared vehicle owner to notify the platform of the recall. The platform is also required to establish commercially reasonable procedures to determine any safety recalls that apply to the vehicle after initial registration.
- **Airports:** Allows airports to adopt reasonable standards, regulations, procedures, fees an agreement applicable to peer-to-peer car sharing programs. Platforms are required to comply and pay any applicable fees in a timely manner.
- **Taxes:** Clearly applies sales taxes to the transaction by codifying that the agreement is a "consumer transaction" and that the program / owner are suppliers and the driver is the consumer for purposes of the Code.
- **Enforcement:** Expressly provides that a violation of its provisions is deemed to be an unfair or deceptive act subject to a cause of action, relief, etc.
- **Vicarious liability:** Includes exemption from vicarious liability pursuant to federal law.

### Maine (HP 1167, 2019)

- **Insurance:** Contains definitions and insurance provisions based upon the APCIA Model Act. Mandates that three times MFR must be provided and that the insurance company providing coverage to the platform must be primary.
- **Vicarious liability:** Includes exemption from vicarious liability pursuant to federal law.

- **Enforcement:** Expressly provides that the superintendent may assess civil penalties for anyone who violates the chapter.
- **Taxes:** The recently passed Marketplace Facilitator Law (HP 1064 (2019)) requires platforms to collect and remit taxes.

**Maryland** (HB 166, 2019)

- **Insurance:** Contains definitions and insurance provisions based upon the APCIA Model Act. Includes a limited license for the platform to sell insurance. Mandates that MFR must be provided and that the platform's policy is primary.
- **Disclosures:** Includes disclosures and notices, including costs and fees charged to the driver under the agreement. Disclosures include specific language for damage waivers that mirrors what is provided for rental cars.
- **Additional protections:** Prohibits a charge based on distance when the odometer is inaccurate and prohibits deceiving a driver with regards to distance travelled. Prohibits allowing a driver to operate a vehicle if the person knows that the person is under the influence of drugs or alcohol.
- **Cost recovery:** Allows a platform to charge a shared vehicle driver a fee to cover the following costs incurred by the program: (1) concession fees; (2) any other fees charged or imposed by a governmental entity. Advertisements must include clear disclosure of those fees.
- **Airports:** Requires platforms to have a concession fee agreement with the Maryland Aviation Administration to operate at an airport in the state.
- **Enforcement:** Expressly provides that a violation of its provisions is deemed to be an unfair or deceptive trade practice.
- **Recalls:** Prohibits making a shared vehicle available if it has a safety recall. After initial registration, the obligation is on the shared vehicle owner to notify the platform of the recall.
- **Inspections:** The platform is required to verify the age of the shared vehicle, and, request that the owner provide the date of the last state inspection and disclose that information in its description of the vehicle on the website. Vehicles older than 10 years cannot be placed on the platform unless the owner has obtained a state inspection certificate, and, a subsequent inspection certificate is obtained every 10,000 miles.
- **Taxes:** Applies an 8 percent sales and use tax rate on the car sharing transaction, and, adds a two-year exemption from the definition of short term rental for car sharing.