

Peer-to-Peer Vehicle Sharing Study

2019 Report

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Contents

Executive Summary	3
Introduction	5
Study Process	7
What is Peer-to-Peer Vehicle Sharing?	8
Peer-to-Peer Vehicle Sharing Legislation in other States	9
Discussion of Key Definitions for Virginia	12
Registration and Use	16
What types of vehicles may be shared?	16
Statutory Privileges Afforded to Rental Vehicle Companies	17
Rental Decals	17
Record-Keeping Requirements	17
Safety Recalls	18
Consumer Protection Notices	19
Airport Concessions	19
User Experience, Idle Assets, and Increased Mobility Options	20
Taxation	21
Insurance	26
Insurance Coverage	26
Discussions Addressing Other Insurance Draft Language	27
Virginia Specific Insurance Issues	28
Conclusion	30
Appendices	31
Appendix A: Charge Letters	32
Appendix B: SB 1733 and HB 2813	33
Appendix C: Stakeholder Participants	34
Appendix D: Model Insurance Legislation	35
Appendix E: Stakeholder Draft Legislation Used for Discussion	36
Appendix F: Stakeholder Submissions and Responses to Report	37

Executive Summary

During the 2019 General Assembly session, legislators considered House Bill (HB) 2813 and Senate Bill (SB) 1733, which concerned electronic peer-to-peer vehicle rental. In its simplest form, peer-to-peer vehicle rental is a business model in which a software application is provided to facilitate a transaction between two parties in which one party rents a vehicle from the other. The Chairman of the Senate Transportation Committee, Senator Charles W. Carrico, Sr., requested the Virginia Department of Motor Vehicles (DMV), in consultation with the Virginia State Corporation Commission (SCC) and the Virginia Department of Taxation (TAX), to convene a group of stakeholders to study electronic peer-to-peer vehicle rentals in Virginia and to address insurance, taxation, and consumer protection issues involved with the activity.

In a traditional vehicle rental transaction, the owner of the vehicle, a rental vehicle company, rents the vehicle to a consumer. An established body of law governs the responsibilities imposed on each party in that transaction, including which party maintains insurance on the vehicle, which party's insurance is primary in the event that both parties maintain insurance, what taxes apply to the transaction, and which party is responsible to pay, collect and remit those taxes. Additional law has developed to protect consumers involved in vehicle rental transactions. Peer-to-peer vehicle rental introduces a new party to the transaction, a third-party facilitator, who neither owns nor uses the vehicle. This study addressed what legal responsibilities might be imposed on the third party facilitator and in what instances the facilitator assumes the responsibilities borne by the vehicle owner in the traditional vehicle rental transaction. The study also explored consumer protection issues that arise as a result of this new business model.

For the most part, Virginia's current registration and tax regulatory schemes contemplate that a vehicle is either purchased and used as a personal vehicle or that it is purchased and used as a rental vehicle. The *Code of Virginia* does not anticipate a mixed use vehicle in the way vehicles are used in the peer-to-peer vehicle rental business model. A vehicle can currently be registered as a rental vehicle or a personal vehicle but not both. A vehicle's registration status affects what taxes are imposed on vehicle ownership and rental. Discussing taxation requires consideration of the policy on how to levy taxes based on this mixed use because in some cases the levy of one tax excludes the levy of another tax unless changes are made to current law. Additional policy considerations include whether to consider the total tax burden on the business transaction and vehicle owner when establishing a levy against peer-to-peer vehicle rental or whether to establish the levy against the rental transaction without consideration of other taxes paid.

Insurance requirements for motor vehicles are typically imposed on the owner of the vehicle, and stakeholders considered what insurance requirements should be imposed on a peer-to-peer vehicle sharing platform as the facilitator of the peer-to-peer vehicle sharing transaction.

During the course of the study, stakeholders were unable to reach consensus on comprehensive recommendations. Therefore, this report documents the research presented,

stakeholder discussions, and the different positions articulated for issues involving the registration and use of the vehicles, taxation, and insurance. Draft legislation used for discussion purposes and all submitted stakeholder responses to this study report are included in the appendices. The report contains no recommended legislation due to the lack of consensus.

Introduction

During the 2019 General Assembly session, legislators considered House Bill (HB) 2813, patroned by Delegate Mark D. Sickles, and Senate Bill (SB) 1733, patroned by Senator John A. Cosgrove, Jr., which concerned electronic peer-to-peer vehicle rental.¹ In its simplest form, peer-to-peer vehicle rental is a business model in which a software application is provided to facilitate a transaction between two parties in which one party rents a vehicle from the other. HB 2813 was left in the House Committee on Rules, and SB 1733 was stricken at the request of the patron. The Chairman of the Senate Transportation Committee, Senator Charles W. Carrico, Sr., requested the Virginia Department of Motor Vehicles (DMV), in consultation with the Virginia State Corporation Commission (SCC) and the Virginia Department of Taxation (TAX), to convene a group of stakeholders to study electronic peer-to-peer vehicle rentals.

In letters dated March 19, 2019, and April 10, 2019, Chairman Carrico charged the stakeholders to consider the following issues relating to peer-to-peer vehicle rental:

- Insurance coverage for accidents and incidents that occur during peer-to-peer vehicle rentals;
- Consumer protection laws and regulations protecting traditional vehicle rental company customers but not those using peer-to-peer rental;
- Taxation of peer-to-peer rental vehicle companies;
- Revenue sources from otherwise idle assets;
- Customized approaches to vehicle rental as a result of peer-to-peer rental;
- Legislation passed by other states relating to this topic;
- Increased mobility options afforded by peer-to-peer rental;
- Ownership and user experiences; and
- Any other issues deemed relevant or appropriate by DMV.

The Chairman requested DMV to submit a report outlining the stakeholders' recommendations to the Senate Transportation Committee in December 2019.²

In addition to staff from DMV, SCC, and TAX, DMV invited representatives from traditional rental vehicle companies, the peer-to-peer rental vehicle industry, law enforcement, the insurance industry, the banking industry, the Virginia Automobile Dealers Association (VADA), the Virginia Independent Automobile Dealers Association (VIADA), the Virginia Trial Lawyers Association (VTLA), other transportation industry representatives, local government, and the Office of the Attorney General.³

During the meetings, stakeholders considered how to define peer-to-peer vehicle rental and whether it is appropriate to distinguish it from traditional vehicle rental. In general, because peer-to-peer industry participants refer to the peer-to-peer vehicle rental activity as “sharing” to distinguish it from traditional vehicle rental, the term “sharing” will be used throughout this

¹ House Bill (HB) 2813 and Senate Bill (SB) 1733 are found in Appendix B.

² The charge letters from Chairman Carrico are found in Appendix A.

³ A list of stakeholder participants is attached as Appendix C.

report. Distinguishing peer-to-peer vehicle sharing from traditional vehicle rental may be necessary for the purpose of appropriately regulating the business model and protecting consumers who participate in peer-to-peer vehicle sharing and protecting citizens who could be harmed by a shared vehicle during peer-to-peer vehicle sharing. As part of the discussions, stakeholders considered the registration and use of vehicles used in peer-to-peer vehicle sharing because current law allows a vehicle to be registered either as a personal vehicle or as a rental vehicle, but not both. Rental vehicles and the rental of a vehicle are also subject to different taxes than vehicles purchased and owned for personal use. Discussion of whether and how to tax peer-to-peer vehicle sharing invoked questions of tax parity for the owners of those vehicles and general tax policy. Finally, the group considered the following insurance questions: who should maintain insurance on a shared vehicle and at which time during the vehicle sharing period, which insurance policy is primary in cases where multiple parties maintain insurance, how much insurance coverage is necessary, and other more general insurance questions.

Stakeholders were unable to reach consensus on comprehensive recommendations. This report documents the research presented, stakeholder discussions, and the different positions articulated for the registration and use, taxation, and insurance issues addressed. Draft legislation used for discussion and all submitted stakeholder responses to the study report are included in the appendices. The report contains no recommended legislation due to the lack of consensus.

Study Process

The DMV team reviewed the study charge, conducted research related to Virginia's and other jurisdictions' rental vehicle and peer-to-peer vehicle sharing laws, and identified issues to include in the study. After separating the issues into the categories of registration and use, taxation, and insurance, DMV developed an initial stakeholder list, held discussions with stakeholders at SCC and TAX, and prepared a stakeholder presentation.

At the initial stakeholder meeting on May 30, 2019, DMV presented information about Virginia laws related to rental vehicles and peer-to-peer legislation enacted in other jurisdictions. After discussing the issues identified in the charge letter and by DMV, SCC, and TAX, stakeholders were asked to express positions or concerns and to identify additional issues for discussion. Each stakeholder was invited to attend any of the committee meetings scheduled to address registration and use, taxation, and insurance issues. Stakeholders identified model legislation, previously developed by the insurance and peer-to-peer vehicle sharing industries, as well as recent legislation enacted in other states that was not presented at the initial meeting.

Registration and use, taxation, and insurance committees each met twice to discuss issues related to those topics. Each committee reviewed relevant Virginia laws, model and other jurisdictional legislation, and draft legislation prepared by DMV in response to stakeholder-identified issues and concerns. A smaller subgroup of the insurance committee met with the active participation of SCC to discuss insurance issues and to draft compromise insurance legislation in conformity with Virginia-specific insurance laws. The full insurance committee met a third time to discuss the draft prepared by the subgroup. During the course of these discussions, the groups did not reach a compromise on a comprehensive set of recommendations.

The entire stakeholder group held a final meeting for a comprehensive review and discussion of each issue. The stakeholder group did not reach any consensus and made no recommendations.

What is Peer-to-Peer Vehicle Sharing?

Peer-to-peer vehicle sharing spans a wide variety of business models. The initial version of peer-to-peer vehicle sharing involved the owner of a personal vehicle using a software application (app) to register to offer a vehicle for rent. A potential renter used the same app to register as a driver and choose a vehicle to rent. The peer-to-peer vehicle sharing platform providing the app facilitated the rental, instead of merely advertising the availability of a rental, by providing standard contractual terms and conditions, verifying the identity of the parties involved, and providing insurance. Renters typically used the rental vehicles for non-commercial purposes such as filling a transportation need when traveling.

However, as the industry developed, other business models emerged. The following examples are not exhaustive, but describe other common business practices. Vehicle owners may offer their personal vehicles for rent on platforms advertising the sale or rental of many types of items. On other platforms, businesses own some of the vehicles and also facilitate the rental of vehicles owned by others. Some platforms facilitate the rental of vehicles for commercial services in the gig economy, allowing an individual to rent a vehicle specifically for the purpose of driving for a transportation network company (TNC) like Uber or Lyft.

For purposes of this report and study, DMV considered four key participants in peer-to-peer vehicle sharing transactions and used the following terms: shared vehicle owner (the rentor), shared vehicle driver (the renter), peer-to-peer vehicle sharing platform, and insurer.

Peer-to-Peer Vehicle Sharing Legislation in other States

At the time of the drafting of this report, eight states have enacted legislation relating to peer-to-peer vehicle sharing. The first three states to enact legislation, California, Oregon, and Washington, enacted similar peer-to-peer vehicle sharing legislation from 2010 - 2012. These jurisdictions generally defined peer-to-peer vehicle sharing as the use of a “private passenger motor vehicle” for “personal vehicle sharing” as part of a “personal vehicle sharing program.”⁴ Motorcycles, mopeds, and commercial motor vehicles (including vehicles used in the gig economy to transport people and property for compensation) were not included in these definitions.

These jurisdictions imposed the following requirements on peer-to-peer vehicle sharing platforms:

- Provide insurance coverage during the vehicle sharing period;
- Provide the registered owners of the shared vehicles with proof of the peer-to-peer vehicle sharing platform’s compliance with insurance requirements;
- Maintain records concerning the rental period and the renter and provide them to interested parties upon request;
- Provide disclosures about applicable law to the shared vehicle owner and driver;
- Maintain any hardware in the shared vehicle necessary for the shared vehicle to be used for peer-to-peer vehicle sharing;
- Refrain from permitting the shared vehicle to be used for commercial use; and
- Maintain primary liability of the owner in the event of loss or injury that occurs during the vehicle sharing period.⁵

These states did not address questions of taxation. The definition of a peer-to-peer shared vehicle is restricted to a vehicle for which the shared vehicle owner’s annual income from peer-to-peer vehicle sharing does not exceed the annual average cost of owning and operating the vehicle.

In 2018, Maryland enacted peer-to-peer vehicle sharing legislation. In 2019, Colorado, Indiana, Maine, and Ohio also enacted legislation. This recent legislation is more comprehensive and addresses insurance, consumer protection, and taxation issues not addressed previously. Stakeholders reviewed the legislation from Maryland, Colorado, and Indiana, which is summarized in this report.

Maryland, Indiana, and Colorado enacted similar legislation in terms of insurance and consumer protection issues, which mirrors model legislation shared with stakeholders. The model legislation served as a starting point for discussion during this study. (For reference, the model legislation is found in Appendix C.) While the model legislation does not address taxation, the legislation that passed does. However, the taxation issues are addressed differently

⁴ Cal Ins. Code § 11580.24.

⁵ Cal Ins. Code § 11580.24.

in each state, in part because each state levies different types of taxes on vehicles and vehicle rental transactions.

Maryland uses the terms “peer-to-peer car sharing” and “peer-to-peer car sharing program.”⁶ Maryland specifies that a peer-to-peer vehicle sharing platform is not a vehicle rental company, that vehicle sharing is not commercial use, and that peer-to-peer vehicle sharing is not vehicle rental. In Maryland, commercial motor vehicles requiring a commercial driver’s license to operate may not be shared on a peer-to-peer vehicle sharing platform.

Under Maryland’s law, a peer-to-peer vehicle sharing platform must:

- Use the same collision damage waiver form used by rental vehicle companies when the form is required;
- Hold (or have employees hold) a limited lines license to sell insurance products;
- Assume the liability of a shared vehicle owner during the vehicle sharing period;
- Provide consumer disclosures;
- Ensure a shared vehicle owner and a shared vehicle driver are insured during the car sharing period, allowing the insurance requirement to be met by insurance provided by a shared vehicle owner or the peer-to-peer vehicle sharing program;
- Maintain records which must be made available to law enforcement and certain authorized representatives for inspection;
- Enter a concession fee agreement to operate at airports;
- Verify a shared vehicle does not have a safety recall at the time of registration with the platform; and
- Verify the age of the shared vehicle and request from a shared vehicle owner the date of the last state safety inspection on a shared vehicle.

Maryland also explicitly limits registration as a shared vehicle driver to individuals with a valid driver’s license who are of the same age or older than Maryland’s driving age limits, requires shared vehicles 10 years or older to be inspected within 90 days of becoming part of a peer-to-peer vehicle sharing program, requires shared vehicle owners to obtain a valid state inspection certificate at least once every 10,000 miles added to the shared vehicle’s odometer, and allows insurers to exclude coverages for peer-to-peer vehicle sharing.

Maryland addressed taxation by imposing a sales and use tax rate of 8% on peer-to-peer vehicle sharing transactions for an initial two-year period and ordered the Maryland Motor Vehicle Administration to submit a report by December 31, 2019, comparing tax treatment of motor vehicles subject to rental and peer-to-peer taxes. Maryland imposes an 11.5% tax on short-term passenger car and recreational vehicle rentals and an 8% tax on short-term truck rentals, neither of which is imposed on peer-to-peer vehicle sharing.

In Indiana, both rental vehicle companies and shared vehicle owners are subject to a motor vehicle excise tax. Rental vehicle companies receive a credit against the motor vehicle excise tax for the auto rental excise tax collected. The shared vehicle owner receives no credit. A

⁶ Md. Code, Ins. § 19-520.

rental transaction from a rental vehicle company is subject to a 7% sales tax and an auto rental excise tax of 4% of the gross rental income. Certain counties have an option to pass an ordinance to implement a supplemental auto rental excise tax. The enacted legislation clarifies that peer-to-peer vehicle sharing is different than traditional vehicle rentals and while both transactions are subject to the 7% sales tax, peer-to-peer vehicle sharing is subject to a 2% vehicle sharing excise tax and is not subject to the auto rental excise tax. Localities have the option to pass an ordinance imposing a supplemental vehicle sharing excise tax on peer-to-peer vehicle sharing transactions at 1% of the gross rental income. A vehicle purchased for use as a rental car is exempt from sales tax. The enacted legislation clarifies that a vehicle purchased for peer-to-peer sharing is not exempt from sales tax. The peer-to-peer sharing platform must remit the peer-to-peer vehicle sharing tax if the transaction occurs on the platform. A shared vehicle owner must remit the tax if the vehicle is shared by some other means than a peer-to-peer vehicle sharing platform.

Colorado imposes a \$2 daily rental fee on short-term vehicle rentals and exempts a shared vehicle from the daily vehicle rental fee and from the definition of rental motor vehicle. Colorado does not appear to have imposed a new tax on the car sharing transaction, although stakeholders disagreed on how Colorado's recent legislation will be implemented.

Discussion of Key Definitions for Virginia

To understand the issues that arise in peer-to-peer vehicle sharing in Virginia, it is important to understand how Virginia law currently defines a rental vehicle and the rental of vehicles. Both terms are defined in Title 58.1 (Taxation). Section 58.1-1735 of the *Code of Virginia* (the “*Code*”) defines daily rental vehicle, rental, and rentor:

“Daily rental vehicle” means a motor vehicle, except for a motorcycle or manufactured home defined in § 46.2-100, used for rental as defined in this section and for the transportation of people or property, whether on its own structure or by drawing another vehicle or vehicles.

"Rental" means the transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than 12 months.

“Rentor” means a person engaged in the rental of motor vehicles for consideration as defined in this section.

Other parts of the *Code*, including Title 46.2 (Motor Vehicles), refer to the definition found in Va. Code § 58.1-1735 when addressing a rental vehicle or the rental of vehicles. The *Code* does not address peer-to-peer vehicle sharing. The activity of peer-to-peer vehicle sharing falls within the definition of rental found above.

Neither the term “rental vehicle company” nor the term “motor vehicle rental company” is defined in the *Code*. The terms are used interchangeably. This report will use the term “rental vehicle company.” Because the *Code* does not define a rental vehicle company, it is unclear whether a peer-to-peer vehicle sharing platform is considered a rental vehicle company in Virginia.

Defining the terms “peer-to-peer vehicle sharing,” “peer-to-peer vehicle sharing platform,” and “shared vehicle” is necessary to clarify the legal obligations of each party involved in peer-to-peer vehicle sharing and the legal obligations imposed on a shared vehicle. The definitions are important for the following reasons:

- Current law imposes different registration requirements on a personal vehicle and a rental vehicle and does not specifically address a situation where the vehicle is a personal *and* a rental vehicle;
- Current law imposes different insurance requirements on personal vehicles and rental vehicles, and there is no current obligation to insure a vehicle owned and registered by another;
- Different taxes are imposed on the purchase of a personal vehicle and a rental vehicle, and on the ownership and use of a personal vehicle and a rental vehicle, and sometimes the levy of one tax precludes the levy of another tax; and

- Legal requirements imposed on persons who rent vehicles do not necessarily apply to a peer-to-peer vehicle sharing platform as the facilitator of a rental transaction.

As a starting point for discussions, the stakeholder group considered the following definitions from the model legislation found in Appendix C:

“Shared vehicle” means a vehicle that is available for sharing through a peer-to-peer car sharing program. “Shared vehicle” does not mean rental car or rental vehicle as defined in [insert citation to the State’s statutory definition of “rental car” or the equivalent term in that State’s laws].

“Peer-to-Peer Vehicle Sharing Program” means 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 _____.

Stakeholders representing the peer-to-peer vehicle sharing industry and insurers favor adopting these or similar definitions. Stakeholders representing the traditional rental vehicle industry object to the model definitions asserting they are too broad, or circular. They argue the definitions are circular because a shared vehicle is defined as a vehicle available for sharing through a peer-to-peer sharing program. The problem, they assert, is the original peer-to-peer vehicle sharing business model was contingent on individual ownership but the scope of the business model has broadened to include activities such as manufacturers offering fleets for sharing, which is indistinguishable from traditional vehicle rental. Under the model definitions, a traditional rental vehicle company could list its vehicles on a sharing platform and the vehicles would become shared vehicles, which could lead to the evasion of registration, insurance, and taxation requirements that apply to rental vehicles. The model definitions do not prevent either registering a fleet of vehicles on a peer-to-peer vehicle sharing platform or purchasing and registering a personal vehicle solely for use as a shared vehicle. This definitional problem becomes important if different regulatory schemes are applied to traditional vehicle rental and peer-to-peer vehicle sharing.

Proponents of the model definitions point out that the model legislation’s definition of peer-to-peer vehicle sharing platform defines a new party to the transaction: a third party facilitator. The definition allows the legislature to recognize a third party in the sharing transaction and to impose obligations on that party.

Stakeholders discussed various alternatives to define a shared vehicle. One proposal to narrow the definition was to use a preponderance of use standard to determine whether the vehicle is used primarily for personal use or for rental. This standard can be difficult to enforce and relies upon either the shared vehicle owner or the peer-to-peer vehicle sharing platform to track and accurately report use, which could be especially challenging if a vehicle is offered on more than one platform. Using a preponderance of use standard also requires determining how preponderance of use is calculated. Options include the total amount of time in a given time period a shared vehicle is available for rent, the number of days a shared vehicle is actually

rented, or the number of miles the shared vehicle is driven while rented versus driven for personal use.

Another method to narrow the definition of shared vehicle is to use ownership type as the criteria. For example, if the platform owns the vehicle, it is a rental vehicle, and if the platform does not own the vehicle, it is a shared vehicle. While this method distinguishes between a third party platform and a rental company that lists its own vehicles, it does not prevent a person from placing multiple vehicles, including a fleet of vehicles, on another party's platform and does not prevent a person from purchasing vehicles for the sole purpose of sharing them on a platform. Traditional rental vehicle companies argue when a person holds a vehicle exclusively, or almost exclusively, for rental, that person is in the business of vehicle rental and should be treated accordingly.

After listening to these concerns, DMV offered for consideration and discussion a definition of a shared vehicle intended to limit a shared vehicle to a personal vehicle:

“Peer-to-Peer Shared Vehicle” means a motor vehicle that (i) has been made available for rental by its owner through a peer-to-peer vehicle sharing platform and (ii) has been insured under a personal policy of motor vehicle liability insurance or registered as an uninsured motor vehicle as provided in Va. Code § 46.2-706.

Although there was some support for limiting the definition of a shared vehicle to a personal vehicle, there were many objections to the proposed definition. The proposal excludes personal vehicles insured on a commercial policy and business owned vehicles. Examples were offered as to when it should be permissible for those vehicles to be shared: a vehicle owner insuring a personal vehicle on the same policy the owner maintains to insure the owner's business vehicles or a small business sharing a vehicle on days when it is not needed for business. The definition also places a burden on a peer-to-peer vehicle sharing platform to determine what type of insurance coverage a shared vehicle owner maintains and whether it is a “personal motor vehicle liability insurance policy,” which is not defined in the *Code*.

DMV also offered for consideration and discussion a definition of peer-to-peer vehicle sharing platform intended to allow vehicles not meeting the definition of “peer-to-peer shared vehicle” to be rented on a peer-to-peer vehicle sharing platform. A vehicle not meeting the shared vehicle definition would be treated as a rental vehicle for registration, taxation, and insurance purposes:

“Peer-to-Peer Vehicle Sharing Platform” means any online-enabled application, software, website, or system offered or utilized for the exclusive purpose of renting motor vehicles, including peer-to-peer shared vehicles, and the provision of services incidental to the rental of such vehicles.⁷

⁷ This definition of a platform borrows from the language defining “digital platform” in Virginia's TNC law, Va. Code § 46.2-2000.

However, this definition does not distinguish a rental vehicle company using an online application from a peer-to-peer vehicle sharing platform and fails to recognize the platform as a distinct third party to the transaction. In addition, the use of the word “exclusive” would eliminate a platform facilitating peer-to-peer vehicle sharing transactions if the platform also conducts other business activities, leading to different treatment of the peer-to-peer vehicle sharing transaction based on which platform is used.

Stakeholders also proposed linking the definitions to Virginia’s marketplace facilitator law.⁸ The advantages of a linked definition include a definition that recognizes both the third-party facilitator and instances where the activity occurs on a platform. Linking the platform definition to the transaction could ensure all of the transactions receive similar tax treatment. Linking the definition to the marketplace facilitator law could ensure the platform stands in the place of the rentor to fulfil any duties imposed on the rentor. This proposal generated some interest but was not explored in more detail due to lack of consensus on other issues.

⁸ Va. Code § 58.1-612.1.

Registration and Use

In Virginia, a vehicle is registered with DMV as either a personal vehicle or a rental vehicle, but not both. The type of registration affects both the taxation and insurance requirements on the vehicle, which will be discussed in more detail in later sections of this report. This section will address questions of what types of vehicles should be eligible for peer-to-peer vehicle sharing in Virginia, whether shared vehicle owners should be given certain privileges that the *Code* affords to rental vehicle companies as owners, whether the current requirement for a rental decal should apply to shared vehicles, and other consumer protection and regulatory issues unrelated to taxation and insurance.

What types of vehicles may be shared?

As discussed earlier, different states have placed limitations on what types of vehicles can be shared on peer-to-peer vehicle sharing platforms, including limiting shared vehicles to four-wheeled, non-commercial vehicles. Stakeholders considered whether to allow sharing of vehicles with special registrations like antique vehicles, vehicles with disabled plates, or farm use plates; commercial motor vehicles; vehicles registered out-of-state, such as vehicles belonging to military members stationed in Virginia; and government-owned vehicles. Stakeholders generally agreed allowing the peer-to-peer vehicle sharing platforms to facilitate the rental of different types of vehicles allows customized approaches to peer-to-peer vehicle sharing, increases mobility options, and encourages innovative business uses. Examples of innovative uses include a commercial driver obtaining the use of a vehicle through a platform for work purposes or a disabled person renting a specially equipped vehicle while traveling.

Generally, stakeholders expressed approval of a vehicle being placed on a platform under the following conditions:

- The vehicle must be properly registered under Title 46.2 of the *Code*, which includes vehicles registered in another state where permitted, such as with active duty military members;
- The sharing use must comply with any legal restrictions on the use of the vehicle, including operating restrictions on vehicles with special plates;
- The renter must possess the requisite statutory authority to operate the vehicle; and
- Fleet vehicles, including government vehicles, can be placed on a platform if the owner authorizes the use and the use is not restricted by fleet operational requirements.

However, law enforcement expressed a concern with allowing vehicles with antique or farm use plates to be shared because enforcing restrictions on the lawful operation of those vehicles is already difficult.

Statutory Privileges Afforded to Rental Vehicle Companies

After discussing the types of vehicles that can be shared, stakeholders turned their attention to provisions of the *Code* that afford special treatment to rental vehicle companies as vehicle owners. A number of sections in the *Code* relieve a rental vehicle company of the statutory presumption that a vehicle owner is responsible for tolling, littering, or high occupancy vehicle lane use violations. The group reached consensus that there is no reason to release the statutory presumption against the owners of peer-to-peer shared vehicles because the shared vehicles are often operated by their owners, whereas rental vehicles are not. For all vehicle owners, the presumption of liability attaching to the vehicle owner can be rebutted by evidence that at the time of the violation the vehicle was not owner-operated. In the context of peer-to-peer vehicle sharing, a shared vehicle owner can offer proof of the vehicle sharing agreement during the time of any alleged violation to rebut the presumption of liability. Stakeholders representing the peer-to-peer vehicle sharing industry noted many platforms address these issues contractually in the peer-to-peer vehicle sharing agreement.

Rental Decals

Another registration issue the group addressed is the requirement that DMV issue appropriately designed plates for motor vehicles held for rental.⁹ DMV currently meets this requirement by issuing uniquely colored registration decals to vehicles registered as rental vehicles. The group generally discussed the history of this requirement, its value for law enforcement purposes, whether the requirement should apply to peer-to-peer shared vehicles, and even how the requirement was addressed and evolved in the context of TNC legislation. Ultimately, stakeholders, including law enforcement and DMV, agreed there is no need to place a rental decal on shared vehicles and the requirement can be eliminated for rental vehicles as well.

Record-Keeping Requirements

Both the model legislation and the *Code* address record-keeping requirements in the context of vehicle rental. In Virginia, persons engaged in the business of renting motor vehicles must “maintain a record of the identity of the person to whom the vehicle is rented and the exact time the vehicle is rented or in possession of the renter,”¹⁰ which is less demanding than what the model language requires of peer-to-peer vehicle sharing platforms.

The model language requires the peer-to-peer vehicle sharing platforms to maintain additional records including:

- The identity of the owner and authorized driver of a shared vehicle;
- The driver’s license number and place of issuance of any authorized shared vehicle driver;
- The times the shared vehicle is used;

⁹ Va. Code § 46.2-711(C).

¹⁰ Va. Code § 46.2-108(A).

- The fees paid by the shared vehicle driver; and
- Revenues received by the shared vehicle owner.

DMV proposed adding language to Va. Code § 46.2-108 to impose the same record-keeping requirements on rental vehicle companies and on peer-to-peer vehicle sharing platforms. The peer-to-peer vehicle sharing industry participants expressed concern with the current statutory language of Va. Code § 46.2-108 indicating that these records are “public records.”

The *Code* is silent on the issue of how long records must be maintained and the model legislation requires retaining records “for a time period not less than the applicable personal injury statute of limitations.” In Virginia, different statutes of limitations apply to personal injury and property damage claims and statutes of limitation are tolled when an injured party is a minor or under a disability. Generally, stakeholders agreed maintaining records for the amount of time required by the applicable statute of limitations is sufficient, although the personal injury statute of limitations is longer.

Safety Recalls

As a consumer protection issue, stakeholders discussed how peer-to-peer vehicle sharing platforms should address safety recalls. The model legislation requires peer-to-peer vehicle sharing platforms to check a shared vehicle for safety recalls before it is placed on the platform and requires shared vehicle owners to remove the shared vehicle from availability on the platform or from an active rental within 72 hours of receiving a recall notice. Stakeholders representing platforms were comfortable with these requirements, while stakeholders representing rental vehicle companies and the VTLA argued in favor of more stringent requirements. Federal law prohibits any rental company or dealer with a fleet greater than 35 vehicles to rent unrepaired recalled vehicles.¹¹

As a practical consideration, a peer-to-peer vehicle sharing platform does not own the vehicles and does not receive actual notice of vehicle safety recalls, whereas the vehicle owners, including traditional rental vehicle companies, do receive the notice. Stakeholders representing peer-to-peer vehicle sharing platforms contend that because the National Highway Safety Transportation Administration does not provide a method for checking vehicles for safety recalls other than to manually enter vehicle identification numbers, checking vehicles more frequently than at the time of registration presents an operational impracticality. If a duty to check for safety recalls is imposed on the peer-to-peer vehicle sharing platform, the frequency with which each vehicle is checked will have to be established.

Those opposed to more stringent requirements on peer-to-peer vehicle sharing platforms argued the federal law addressing the rental of vehicles from rental companies or dealers covers entities owning 35 or more vehicles and questioned whether Virginia law should go further. They claimed because peer-to-peer shared vehicles are personally owned and driven, the shared vehicle owner has a personal incentive to repair a vehicle with an active safety recall. Those in favor of requiring peer-to-peer vehicle sharing platforms to regularly check for vehicle safety

¹¹ 49 U.S.C. § 30120.

recalls countered that any legislation should contemplate the worst case use of platforms, not the best case, and indicated shared vehicle owners may not be as responsive to business and liability pressures as rental vehicle companies and may be less likely to obtain repairs. The group did not reach consensus on this issue.

Consumer Protection Notices

For consumer protection purposes the stakeholder group discussed whether peer-to-peer vehicle sharing platforms should provide the following notices to consumers and generally agreed such notices are helpful to consumers and should be given:

- The peer-to-peer shared vehicle platform can seek indemnification from the shared vehicle owner or the shared vehicle driver for losses sustained by the platform resulting from a breach of the terms of the platform agreement;
- Any insurance provided by the platform does not provide a defense or indemnification for a claim asserted by the platform;
- Insurance coverage provided during the vehicle sharing period does not cover losses incurred after the sharing termination time;
- In certain circumstances a state law or regulation may impose on an individual driver the duty to maintain more or additional insurance coverage than what is provided by the platform;
- If the peer-to-peer vehicle sharing platform is not providing physical damage coverage, a shared vehicle owner's policy may not provide physical damage coverage; and
- Sharing a vehicle on a peer-to-peer vehicle sharing platform might be a violation of the terms of a shared vehicle owner's lien or lease agreement.

Airport Concessions

Most airports require rental vehicle companies to enter into concession agreements for the privilege of doing business at the airport. Some jurisdictions require peer-to-peer vehicle sharing platforms to enter into concession agreements with airport authorities when vehicle sharing activities are conducted on airport premises. Since peer-to-peer vehicle sharing platforms do not have a physical presence at the airport, but facilitate vehicle sharing transactions on airport premises, an off-airport concession is required. While the *Code* grants an airport authority broad general power to regulate business activities on airport property, the stakeholder group debated whether it is a better practice to legislate specific authority to require peer-to-peer vehicle sharing platforms to enter concession agreements or to rely on existing provisions of law. The stakeholder representing airports advocated in favor of stipulating the authority expressly.¹²

¹² Va. Code § 46.2-299.48(L) offers specific language with regard to Transportation Network Companies operating on airport property. Language proposed by a stakeholder representing Metropolitan Washington Airports Authority is included in Appendix F.

User Experience, Idle Assets, and Increased Mobility Options

The study group was charged to consider user experiences, idle assets and increased mobility options as they relate to peer-to-peer vehicle sharing. The stakeholders were invited to share information related to these topics and what follows is a summary of the information communicated at the stakeholder meetings.

Representatives of Turo, a peer-to-peer vehicle sharing platform, indicated shared vehicle owners use vehicle sharing to offset the cost of vehicle ownership. According to Turo, the average shared vehicle owner using the platform in Virginia earns about \$2,200 annually from vehicle sharing. Approximately 17% of Turo's customers are active duty military members or veterans, and 97% of Turo's customers share two to three vehicles, with the majority sharing family-owned vehicles. Around half of Turo's peer-to-peer vehicle sharing transactions in Virginia occur between two Virginia residents. Enterprise Holdings countered with its research suggesting the majority of peer-to-peer vehicle sharing activity is driven by "power users," defined as entities sharing four or more vehicles.

Peer-to-peer vehicle sharing industry stakeholders communicated examples of increased mobility options afforded by peer-to-peer vehicle sharing. Charitable foundations have explored sharing vehicles in underserved communities, and municipalities have considered making shared vehicles available near public transit to encourage tourism. They noted while most peer-to-peer vehicle sharing occurs in densely populated areas, peer-to-peer vehicle sharing is spreading to rural and suburban communities where rental cars are less available.

The type of vehicle which can be shared and the use of peer-to-peer shared vehicles were the most straightforward issues the study group addressed. On these topics there were broad areas of agreement; however, the stakeholders were unable to reach consensus on the more controversial issues of taxation and insurance, which are discussed in the next sections.

In its research, DMV discovered some shared vehicle owners are using a peer-to-peer vehicle sharing platform to offer a vehicle with a driver. DMV informed stakeholders during the meetings that a chauffeured car is not a vehicle rental, but instead is for-hire passenger transportation. Specifically, the offering of chauffeured services makes the platform a "broker" of passenger transportation, and the vehicle owner offering the chauffeured service a "motor carrier" of passengers, as those terms are defined in Va. Code § 46.2-2000. Both brokers and motor carriers are subject to regulation by DMV. The agency's enforcement officers will be monitoring the platforms to ensure they are not unlawfully offering for-hire passenger transportation.

Taxation

The discussion of taxation issues is complicated because different taxes are levied against the purchase, ownership, and rental of vehicles in Virginia. Understanding the different taxes, how they are levied, and how they are distributed is key to an informed discussion of the taxation of peer-to-peer vehicle sharing. The relevant taxes are summarized below to enable a better understanding of the stakeholder discussions.

In Virginia, the motor vehicle rental tax (MVRT) includes a 4% levy on the rental of any motor vehicle, and an additional 4% tax and 2% fee on the rental of any daily rental vehicle.¹³ The total MVRT is thus 10% of gross proceeds from the rental. The tax is levied against the renter, the person renting the motor vehicle, and the tax is collected and remitted by the rentor.¹⁴ To administer this tax, every rentor engaged in the rental of motor vehicles in Virginia is required to file an application for a Certificate of Registration with TAX for the collection and payment of the MVRT.¹⁵

Approximately 40% of the MVRT is distributed to localities, 40% is distributed amongst three special funds,¹⁶ and 20% is distributed to the general fund for debt service on the Virginia State Police radio system.

A motor vehicle sales and use tax (MVSUT) is a levy of 4.15% on the sale price of a vehicle sold in Virginia or sold elsewhere but used or stored for use in Virginia. The tax is collected by DMV at the time the vehicle is titled in Virginia. Rental vehicle companies are excluded from this tax because it does not apply to “a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.”¹⁷ Although “established business” is not defined in the *Code*, as an administrative matter if a vehicle owner applies for a Certificate of Registration with TAX for the collection and payment of the MVRT and provides that information to DMV at the time the vehicle is titled, DMV will regard the vehicle as falling within the scope of the statutory exclusion and no MVSUT will be collected.

A tangible personal property tax (TPPT) is levied by localities annually on the assessed value of motor vehicles and other tangible personal property. However, a daily rental vehicle subject to the 4% motor vehicle rental tax on daily rental vehicles is not subject to tangible

¹³ Motorcycles and mobile homes are not considered daily rental vehicles. Va. Code § 58.1-1735.

¹⁴ Va. Code § 58.1-1736 et seq.

¹⁵ “Guidelines for the Motor Vehicle Rental Taxes and Fee,” amended July 1, 2013, Department of Taxation, <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/13-109>. At this time, TAX’s records reflect that only 18 individuals are registered to remit the motor vehicle rental tax. An online search of peer-to-peer platforms for vehicles available in Virginia reveals many more than 18 vehicles available for rent in Virginia through peer-to-peer platforms, suggesting individual owners currently using peer-to-peer vehicle sharing platforms are not collecting and remitting the motor vehicle rental tax.

¹⁶ 25% Washington Metropolitan Area Transit Authority Capital Fund, 50% Rail Enhancement Fund, 25% Transportation Trust Fund.

¹⁷ Va. Code § 58.1-2402(A).

personal property tax or to the license taxes and fees imposed by Virginia localities.^{18 19} When a vehicle has been registered with DMV as a rental vehicle, DMV provides registration information to localities and no TPPT is assessed on the vehicle.

The revenue from MVSUT and TPPT is distributed to localities and special funds, with approximately 47% of the revenue distributed to localities and 53% distributed to transportation special funds. Rental vehicle companies are exempt from these two taxes.

In summary, personally owned motor vehicles in Virginia are subject to the MVSUT and TPPT. Rental vehicles are not subject to those taxes. Based on a reading of these statutes and an examination of DMV and TAX documents, government stakeholders concluded the MVRT applies to peer-to-peer vehicle sharing, but very few shared vehicle owners are currently registering with TAX to collect or remit the motor vehicle rental tax. Instead, the shared vehicles are registered as personal vehicles and their owners have paid the MVSUT and are subject to an annual TPPT.

Localities may levy either the merchants' capital tax,²⁰ a tax assessed annually on business inventory on the date of the assessment, or a Business, Professional, and Occupational License (BPOL)²¹ tax, but not both.²² The rate of the BPOL tax varies by locality, is more frequently used than the merchants' capital tax, and is a levy against the gross receipts of a business. In many localities the BPOL tax is a flat fee of \$50 or less on gross receipts up to \$100,000, and a variable rate thereafter. The BPOL tax on gross receipts is not dependent on whether a vehicle is registered as a rental vehicle.

In matters of taxation and registration, the *Code* does not contemplate a mixed use shared vehicle. Imposing a tax on peer-to-peer vehicle sharing requires a policy decision on both whether *and* how to levy a tax against this mixed use because, as currently written, the levy of one tax precludes the levy of another tax and can significantly change the amount of tax revenue collected and the distribution of that revenue. Stakeholders did not reach consensus on the issue of taxation of peer-to-peer vehicle sharing but enumerated a host of competing policy considerations.

Proponents of taxing peer-to-peer vehicle sharing at a rate lower than the MVRT argue policymakers should take a holistic view of the overall taxes paid in relation to a particular vehicle. Those who favor the holistic approach addressed tax parity and argued that while a shared vehicle owner has paid both the MVSUT and an annual TPPT, a rental vehicle company has paid neither. Imposing a lower tax on peer-to-peer vehicle sharing allows the legislature to account for the tax exemptions granted to rental vehicle companies. They contend taxes are always built into the ultimate price of a service, which will impact demand, profits, and the price that can be charged for the service.

¹⁸ Va. Code §§ 46.2-755(C), 58.1-3500 (excluding merchants' capital from the tax on tangible personal property), and 58.1-3510(A) (defining merchants' capital to include daily rental vehicles).

¹⁹ Va. Code § 58.1-1736(A). When added together, the entire MVRT is 10%, however 4% of the tax and the 2% fee are only levied on a daily rental vehicle.

²⁰ See Va. Code § 58.1-3509, et seq.

²¹ See Va. Code § 58.1-3700, et seq.

²² Va. Code § 58.1-3704.

Additionally, these stakeholders asserted policymakers often consider the entire tax burden on a good or service and establish tax rates to encourage or discourage certain activities. Peer-to-peer vehicle sharing is a new economic activity providing vehicle owners with new opportunities to earn income and expanding the range of vehicles from which renters can choose. Stakeholders supporting peer-to-peer vehicle sharing assert other jurisdictions have considered the sales tax rate and the vehicle rental tax rate and have settled on a tax rate between the two as the appropriate levy on peer-to-peer vehicle sharing.

Peer-to-peer vehicle sharing industry stakeholders also point to the *Code*, which permits a rental vehicle company to separately itemize and charge to the consumer a vehicle license fee to recoup the cost of licensing, titling and registering its rental fleet, a benefit not available to shared vehicle owners.²³ Under Va. Code § 46.2-755(D), the daily amount charged by the rental vehicle company is tied to its actual annual cost incurred in licensing its vehicles. Although the vehicle license fee charged to the renter amounts to cents per day, stakeholders argue it represents a policy decision permitting the rental vehicle company to recoup some of the expenses associated with vehicle ownership.

On the other side of the debate, stakeholders emphasized the MVRT is a tax on the rental transaction, and policymakers should only consider the rental transaction when establishing a tax rate. They point out the MVRT is paid by the renter and is only collected and remitted by the rentor (the vehicle owner). Whether a renter rents from a traditional rental vehicle company or uses a peer-to-peer vehicle sharing platform, the same rental transaction occurs. In other words, the renter is consuming the same service and a preferential tax treatment should not be given to those choosing a peer-to-peer vehicle rental rather than a traditional vehicle rental.

They add there is no general tax policy that an asset such as a motor vehicle is only taxed once; in fact, an asset is often taxed multiple times over the course of its lifetime. Stakeholders note when an asset is purchased at wholesale solely for use in resale, it is exempt from sales tax because the sales tax is a retail transaction tax. This is true in cases other than rental vehicles. However, when a peer-to-peer sharing vehicle is purchased, it is purchased for mixed use and is subject to the sales tax for the personal use that has no bearing on a tax later levied against a third party on the rental transaction. A wholesale transaction is often untaxed because when the asset is later resold the retail tax applies. When a rental vehicle company sells a vehicle in its fleet, the sale is subject to the MVSUT.

Rental vehicle industry stakeholders noted only three states (at the time of the discussion) have enacted relevant peer-to-peer vehicle sharing tax legislation and while Maryland imposed a lower tax rate, Maryland also included a sunset clause on the lower tax rate.

Stakeholders representing localities, which receive revenue from MVRT, MVSUT and TPPT, stressed the importance of the tangible personal property tax revenue as one of the primary sources of income for localities and emphasized that no tax policy decision should adversely impact that revenue stream. Local government representatives aligned with the traditional rental vehicle companies in questioning any policy decision granting a reduced tax

²³ Va. Code § 46.2-755(D).

rate to a consumer who chooses a peer-to-peer vehicle rental rather than a traditional vehicle rental. For the locality, whether a consumer uses a peer-to-peer vehicle sharing platform or a rental vehicle company, the impact of the car rental is the same in terms of emissions and pavement impact. Localities expressed the general concern that when a transaction is taxed at the point of transfer, either by a rental vehicle company or by a peer-to-peer vehicle sharing platform, the vehicle may be used to travel in a locality not receiving any share of the tax revenue.

Stakeholders from the peer-to-peer vehicle sharing industry countered peer-to-peer vehicle sharing reduces local impact because a shared vehicle owner does not use a shared vehicle during the sharing period, thereby causing no net increase in the number of vehicles on the road. They argued the increased economic activity permitted by peer-to-peer vehicle sharing compensates for any increased impact. However, other stakeholders argued infrastructure impacts are caused by vehicle miles traveled, not by the number of vehicles.

During taxation discussions the group addressed the concept of granting a tax credit against the MVRT for shared vehicle owners who have already paid the annual TPPT. There is some precedent for this concept as Va. Code § 58.1-1740 grants a credit to “any rentor subject to the additional tax on the rental of a daily rental passenger car for a portion of the tangible personal property tax assessed by a Virginia locality on such car.” Although this section has never been repealed, it is not often used. Government and peer-to-peer industry stakeholders agreed granting a credit to shared vehicle owners would be administratively difficult for both government officials and peer-to-peer vehicle sharing platforms.

DMV also presented for discussions the concept of imposing a lower tax rate on peer-to-peer vehicle sharing by excluding a peer-to-peer shared vehicle from the definition of daily rental vehicle in Va. Code § 58.-1735. If a peer-to-peer shared vehicle is not a daily rental vehicle, it is not subject to the additional 4 % MVRT imposed by Va. Code § 58.-1736(A)(2).

Other considerations the group addressed included the difficulty in educating individuals about the current requirement to collect and remit the rental tax or whether the current language of the marketplace facilitator law²⁴ is broad enough to require peer-to-peer vehicle sharing platforms to collect and remit the MVRT on behalf of shared vehicle owners. Although the marketplace facilitator law addresses the retail sales and use tax and does not specifically address other taxes, the provisions of the MVRT regarding the administration of the tax specify that the provisions of Chapter 6 of Title 58.1 of the *Code*, which includes the marketplace facilitator law, apply *mutatis mutandis* to the MVRT.²⁵ If the marketplace facilitator law were interpreted as not applicable to peer-to-peer vehicle sharing platforms, legislation would be needed to impose a requirement on a peer-to-peer vehicle sharing platform to collect and remit a tax on behalf of shared vehicle owners.

On the issue of broader tax policy and total tax revenue, stakeholders urged policy makers to consider that peer-to-peer vehicle sharing has been marketed as a way to reduce individual vehicle ownership and reduced individual vehicle ownership has broader tax revenue

²⁴ Va. Code § 58.1-612.1.

²⁵ Va. Code § 58.1-1738.

implications than what this study addresses. In addition, both MVSUT and TPPT are only assessed against vehicles purchased and registered in Virginia, and shared vehicles may be shared and used in the Commonwealth without being purchased or registered here. With that in mind, stakeholders cautioned policymakers to consider which parties bear the burden of the tax and which parties earn the revenue from the activity.

Stakeholders had opposing viewpoints on whether the MVRT should be imposed on peer-to-peer vehicle sharing and if so, what rate of tax should be imposed. DMV proposed a compromise solution. In the DMV proposal, a peer-to-peer shared vehicle would be subject to a tax on the peer-to-peer vehicle sharing transaction at a rate lower than the MVRT. At the same time, the purchase of a peer-to-peer shared vehicle would remain subject to the MVSUT and the shared vehicle owner would remain liable for TPPT. DMV made this proposal in an attempt to preserve all existing revenue streams, while creating an opportunity for the Commonwealth to benefit from a new revenue stream on the peer-to-peer vehicle sharing business model. This proposal, parts of which can be seen in the stakeholder draft legislation attached as Appendix E, was rejected by stakeholders.

Failure to reach any compromise on the taxation issues made it difficult for stakeholders to successfully resolve the insurance issues which are next addressed, although it seemed as if there were areas of potential agreement.

Insurance

In the insurance committee stakeholders discussed insurance requirements imposed on the peer-to-peer shared vehicle platform, the shared vehicle owner, and the shared vehicle driver. The primary focus of the model insurance legislation is to clearly establish which parties maintain primary insurance coverage during each vehicle sharing time period to ensure a smooth process for claim resolution. The group also addressed other issues related to insurance such as whether peer-to-peer vehicle sharing platforms must comply with the Collision Damage Waiver Act,²⁶ whether peer-to-peer vehicle sharing platform employees should be permitted to obtain a motor vehicle rental contract insurance agent license to sell certain insurance products, and insurance verification for peer-to-peer shared vehicles.

Insurance Coverage

The central insurance issue is maintaining insurance coverage on the shared vehicle while it is being shared. The model language requires the peer-to-peer vehicle sharing platform to ensure the shared vehicle is insured during the peer-to-peer vehicle sharing period and allows the coverage to be maintained by the platform, by the vehicle owner, by the vehicle driver, or by a combination of those parties. The model language clarifies that the platform insurance is primary in the event of a lapse when the driver or owner is providing the primary coverage. Insurance industry stakeholders support this approach.

Today, a shared vehicle driver or owner may not be able to purchase a type of insurance product in Virginia to cover the peer-to-peer vehicle sharing activity. Legislation allowing this option would promote innovation in the industry and encourage the development of new insurance products. Insurance industry stakeholders shared there are companies writing endorsements for TNC coverage that came about as TNC's evolved. Insurance industry stakeholders also stated if legislation only permits the peer-to-peer vehicle sharing platform to provide the primary insurance coverage, there will be no reason for the insurance industry to invest in the development of insurance products covering shared vehicle owners and drivers.

Stakeholders representing peer-to-peer vehicle sharing platforms support the flexibility permitted by the model language for shared vehicle owners or drivers to provide the primary insurance coverage. This approach allows the peer-to-peer vehicle sharing platform to offer discounts to those owners and drivers who provide their own insurance coverage. Under all circumstances, the model language clarifies the platform is primary in the event of a lapse when the driver or owner is providing the primary coverage.

Rental vehicle companies are required to provide the primary insurance coverage and stakeholders expressed concern with any situation requiring a shared vehicle owner or driver to provide the primary insurance coverage in a vehicle sharing transaction.

VTLA emphasized the importance of clearly establishing which policy is primary if there are multiple policies in effect and establishing an order of priority. For example, when both a

²⁶ Va. Code § 59.1-207.28 et seq.

platform and a driver maintain insurance and the driver commits an act of negligence resulting in damage, which policy is primary?

The SCC representative explained under current Virginia law, a vehicle owner's personal automobile policy will provide coverage for any driver who has permission to drive the vehicle.²⁷ Language in the model insurance draft assumes insurers can exclude coverage for the peer-to-peer vehicle sharing activity, which is not true in Virginia. Allowing a Virginia insurer to exclude peer-to-peer vehicle sharing would require a legislative change. The insurance industry indicated it will lobby for the introduction of legislation permitting a limited exclusion.

Because all stakeholders agreed it is critical to establish primary coverage and the priority of coverage and because the model language assumes an insurer can exclude coverage for the peer-to-peer vehicle sharing activity, certain insurance stakeholders met in a smaller group to amend the model language to a version recognizing the specifics of Virginia law. Although no consensus was reached on the model language or the language drafted by the stakeholders, the stakeholder draft legislation is attached as Appendix D.

Discussions Addressing Other Insurance Draft Language

Stakeholders were concerned with model language allowing a peer-to-peer vehicle sharing platform's insurer to deny coverage if a shared vehicle owner makes a fraudulent omission or representation when placing the vehicle on the peer-to-peer vehicle sharing platform. The group agreed an injured party should not be adversely impacted by any contractual dispute between the shared vehicle owner and the platform. They agreed an indemnification clause between the owner and the platform should be used to protect the platform while ensuring coverage for an injured party and also offered narrower fraud and misrepresentation language in the draft insurance legislation.

The model insurance draft contains a definition of vehicle sharing start time including the vehicle delivery period. The definition of vehicle delivery period in the model was intended to cover a period of time when certain peer-to-peer vehicle sharing platforms take possession of the vehicle from the shared vehicle owner and deliver it to the shared vehicle driver, which is not a business model common to all peer-to-peer vehicle sharing platforms. The concern with the definition as written is it could be construed to mean a shared vehicle owner, while delivering the vehicle to the shared vehicle driver, is covered by the peer-to-peer vehicle sharing platform's insurance instead of the shared vehicle owner's insurance. The group agreed the definition of vehicle sharing delivery time could be clarified with the following language:

“Vehicle sharing delivery period” means, if applicable, the period of time beginning when the peer-to-peer platform's designee takes custody of the shared vehicle and ending when the shared vehicle arrives at the location of the vehicle sharing start time as documented by the governing vehicle sharing platform agreement.

²⁷ Va. Code § 38.2-2204.

The model language requires shared vehicles to maintain insurance meeting a state's minimum liability limits. VTLA advocated the minimum liability limits for shared vehicles should be three times the minimum liability requirements for other passenger vehicles in Virginia. VTLA argued because peer-to-peer shared vehicles are not controlled by the peer-to-peer vehicle sharing platform to the same extent that rental vehicles are controlled by rental vehicle companies, the shared vehicles pose an increased safety risk due to possible lack of maintenance. They also argued driving any unfamiliar vehicle is inherently riskier than driving a driver-owned vehicle. Both the rental vehicle industry and the peer-to-peer vehicle sharing industry opposed this position, arguing the minimum liability limits should apply.

When stakeholders reviewed the draft insurance legislation, there was disagreement about what information needs to be provided to an injured party or his representative as a result of a claim. The insurance industry representatives favored releasing information consistent with current law,²⁸ while VTLA favored a more expansive approach. The insurance industry argued requiring claimants to provide medical bills before having access to policy limits provides valuable information to insurers in terms of setting reserves and disclosing the limits of coverage without the exchange of information would hurt insurers. VTLA responded that no burden is placed on the insurance industry by a requirement to disclose policy limits and in the context of peer-to-peer vehicle sharing it is more difficult for a claimant to ascertain who is providing coverage and in what amounts and the policy limits should be disclosed. There was no consensus on this issue.

The model insurance language also includes a provision based on 49 U.S.C. § 30106 relieving the peer-to-peer vehicle sharing platform and the shared vehicle owner from the imposition of liability based solely on ownership of the vehicle. The federal statute relieves a vehicle owner who rents the vehicle from liability for harm to persons or property arising out of the use of the vehicle during a rental if the owner is engaged in the business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing on the part of the owner. This language may be unnecessary in Virginia because Virginia law does not automatically assign vicarious liability to a vehicle owner; however, the group did not reach consensus on either using or excluding this language. Rental industry stakeholders noted the inconsistency of applying a federal statute giving protection to rental vehicle companies to peer-to-peer vehicle sharing platforms while also maintaining a peer-to-peer vehicle sharing platform is not a rental vehicle company.

Virginia Specific Insurance Issues

Stakeholders raised other insurance issues for consideration specific to Virginia. In the Commonwealth, vehicle owners, including rental vehicle companies, are permitted to meet minimum insurance requirements by self-insurance or making a bond, situations that are not contemplated by the model insurance language for peer-to-peer vehicle sharing platforms. No stakeholder objected to allowing peer-to-peer vehicle sharing platforms to meet Virginia's insurance requirements by self-insuring or making a bond.

²⁸ Va. Code § 8.01-417 (C) requires an insurer to provide the bodily injury limits of liability to the injured party if the party produces evidence of medical bills or lost wages exceeding \$12,500.

Stakeholders examined Maryland’s law specifically addressing limited lines licensing for a peer-to-peer vehicle sharing platform and its employees. The group believes Virginia law already addresses whether and when a peer-to-peer vehicle sharing platform must obtain a license.²⁹ DMV noted adding the term peer-to-peer vehicle sharing platform to the definitions of “motor vehicle rental contract enroller” and “motor vehicle rental contract insurance agent” under Va. Code § 38.2-1800 might clarify the type of agent license needed if a peer-to-peer vehicle sharing platform’s employees sell insurance products and this language is included in the stakeholder draft legislation found in Appendix D.

Maryland law also requires peer-to-peer vehicle sharing platforms to comply with Maryland’s Collision Damage Waiver Act. Virginia stakeholders agreed the requirement imposed on rental vehicle companies offering to sell a collision damage waiver as part of a rental agreement³⁰ should also apply to peer-to-peer vehicle sharing platforms offering to sell a collision damage waiver as part of a vehicle sharing agreement. This language is included in the stakeholder draft legislation found in Appendix D.

DMV addressed with stakeholders the insurance verification requirements imposed on Virginia insurers to assist DMV in verifying driver insurance coverage. DMV expressed an interest in having peer-to-peer vehicle sharing platforms participate in that program when, in the course of registering a vehicle on the platform, a platform discovers a vehicle is uninsured. Peer-to-peer industry stakeholders objected to that requirement.

Although stakeholders reached agreement on some areas of the insurance requirements that should apply to peer-to-peer vehicle sharing, there was no overall consensus on the topic permitting DMV to offer recommended draft legislation.

²⁹ See Administrative Letter 2002-9 on the topic of insurance activities requiring persons to be licensed and found at <http://www.scc.virginia.gov/boi/adminlets/2002.aspx>.

³⁰ Va. Code § 59.1-207.31.

Conclusion

The Chairman of the Senate Transportation Committee charged DMV, along with SCC and TAX, to convene a study to consider the issues surrounding peer-to-peer vehicle sharing. During the course of the study, stakeholders diligently met, identified issues, and conducted robust discussions about registration and use, taxation, insurance, and consumer protection. Stakeholders identified the issues, model legislation, and enacted legislation and shared their ideas and concerns.

DMV thanks each stakeholder for the time dedicated to this study and acknowledges each stakeholder's active participation, unique insight, and expertise provided valuable information for consideration on this topic. However, lacking a general consensus on all of the issues, the report contains no recommended legislation.

Appendices

Appendix A: Charge Letters

SENATE OF VIRGINIA



C.W. "BILL" CARRICO, SR.
40TH SENATORIAL DISTRICT
ALL OF GRAYSON, LEE, SCOTT, AND WASHINGTON
COUNTIES; ALL OF THE CITY OF BRISTOL; AND PART OF
SMYTH, WISE, AND WYTHE COUNTIES
P.O. BOX 396
RICHMOND, VIRGINIA 23218
(804) 698-7540

COMMITTEE ASSIGNMENTS:
TRANSPORTATION, CHAIR
EDUCATION AND HEALTH
FINANCE
LOCAL GOVERNMENT
RULES

April 10, 2019

Mr. Richard D. Holcomb, Commissioner
Virginia Department of Motor Vehicles
2300 West Broad Street
Richmond, Virginia 23269

Dear Commissioner Holcomb:

During the 2019 General Assembly Session, Senate Bill 1733, patroned by Senator Cosgrove, and House Bill 2813, patroned by Delegate Sickles, were introduced requiring the Department of Motor Vehicles (DMV) with the consultation of the Department of Taxation, the State Corporation Commission, and other relevant stakeholders to study the implications of electronic peer-to-peer vehicle rental services. In particular, the bills requested that the study include the following:

- issues relating to insurance coverage for accidents and incidents that occur during such a peer-to-peer rental;
- consumer protection laws and regulations protecting traditional vehicle rental company customers but not those using peer-to-peer rentals;
- taxation of peer-to-peer vehicle rental companies; and
- any other issues deemed relevant or appropriate by DMV.

Further, the bills state that the stakeholders must review legislation passed in Maryland in 2018 relating to such peer-to-peer vehicle rental companies. In conversations concerning the bills, the patrons and those advocating for the bill agreed that a letter directing DMV to study this issue would be sufficient to fulfill the purposes of these bills.

Therefore, I request that the Department of Motor Vehicles convene a workgroup of the parties identified above to study SB 1733 and report back to the Senate Committee on Transportation in December of 2019 with the results of the study and the stakeholder's recommendations.

SENATE OF VIRGINIA

C.W. "BILL" CARRICO, SR.
40TH SENATORIAL DISTRICT
ALL OF GRAYSON, LEE, SCOTT, AND WASHINGTON
COUNTIES; ALL OF THE CITY OF BRISTOL; AND PART OF
SMYTH, WISE, AND WYTHE COUNTIES
P.O. BOX 396
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(804) 698-7540



COMMITTEE ASSIGNMENTS:
TRANSPORTATION, CHAIR
EDUCATION AND HEALTH
FINANCE
LOCAL GOVERNMENT
RULES

Sincerely,

Bill

Charles W. Carrico, Sr.
Chair, Senate Transportation Committee

cc: The Honorable John A. Cosgrove, Jr.
The Honorable M. Kirkland Cox
The Honorable Mark D. Sickles
The Honorable Shannon R. Valentine

SENATE OF VIRGINIA

C.W. "BILL" CARRICO, SR.
40TH SENATORIAL DISTRICT
ALL OF GRAYSON, LEE, SCOTT, AND WASHINGTON
COUNTIES; ALL OF THE CITY OF BRISTOL; AND PART OF
SMYTH, WISE, AND WYTHE COUNTIES
POST OFFICE BOX 1100
GALAX, VIRGINIA 24333
(276) 236-0098



COMMITTEE ASSIGNMENTS:
TRANSPORTATION, CHAIR
EDUCATION AND HEALTH
FINANCE
RULES

March 19, 2019

Mr. Richard D. Holcomb, Commissioner
Virginia Department of Motor Vehicles
2300 West Broad Street
Richmond, Virginia 23269

Dear Commissioner Holcomb:

I write to you as Chairman of the Senate of Virginia's Committee on Transportation. During the 2019 Regular Session, the Committee considered Senator John Cosgrove's Senate Bill 1733. The introduced bill directed the Department of Motor Vehicles, in consultation with the Department of Taxation, the State Corporation Commission, and other relevant stakeholders to study the implications of electronic peer-to-peer vehicle rental services. While the Committee tabled the bill, it did so with the intent that the subject matter be referred to the Virginia Department of Motor Vehicles for further review.

Therefore, I request that the Department of Motor Vehicles convene a workgroup of the parties identified above to review and consider: (i) increased mobility options afforded by peer-to-peer rental; ownership and user experiences; (ii) issues relating to insurance coverage for accidents and incidents that occur during peer-to-peer rental; (iii) consumer protection laws and regulations protecting traditional vehicle rental company customers; (iv) taxation of peer-to-peer vehicle rental companies; revenue sources from otherwise idle assets; customized approaches to vehicle rental as a result of peer-to-peer vehicle rental; and (v) any other issues deemed relevant or appropriate by the DMV. Please also review legislation passed by other states on this topic.

I would appreciate receiving a report of your review and findings, as well as your conclusions and any recommendations, no later than December 2019, so they may be properly considered by the Committee during the 2020 Regular Session.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Charles W. Carrico, Sr.
Chair, Senate Transportation Committee

SENATE OF VIRGINIA

C.W. "BILL" CARRICO, SR.

40TH SENATORIAL DISTRICT
ALL OF GRAYSON, LEE, SCOTT, AND WASHINGTON
COUNTIES; ALL OF THE CITY OF BRISTOL; AND PART OF
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COMMITTEE ASSIGNMENTS:

TRANSPORTATION, CHAIR
EDUCATION AND HEALTH
FINANCE
RULES

cc: The Honorable John A. Cosgrove, Jr.
The Honorable M. Kirkland Cox
The Honorable Mark D. Sickles
The Honorable Shannon R. Valentine

Appendix B: SB 1733 and HB 2813

19104516D

SENATE BILL NO. 1733

Offered January 17, 2019

A *BILL to direct the Department of Motor Vehicles to convene a work group to study electronic peer-to-peer vehicle rental services; report.*

Patrons—Cosgrove, DeSteph and Carrico

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Department of Motor Vehicles (the Department), in consultation with the State Corporation Commission and the Department of Taxation, shall convene a work group to study the implications of electronic peer-to-peer vehicle rental services. The Department shall consult relevant stakeholders and shall review and consider (i) issues relating to insurance coverage for accidents and incidents that occur during such a peer-to-peer rental, (ii) consumer protection laws and regulations protecting traditional vehicle rental company customers but not those using peer-to-peer rentals, (iii) taxation of peer-to-peer vehicle rental companies, and (iv) any other issues as deemed relevant or appropriate by the Department. Such work group shall review the 2018 legislation passed in Maryland relating to peer-to-peer rental companies. The Department shall complete its meetings by November 30, 2019, and shall submit to the General Assembly and the Governor an executive summary and a report of its findings and recommendations. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2020 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

INTRODUCED

SB1733

2019 SESSION

INTRODUCED

19106191D

HOUSE BILL NO. 2813

Offered January 30, 2019

A BILL to direct the Department of Motor Vehicles to convene a work group to study electronic peer-to-peer vehicle rental services; report.

Patron—Sickles

Unanimous consent to introduce

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Department of Motor Vehicles (the Department), in consultation with the State Corporation Commission and the Department of Taxation, shall convene a work group to study the implications of electronic peer-to-peer vehicle rental services. The Department shall consult relevant stakeholders and shall review and consider (i) issues relating to insurance coverage for accidents and incidents that occur during such a peer-to-peer rental, (ii) consumer protection laws and regulations protecting traditional vehicle rental company customers but not those using peer-to-peer rentals, (iii) taxation of peer-to-peer vehicle rental companies, and (iv) any other issues as deemed relevant or appropriate by the Department. Such work group shall review the 2018 legislation passed in Maryland relating to peer-to-peer rental companies. The Department shall complete its meetings by November 30, 2019, and shall submit to the General Assembly and the Governor an executive summary and a report of its findings and recommendations. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2020 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

INTRODUCED

HB2813

Appendix C: Stakeholder Participants

Name	Agency, Company or Association
Richard Holcomb	Commissioner, Department of Motor Vehicles
Patrick Harrison	Virginia Department of Motor Vehicles
Tonya Blaine	Virginia Department of Motor Vehicles
Melanie Lester	Virginia Department of Motor Vehicles
Alexandra Berg	Virginia Department of Motor Vehicles
Randy Brooks	Virginia Department of Motor Vehicles
Mary Brett Campbell	Virginia Department of Motor Vehicles
Russell Cross	Virginia Department of Motor Vehicles
Samuel Davenport	Virginia Department of Motor Vehicles
Colby Ferguson	Virginia Department of Motor Vehicles
Linda Ford	Virginia Department of Motor Vehicles
Millicent Ford	Virginia Department of Motor Vehicles
Leslie Grott	Virginia Department of Motor Vehicles
Amanda Hamm	Virginia Department of Motor Vehicles
Carla Jackson	Virginia Department of Motor Vehicles
Katreena Lewis	Virginia Department of Motor Vehicles
Andrew Owens	Virginia Department of Motor Vehicles
Angela Schneider	Virginia Department of Motor Vehicles
Jessica Seier	Virginia Department of Motor Vehicles
Melissa Velazquez	Virginia Department of Motor Vehicles
Werner Versch	Virginia Department of Motor Vehicles
Domica Winstead	Virginia Department of Motor Vehicles
Tray Adams	McGuire Woods/Turo
Joel Andrus	Kemper Consulting/Alliance of Automobile Manufacturers
Vivek Bakshi	Department of Taxation
Deborah Batchelor	Department of Taxation
Peggy Bailey	Virginia Motor Vehicle Dealer Board
Janet Baugh	Office of the Attorney General
Robert Bradshaw	Independent Insurance Agents of Virginia
Don Bragg	Independent Insurance Agents of Virginia
Nicole Brenner	Reed Smith/Maven, General Motors
Michael Bruce	Enterprise
Emma Buck	Division of Legislative Services
Elliott Buckner	Virginia Trial Lawyers Association
Patricia Carroll	Arlington County
Melissa Cheaney	Newport News/Williamsburg International Airport
Mark Chilcott	Enterprise
William Childress	Virginia Motor Vehicle Dealer Board
Sherman Chung	Department of Taxation
Angie de la Barrera	Arlington County
Mark Dix	Virginia Trial Lawyers Association
Nancy Egan	American Property Casualty Insurance Assoc.
Larry Eckhouse	Allstate and Drift
Laura Farmer	Virginia Department of Transportation
Matthew Foster	Virginia Trial Lawyers Association
Anne Gambardella	Virginia Automobile Dealers Association

Tomi Gerber	Enterprise
Kristin Givens	State Farm
Michelle Gowdy	Virginia Municipal League
Nicholas Green	Orrick/Getaround
Ross Grogg	Alliance of Automobile Manufacturers
Vicki Harris	USAA
Mark Haskins	Enterprise
Fred Helm	Kemper Consulting/Alliance of Automobile Manufacturers
Eric Henning	GM and Maven
Joe Hudgins	Independent Insurance Agents of Virginia
Pete Iaricci	Virginia Independent Automobile Dealers Association
Katie Johnson	State Corporation Commission – Bureau of Insurance
Joshua Kaplan	Division of Legislative Services
Alexander Keros	General Motors, Maven
Anne Leigh Kerr	Kerr Government Strategies/USAA, Avis
Allen Kidd	Sinnott, Nuckols & Logan/Virginia Farm Bureau
Mark Kubiak	Office of the Attorney General
Chris LaGow	APCIA, AIG
Joe Lerch	Virginia Association of Counties
Kevin Logan	Sinnott, Nuckols & Logan/Farm Bureau Insurance
Ryan Logan	Sinnott, Nuckols & Logan/Farm Bureau Insurance
Tommy Lukish	Virginia Automobile Dealers Association
Captain Ron Maxey	Virginia State Police
Joseph Mayer	Department of Taxation
Chris McDonald	Virginia Association of Counties
Neal Menkes	Virginia Municipal League
David Miles	Virginia Credit Union League
Manolo Morales	Allstate/Drift
Edward Mullen	Reed Smith/Maven, General Motors
Rebecca Nichols	State Corporation Commission – Bureau of Insurance
Christine Noonan	Reed Smith/Maven, General Motors
Mitchell Nuckles	Commissioners of the Revenue Assn. of Virginia
Christian Parrish	Office of the Attorney General
Robert Passmore	American Property Casualty Insurance Assoc.
Noel Patterson	Allstate/Drift
Michelle Peacock	Turo
Elizabeth Rafferty	Williams Mullen/Metropolitan Washington Airport Authority
Sam Rooks	Virginia Farm Bureau
George Sandridge	Virginia Municipal League
Rich Savage	Allstate and Drift
Dana Schrad	Virginia Association of Chiefs of Police
Tara Stevens	Department of Taxation
Kelly Sue-Ling	Geico
Sean Vinck	Turo
Vaden Warren	Virginia Automobile Dealers Association
Morgan Whayland	City of Norfolk
Michael Woods	Troutman Sanders/Enterprise

Andrew Wright	Department of Rail and Public Transportation
Keven Wright	Department of Taxation

Appendix D: Model Insurance Legislation

Peer-to-Peer Car Sharing Program Act

Final 4-10-19

AN ACT concerning transportation.

Be it enacted by the Legislature of the State of X:

[(New Act) / or / (The statutes of the jurisdiction are hereby amended as follows)]:

Chapter 1. Short Title

This Article may be cited as the Peer-to-Peer Car Sharing Program Act.

Chapter 2. Definitions

Application of definitions

Sec. 1. Except as otherwise provided, the definitions in this chapter apply throughout this article.

“Peer-to-Peer Car Sharing”

Sec. 2. “Peer-to-Peer Car Sharing” means 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” does not mean rental car or rental activity as defined in _____.

“Peer-to-Peer Car Sharing Program”

Sec. 3. “Peer-to-Peer Car Sharing Program” means 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 _____.

“Car Sharing Program Agreement”

Sec. 4. “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” does not mean rental car agreement, or similar, as defined in _____.

“Shared Vehicle”

Sec. 5. “Shared vehicle” means a vehicle that is available for sharing through a peer-to-peer car sharing program. “Shared vehicle” does not mean rental car or rental vehicle as defined in *[insert citation to the State’s statutory definition of “rental car” or the equivalent term in that State’s laws]*.

“Shared Vehicle Driver”

Sec. 6. “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.

“Shared Vehicle Owner”

Sec. 7. “Shared Vehicle Owner” means 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”

Sec. 9. “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.

“Car Sharing Period”

Sec. 10. “Car Sharing Period” means 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”

Sec. 11. “Car Sharing Start Time” means 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”

Sec. 12. “Car Sharing Termination Time” means 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.

Chapter 3. Insurance

Insurance Coverage During Car Sharing Period

Sec. 1. (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 (State’s financial responsibility law).

(b) Notwithstanding the definition of “car sharing termination time” as set forth in Chapter 2 or 3 of this Act, the assumption of liability under subsection (a) of this subsection does not apply to any shared vehicle owner when:

(i) 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

(ii) 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 Chapter 2 or Chapter 3 of this Act, 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 [*insert citation to the applicable state financial responsibility law*]

(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 [*insert citation to applicable statute establishing state minimum coverage*], 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 5 of this Chapter 3.

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 Chapter 3 Section (1)(b).

(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:

- (1) Limits 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) Limits 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.

Notification of Implications of Lien

Sec. 2. 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.

Exclusions in Motor Vehicle Liability Insurance Policies

Sec. 3. An authorized insurer that writes motor vehicle liability insurance 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 motor vehicle liability insurance policy, including but not limited to:

- a. liability coverage for bodily injury and property damage;
- b. personal injury protection coverage as defined in [CITE STATUTE];
- c. uninsured and underinsured motorist coverage;
- d. medical payments coverage;
- e. comprehensive physical damage coverage; and
- f. collision physical damage coverage

Nothing in this Article invalidates or limits 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.

Recordkeeping; Use of Vehicle in Car Sharing

Sec. 5. 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.

Exemption; Vicarious Liability

Sec. 6. 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.

Contribution against Indemnification

Sec. 7. 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.

Insurable Interest

Sec. 8. (a) Notwithstanding any other law, statute, 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 creates liability on a Peer-to-Peer Car Sharing Program to maintain the coverage mandated by this Chapter 3, Sec. 1.

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

- (i) liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement; or
- (ii) any liability of the shared vehicle owner; or
- (iii) damage or loss to the shared motor vehicle; or any liability of the shared vehicle driver.

Chapter 4. Consumer Protections

Disclosures

Sec. 1. Each car sharing program agreement made in the 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 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.
- (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.

Driver's License Verification and Data Retention

Sec. 2. (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 _____ 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 by _____ 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.

Responsibility for Equipment

Sec. 3. 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.

Automobile Safety Recalls

Sec. 4. (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) of this section.

(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.

(3) 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.

Chapter 5. **EFFECTIVE DATE.**

Sec. 1. This Act shall take effect on the day that occurs [*the effective date should be at least nine (9) months after the Act becomes law—insert date here*] after the date on which the Act becomes law.

Drafting Note – *The effective date of the should be a minimum of 9 months from the date the governor signs the legislation.*

Appendix E: Stakeholder Draft Legislation Used for Discussion

Peer-to-Peer Vehicle Sharing Registration and Usage Legislation Draft
(Revised 8/14/2019)

1 Legislation Draft that includes Registration and Usage Issues. Please note that any language
2 proposed to be introduced to the *Code of Virginia* is underlined. If language has been changed
3 since last review it is noted in the comments. If the proposal is to strike existing language in the
4 Code of Virginia that existing language is ~~stricken~~.

5

6 **§ Notification of Implications of Lien**

7 At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer vehicle
8 sharing platform and prior to the time when the shared vehicle owner makes a shared vehicle
9 available for vehicle sharing on the peer-to-peer vehicle sharing platform, the peer-to-peer
10 vehicle sharing platform shall notify the shared vehicle owner that, if the shared vehicle has a
11 lien against it, the use of the shared vehicle through a peer-to-peer sharing platform, including
12 use without physical damage coverage, may violate the terms of the contract with the lienholder.
13

14 **§ Recordkeeping: Use of Vehicle in Vehicle Sharing**

15 A peer-to-peer vehicle sharing platform shall collect and verify records pertaining to the use of a
16 vehicle, including, a record of the identity of the person to whom the vehicle is rented, times
17 used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner
18 and provide that information upon request to the shared vehicle owner, the shared vehicle
19 owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.
20 The peer-to-peer vehicle sharing platform shall retain the records for a time period not less than
21 the applicable statute of limitations.
22

Commented [BNL1]: Addition per request of DMV.

Commented [BNL2]: Change per DMV

23
24 **§ Automobile Safety Recalls.**

Commented [BNL3]: New section on recalls from DMV

25
26 A. At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer vehicle sharing
27 platform and prior to the time when the shared vehicle owner makes a shared vehicle available for vehicle
28 sharing on the peer-to-peer vehicle sharing platform, the peer-to-peer vehicle sharing platform shall:

29 1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have
30 not been made; and

31 2. Notify the shared vehicle owner of the requirements under subsection B of this section.

32 B. 1. If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, a shared
33 vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer vehicle sharing
34 platform until the safety recall repair has been made.

35 2. If a shared vehicle owner receives an actual notice of a safety recall on a peer-to-peer shared vehicle
36 while the shared vehicle is made available on the peer-to-peer vehicle sharing platform, the shared vehicle
37 owner shall remove the shared vehicle as available on the peer-to-peer vehicle sharing platform, as soon
38 as practicably possible after receiving the notice of the safety recall and until the safety recall repair has
39 been made.

40 3. If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being
41 used in the possession of a shared vehicle driver, as soon as practicably possible after receiving the notice
42 of the safety recall, the shared vehicle owner shall notify the peer-to-peer vehicle sharing platform about
43 the safety recall so that the shared vehicle owner may address the safety recall repair.

Peer-to-Peer Vehicle Sharing Registration and Usage Legislation Draft

(Revised 8/14/2019)

§ 46.2-711. Furnishing number and design of plates; displaying on vehicles required.

A. The Department shall furnish one license plate for every registered moped, motorcycle, autocycle, tractor truck, semitrailer, or trailer, and two license plates for every other registered motor vehicle, except to licensed motor vehicle dealers and persons delivering unladen vehicles who shall be furnished one license plate. The license plates for trailers, semitrailers, commercial vehicles, and trucks, other than license plates for dealers, may be of such design as to prevent removal without mutilating some part of the indicia forming a part of the license plate, when secured to the bracket.

B. The Department shall issue appropriately designated license plates for:

1. Passenger-carrying vehicles for rent or hire for the transportation of passengers for private trips, other than TNC partner vehicles as defined in § 46.2-2000 and emergency medical services vehicles pursuant to clause (iii) of § 46.2-649.1:1;

2. Taxicabs;

3. Passenger-carrying vehicles operated by common carriers or restricted common carriers;

4. Property-carrying motor vehicles registered pursuant to § 46.2-697 except pickup or panel trucks as defined in § 46.2-100;

5. Applicants, other than TNC partners as defined in § 46.2-2000 and emergency medical services vehicles pursuant to clause (iii) of § 46.2-649.1:1, who operate motor vehicles as passenger carriers for rent or hire;

6. Vehicles operated by nonemergency medical transportation carriers as defined in § 46.2-2000; and

7. Trailers and semitrailers.

~~C. The Department shall issue appropriately designated license plates for motor vehicles held for rental as defined in § 58.1-1735.~~

C. The Department shall issue appropriately designated license plates for low-speed vehicles.

D. The Department shall issue appropriately designated license plates for military surplus motor vehicles registered pursuant to § 46.2-730.1.

E. No vehicles shall be operated on the highways in the Commonwealth without displaying the license plates required by this chapter. The provisions of this subsection shall not apply to vehicles used to collect and deliver the United States mail to the extent that their rear license plates may be covered by the "CAUTION, FREQUENT STOPS, U.S. MAIL" sign when the vehicle is engaged in the collection and delivery of the United States mail.

F. For any summons issued for a violation of this section, the court may, in its discretion, dismiss the summons, where proof of compliance with this section is provided to the court on or before the court date.

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft

(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

1 Legislation Draft that includes Taxation Issues. Please note that any language proposed to be
2 introduced to the *Code of Virginia* is underlined. If model language has been changed it is noted
3 in the comments. If the proposal is to strike existing language in the Code of Virginia that
4 existing language is ~~stricken~~.

5 § 58.1-1735. Definitions.

6 As used in this article, unless the context requires a different meaning:

7 “Daily rental vehicle” means a motor vehicle, except (i) a motorcycle or a manufactured
8 home as defined in § 46.2-100, used for rental as defined in this section and for the transportation
9 of persons or property, whether on its own structure or by drawing another vehicle or vehicles;
10 and (ii) a peer-to-peer shared vehicle.

11 “Gross proceeds” means the charges made or voluntary contributions received for the
12 rental of a motor vehicle where the rental or lease agreement is for a period of less than 12
13 months. The term “gross proceeds” shall not include:

- 14 1. Cash discounts allowed and actually taken on a rental contract;
- 15 2. Finance charges, carrying charges, service charges, or interest from credit given on a
16 rental contract;
- 17 3. Charges for motor fuels;
- 18 4. Charges for optional accidental death insurance;
- 19 5. Taxes or fees levied or imposed pursuant to Chapter 24 (§ 58.1-2400 et seq.);
- 20 6. Any violations, citations, or fines and related penalties and fees;
- 21 7. Delivery charges, pickup charges, recovery charges, or drop charges;
- 22 8. Pass-through charges;
- 23 9. Transportation charges;
- 24 10. Third-party service charges; or
- 25 11. Refueling surcharges.

26 “Mobile office” means an industrialized building unit not subject to federal regulation,
27 which may be constructed on a chassis for the purpose of towing to the point of use and designed
28 to be used with or without a permanent foundation, for commercial use and not for residential
29 use; or two or more such units separately towable but designed to be joined together at the point

Commented [PH1]: These amendments ensure that P2P shared vehicles remain subject to the Tangible Personal Property Tax, rather than the Merchant’s Capital Tax that applies to daily rental vehicles as defined in this statute. Also see § 58.1-3510.6(E) (rental property other than daily rental vehicles to be classed and taxed as tangible personal property).

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft
(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on, other sites.

“Motor vehicle” means every vehicle, except for a mobile office as herein defined, that is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon, and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks, and vehicles, other than manufactured homes, used in the Commonwealth but not required to be licensed by the Commonwealth.

“Peer-to-peer shared vehicle” means a motor vehicle that (i) has been made available for rental by its owner through a peer-to-peer vehicle sharing platform and (ii) is either insured under a personal policy of motor vehicle liability insurance or registered as an uninsured motor vehicle as provided in § 46.2-706.

“Peer-to-peer vehicle sharing platform” means any online-enabled application, software, website, or system offered or utilized for the exclusive purpose of renting motor vehicles, including peer-to-peer shared vehicles, and the provision of services incidental to the rental of those vehicles.

“Rental” means the transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than 12 months. Any fee arrangement between the holder of a permit issued by the Department of Motor Vehicles for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section. Any fee arrangement between a licensed driver training school and a student in that school, whereby the student may use a vehicle owned or leased by the school to perform a road skills test administered by the Department of Motor Vehicles, shall not be deemed a rental under this section.

“Rental in the Commonwealth” means any rental where a person received delivery of a motor vehicle within the Commonwealth. The term “Commonwealth” shall include all land or interest in land within the Commonwealth owned by or conveyed to the United States of America.

“Rentor” means a person engaged in the rental of motor vehicles for consideration as defined in this section. The term “rentor” shall include a person providing a peer-to-peer vehicle sharing platform, but shall not include the owner of a peer-to-peer shared vehicle.

§ 58.1-1736. Levy.

Commented [ALS2]: This definition distinguishes personal vehicles from rental fleet vehicles that are made available on a platform. We did not use the test of whether a vehicle is subject to Virginia TPPT or MVSUT because some of the vehicles will be out-of-state personal vehicles.

Commented [ALS3]: This definition of a platform borrows from the language defining “digital platform” in Virginia’s TNC law (§ 46.2-2000).

Commented [ALS4]: The duty to remit the rental tax is later imposed on the “rentor.”

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft
(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

64 A. There is hereby levied, in addition to all other taxes and fees of every kind now
65 imposed by law, a tax upon the rental of a motor vehicle in Virginia, without regard to whether
66 such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be
67 levied upon a rental to a person for re-rental as an established business or part of an established
68 business, or incidental or germane to such business. The amount of the tax to be collected shall
69 be determined by the Tax Commissioner by the application of the following rates against the
70 gross proceeds:

71 1. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle,
72 except (i) those with a gross vehicle weight rating or gross combination weight rating of 26,001
73 pounds or more and (ii) peer-to-peer shared vehicles. For peer-to-peer shared vehicles, the rate
74 shall be two percent of gross proceeds from the rental in Virginia.

75 2. In addition to the tax levied pursuant to subdivision A 1, a tax of four percent of the
76 gross proceeds shall be levied on the rental in Virginia of any daily rental vehicle and a tax of
77 two percent of the gross proceeds shall be levied on the rental in Virginia of any peer-to-peer
78 shared vehicle, whether or not such vehicle is required to be licensed in the Commonwealth.

79 3. In addition to all other applicable taxes and fees, a fee of two percent of the gross
80 proceeds shall be imposed on the rental in Virginia of any daily rental vehicle and any peer-to-
81 peer shared vehicle, whether or not such vehicle is required to be licensed in the Commonwealth.
82 For purposes of this article, the rental fee shall be implemented, enforced, and collected in the
83 same manner that rental taxes are implemented, enforced, and collected.

84 B. A motor vehicle subject to the tax imposed under subdivision A 1 of this section shall
85 be subject to the tax under subdivision A 1 or A 2 of § 58.1-2402 when it ceases to be used for
86 rental as an established business or part of an established business, or incidental or germane to
87 such business. This subsection shall not apply to any peer-to-peer shared vehicle upon which the
88 owner has already paid the tax under subdivision A 1 or A 2 of § 58.1-2402.

89 C. Any motor vehicle, trailer, or semitrailer exempt from this tax under subdivision 1 or 2
90 of § 58.1-1737 shall be subject to the tax when such vehicle is no longer rented by the United
91 States government or any governmental agency thereof, or the Commonwealth of Virginia or any
92 political subdivision thereof, unless at such time the vehicle is sold or its ownership is otherwise
93 transferred, in which case the tax imposed by § 58.1-2402 shall apply, subject to the exemptions
94 provided for in § 58.1-2403.

95 **§ 58.1-1741. Disposition of revenues.**

96 A. After the direct costs of administering this article are recovered by the Department of
97 Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be
98 forthwith paid into the state treasury. Except as otherwise provided in this section, these funds

Commented [ALS5]: The combination of the taxes and rates imposed in A1-A3 results in a lighter tax burden on vehicle owners who have already paid MVSUT and TPPT on their vehicles while also imposing a tax on the rental activity and directing the revenue collected in the same manner as already imposed by statute. It is not anticipated that there will be any loss of local revenue or transportation funds as shared vehicle owners will continue to remit TPPT.

Commented [PH6]: Added to coordinate with provisions in MVSUT as amended.

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft

(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

99 shall constitute special funds within the Commonwealth Transportation Fund. Any balances
100 remaining in these funds at the end of the year shall be available for use in subsequent years for
101 the purposes set forth in this article, and any interest income on such funds shall accrue to these
102 funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the
103 construction, reconstruction, and maintenance of highways and the regulation of traffic thereon
104 and for no other purpose. However, (i) all funds collected from the additional tax imposed by
105 subdivision A 2 of § 58.1-1736 on the rental of daily rental vehicles and peer-to-peer shared
106 vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was
107 delivered to the rentee; (ii) except as provided in clause (iii), an amount equivalent to the net
108 additional revenues from the motor vehicle rental tax generated by enactments of the 1986
109 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, and by
110 §§ 58.1-1735, 58.1-1736 and this section, shall be distributed to and paid into the Transportation
111 Trust Fund established pursuant to § 33.2-1524, a special fund within the Commonwealth
112 Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board
113 for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the
114 rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § 58.1-1736 at the tax rate
115 in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury
116 and two-thirds of which shall be paid into the Rail Enhancement Fund established by § 33.2-
117 1601 and one-third of which shall be deposited into the Washington Metropolitan Area Transit
118 Authority Capital Fund pursuant to § 33.2-3401; and (iv) all additional revenues resulting from
119 the fee imposed under subdivision A 3 of § 58.1-1736 shall be used to pay the debt service on the
120 bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio
121 System (STARS) for the Department of State Police pursuant to the authority granted by the
122 2004 Session of the General Assembly.

123 B. As provided in subsection A of § 58.1-638, of the funds becoming part of the
124 Transportation Trust Fund pursuant to subdivision A 2, an aggregate of 4.2 percent shall be set
125 aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the
126 Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the
127 Commonwealth Mass Transit Fund.

128 § 58.1-2402. (Contingent expiration date) Levy.

129 A. (For contingent expiration date — see Acts 2019, c. 52, cl. 2) There is hereby levied,
130 in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or
131 use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an
132 established business or part of an established business or incidental or germane to such business.
133 For purposes of this section, “rental as an established business or part of an established business
134 or incidental or germane to such business” shall not include rental as a peer-to-peer shared
135 vehicle as that term is defined in § 58.1-1735.

Commented [ALS7]: Clarifies that P2P sharing is a type of rental activity, but that the rental activity as a shared vehicle is insufficient to qualify for MVSUT relief.

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft
(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

136 The amount of the tax to be collected shall be determined by the Commissioner by the
137 application of the following rates against the gross sales price:

138 1. Three percent through midnight on June 30, 2013, four percent beginning July 1, 2013,
139 through midnight on June 30, 2014, 4.05 percent beginning July 1, 2014, through midnight on
140 June 30, 2015, 4.1 percent beginning July 1, 2015, through midnight on June 30, 2016, and 4.15
141 percent beginning on and after July 1, 2016, of the sale price of each motor vehicle sold in
142 Virginia. If such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be
143 three percent of the sale price of each such manufactured home sold in the Commonwealth; if
144 such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale
145 price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight
146 rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a
147 manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a
148 trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry
149 property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale
150 price of each such vehicle sold in the Commonwealth; and if such vehicle is an all-terrain
151 vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, sold by a
152 Virginia dealer, or, if sold by anyone other than a Virginia dealer, used or stored for use (a) in a
153 county or city located in a planning district described in § 58.1-603.1, the tax shall be six percent
154 of the sales price of each such vehicle or (b) in any county or city other than those set forth in
155 clause (a), the tax shall be 5.3 percent of the sales price of each such vehicle. In any city or
156 county located within the Historic Triangle, as defined in § 58.1-603.2, an additional one percent
157 tax shall be imposed in addition to the tax prescribed in clause (a) if such vehicle is an all-terrain
158 vehicle, moped, or off-road motorcycle.

159 2. Three percent through midnight on June 30, 2013, four percent beginning July 1, 2013,
160 through midnight on June 30, 2014, 4.05 percent beginning July 1, 2014, through midnight on
161 June 30, 2015, 4.1 percent beginning July 1, 2015, through midnight on June 30, 2016, and 4.15
162 percent beginning on and after July 1, 2016, of the sale price of each motor vehicle, not sold in
163 Virginia but used or stored for use in the Commonwealth; or three percent of the sale price of
164 each manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile
165 office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this
166 Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight
167 rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3,
168 (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in §
169 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-
170 700, the tax shall be zero percent of the sale price of each such vehicle not sold in the
171 Commonwealth but used or stored for use in the Commonwealth. If such vehicle is an all-terrain
172 vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, not sold in the
173 Commonwealth but used or stored for use in the Commonwealth (a) in a county or city located in
174 a planning district described in § 58.1-603.1, the tax shall be six percent of the sales price of each

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft

(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

175 such vehicle or (b) in any county or city other than those set forth in clause (a), the tax shall be
176 5.3 percent of the sales price of each such vehicle. In any city or county located within the
177 Historic Triangle, as defined in § 58.1-603.2, an additional one percent tax shall be imposed in
178 addition to the tax prescribed in clause (a) if such vehicle is an all-terrain vehicle, moped, or off-
179 road motorcycle. When any motor vehicle or manufactured home not sold in the Commonwealth
180 is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be
181 based on its current market value.

182 3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is
183 subject to taxation at a rate exceeding zero percent shall be \$75, except as provided by those
184 exemptions defined in § 58.1-2403. This subdivision shall not apply to any all-terrain vehicle,
185 moped, or off-road motorcycle subject to taxation under this chapter.

186 A. (For contingent effective date — see Acts 2019, c. 52, cl. 2) There is hereby levied, in
187 addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use
188 of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established
189 business or part of an established business or incidental or germane to such business. For
190 purposes of this section, “rental as an established business or part of an established business or
191 incidental or germane to such business” shall not include rental as a peer-to-peer shared vehicle
192 as that term is defined in § 58.1-1735.

193 The amount of the tax to be collected shall be determined by the Commissioner by the
194 application of the following rates against the gross sales price:

195 1. Three percent through midnight on June 30, 2013, four percent beginning July 1, 2013,
196 through midnight on June 30, 2014, 4.05 percent beginning July 1, 2014, through midnight on
197 June 30, 2015, 4.1 percent beginning July 1, 2015, through midnight on June 30, 2016, and 4.15
198 percent beginning on and after July 1, 2016, of the sale price of each motor vehicle sold in
199 Virginia. If such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be
200 three percent of the sale price of each such manufactured home sold in the Commonwealth; if
201 such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale
202 price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight
203 rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a
204 manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a
205 trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry
206 property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale
207 price of each such vehicle sold in the Commonwealth; and if such vehicle is an all-terrain
208 vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, sold by a
209 Virginia dealer, or, if sold by anyone other than a Virginia dealer, used or stored for use (a) in a
210 county or city located in a planning district described in § 58.1-603.1, the tax shall be six percent

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft

(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

211 of the sales price of each such vehicle or (b) in any county or city other than those set forth in
212 clause (a), the tax shall be 5.3 percent of the sales price of each such vehicle.

213 2. Three percent through midnight on June 30, 2013, four percent beginning July 1, 2013,
214 through midnight on June 30, 2014, 4.05 percent beginning July 1, 2014, through midnight on
215 June 30, 2015, 4.1 percent beginning July 1, 2015, through midnight on June 30, 2016, and 4.15
216 percent beginning on and after July 1, 2016, of the sale price of each motor vehicle, not sold in
217 Virginia but used or stored for use in the Commonwealth; or three percent of the sale price of
218 each manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile
219 office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this
220 Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight
221 rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3,
222 (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in §
223 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-
224 700, the tax shall be zero percent of the sale price of each such vehicle not sold in the
225 Commonwealth but used or stored for use in the Commonwealth. If such vehicle is an all-terrain
226 vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, not sold in the
227 Commonwealth but used or stored for use in the Commonwealth (a) in a county or city located in
228 a planning district described in § 58.1-603.1, the tax shall be six percent of the sales price of each
229 such vehicle or (b) in any county or city other than those set forth in clause (a), the tax shall be
230 5.3 percent of the sales price of each such vehicle. When any motor vehicle or manufactured
231 home not sold in the Commonwealth is first used or stored for use in Virginia six months or
232 more after its acquisition, the tax shall be based on its current market value.

233 3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is
234 subject to taxation at a rate exceeding zero percent shall be \$75, except as provided by those
235 exemptions defined in § 58.1-2403. This subdivision shall not apply to any all-terrain vehicle,
236 moped, or off-road motorcycle subject to taxation under this chapter.

237 B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A
238 2, nor shall the same transaction be taxed more than once under either subdivision.

239 C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2
240 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is
241 no longer owned or used by the United States government or any governmental agency, or the
242 Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then
243 rented, in which case the tax imposed by § 58.1-1736 shall apply, subject to the exemptions
244 provided in § 58.1-1737. Further, any motor vehicle, trailer or semitrailer exempt from the tax
245 imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674
246 shall be subject to the tax, based on the current market value, when such vehicle is subsequently
247 licensed to operate on the highways of the Commonwealth.

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft
(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

248 D. Any person who with intent to evade or to aid another person to evade the tax
249 provided for herein falsely states the selling price of a vehicle on a bill of sale, assignment of
250 title, application for title, or any other document or paper submitted to the Commissioner
251 pursuant to any provisions of this title or Title 46.2 shall be guilty of a Class 3 misdemeanor.

252 E. Effective January 1, 1997, any amount designated as a “processing fee” and any
253 amount charged by a dealer for processing a transaction, which is required to be included on a
254 buyer’s order pursuant to subdivision A 10 of § 46.2-1530, shall be subject to the tax.

255 **§ 58.1-2402. (Contingent effective date) Levy.**

256 A. (For contingent expiration date — see Acts 2019, c. 52, cl. 2) There is hereby levied,
257 in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or
258 use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an
259 established business or part of an established business or incidental or germane to such business.
260 For purposes of this section, “rental as an established business or part of an established business
261 or incidental or germane to such business” shall not include rental as a peer-to-peer shared
262 vehicle as that term is defined in § 58.1-1735.

263 The amount of the tax to be collected shall be determined by the Commissioner by the
264 application of the following rates against the gross sales price:

265 1. Three percent of the sale price of each motor vehicle sold in Virginia. If such motor
266 vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale
267 price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile
268 office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile
269 office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross
270 combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as
271 defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as
272 severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle
273 registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle
274 sold in the Commonwealth; and if such vehicle is an all-terrain vehicle, moped, or off-road
275 motorcycle, as those terms are defined in § 46.2-100, the tax shall be five percent of the sales
276 price of each such vehicle; except that in any city or county located within the Historic Triangle,
277 as defined in § 58.1-603.2, the tax shall be six percent of the sales price of each such vehicle.

278 2. Three percent of the sale price of each motor vehicle, or three percent of the sale price
279 of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each
280 mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in the
281 Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight
282 rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3,
283 (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in §

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft

(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

284 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-
285 700, the tax shall be zero percent of the sale price of each such vehicle not sold in the
286 Commonwealth but used or stored for use in the Commonwealth. If such vehicle is an all-terrain
287 vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, not sold in the
288 Commonwealth but used or stored for use in the Commonwealth, the tax shall be five percent of
289 the sales price of each such vehicle, except that in any city or county located within the Historic
290 Triangle, as defined in § 58.1-603.2, the tax shall be six percent of the sales price of each such
291 vehicle. When any motor vehicle or manufactured home not sold in the Commonwealth is first
292 used or stored for use in Virginia six months or more after its acquisition, the tax shall be based
293 on its current market value.

294 3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is
295 subject to taxation at a rate exceeding zero percent shall be \$35, except as provided by those
296 exemptions defined in § 58.1-2403. This subdivision shall not apply to any all-terrain vehicle,
297 moped, or off-road motorcycle subject to taxation under this chapter.

298 A. (For contingent effective date — see Acts 2019, c. 52, cl. 2) There is hereby levied, in
299 addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use
300 of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established
301 business or part of an established business or incidental or germane to such business. For
302 purposes of this section, “rental as an established business or part of an established business or
303 incidental or germane to such business” shall not include rental as a peer-to-peer shared vehicle
304 as that term is defined in § 58.1-1735.

305 The amount of the tax to be collected shall be determined by the Commissioner by the
306 application of the following rates against the gross sales price:

307 1. Three percent of the sale price of each motor vehicle sold in Virginia. If such motor
308 vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale
309 price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile
310 office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile
311 office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross
312 combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as
313 defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as
314 severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle
315 registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle
316 sold in the Commonwealth; and if such vehicle is an all-terrain vehicle, moped, or off-road
317 motorcycle, as those terms are defined in § 46.2-100, the tax shall be five percent of the sales
318 price of each such vehicle.

319 2. Three percent of the sale price of each motor vehicle, or three percent of the sale price
320 of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each

Peer-to-Peer Vehicle Sharing Taxation Legislation Draft

(As presented at 07/11/19 Peer-to-Peer Vehicle Rental Taxation Committee meeting)

321 mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in the
322 Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight
323 rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3,
324 (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in §
325 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-
326 700, the tax shall be zero percent of the sale price of each such vehicle not sold in the
327 Commonwealth but used or stored for use in the Commonwealth. If such vehicle is an all-terrain
328 vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, not sold in the
329 Commonwealth but used or stored for use in the Commonwealth, the tax shall be five percent of
330 the sales price of each such vehicle. When any motor vehicle or manufactured home not sold in
331 the Commonwealth is first used or stored for use in Virginia six months or more after its
332 acquisition, the tax shall be based on its current market value.

333 3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is
334 subject to taxation at a rate exceeding zero percent shall be \$35, except as provided by those
335 exemptions defined in § 58.1-2403. This subdivision shall not apply to any all-terrain vehicle,
336 moped, or off-road motorcycle subject to taxation under this chapter.

337 B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A
338 2, nor shall the same transaction be taxed more than once under either subdivision.

339 C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2
340 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is
341 no longer owned or used by the United States government or any governmental agency, or the
342 Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then
343 rented, in which case the tax imposed by § 58.1-1736 shall apply, subject to the exemptions
344 provided in § 58.1-1737. Further, any motor vehicle, trailer or semitrailer exempt from the tax
345 imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674
346 shall be subject to the tax, based on the current market value, when such vehicle is subsequently
347 licensed to operate on the highways of the Commonwealth.

348 D. Any person who with intent to evade or to aid another person to evade the tax
349 provided for herein falsely states the selling price of a vehicle on a bill of sale, assignment of
350 title, application for title, or any other document or paper submitted to the Commissioner
351 pursuant to any provisions of this title or Title 46.2 shall be guilty of a Class 3 misdemeanor.

352 E. Effective January 1, 1997, any amount designated as a “processing fee” and any
353 amount charged by a dealer for processing a transaction, which is required to be included on a
354 buyer’s order pursuant to subdivision A 10 of § 46.2-1530, shall be subject to the tax.

Peer-to-Peer Vehicle Sharing Insurance Legislation Draft

(Revised 8/14/2019)

1 Legislation Draft that includes Insurance Issues. Please note that any language proposed to be
2 introduced to the *Code of Virginia* is underlined. If language has been changed since last review
3 it is noted in the comments. If the proposal is to strike existing language in the *Code of Virginia*
4 that existing language is ~~stricken~~.
5

6 Proposed Placement in Title 46.2

7 § ___. Definitions.

8 As used in this title, unless the context requires a different meaning:

9 “Peer-to-peer vehicle sharing” means the authorized use of a ~~shared vehicle~~ by ~~shared vehicle~~
10 ~~driver~~ through a peer-to-peer vehicle sharing platform.

11 ~~Peer-to-peer vehicle sharing platform” means a business entity that connects vehicle owners with~~
12 ~~drivers to enable the sharing of peer-to-peer vehicles for financial consideration.~~

13 “Shared vehicle” means a motor vehicle that has been made available for sharing through a peer-
14 to-peer vehicle sharing platform. ~~“Shared vehicle” does not mean a daily rental vehicle as~~
15 ~~defined in § 58.1-1735.~~

16 “Shared vehicle driver” means an individual who has been authorized to drive the shared vehicle
17 by the shared vehicle owner under a vehicle sharing platform agreement.

18 “Shared vehicle owner” means the registered owner, or a person or entity designated by the
19 registered owner, of a vehicle made available for sharing to shared vehicle drivers through a
20 peer-to-peer vehicle sharing platform.

21 ~~“Vehicle sharing delivery period” means, if applicable, the period of time beginning when the~~
22 ~~peer-to-peer platform’s designee takes custody of the shared vehicle and ending when the shared~~
23 ~~vehicle arrives at the location of the vehicle sharing start time as documented by the governing~~
24 ~~vehicle sharing platform agreement.~~

25 “Vehicle sharing period” means the period of time that commences with the vehicle sharing
26 delivery period or, if there is no vehicle sharing delivery period, that commences with the vehicle
27 sharing start time and in either case ends at the vehicle sharing termination time.

28 “Vehicle sharing platform agreement” means the terms and conditions applicable to a shared
29 vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-
30 to-peer vehicle sharing platform.

31 “Vehicle sharing start time” means the time when the shared vehicle becomes subject to the
32 control of the shared vehicle driver at or after the time the reservation of a shared vehicle is
33 scheduled to begin as documented in the records of a peer-to-peer vehicle sharing platform.

34 “Vehicle sharing termination time” means the earliest of the following events:

Commented [BNL1]: Title, Chapter, article, etc.
depending on placement in the Code

Deleted: an individual other than the vehicle’s owner

Deleted: platform

Commented [BNL3]: BOI definition.

Commented [BNL4]: Model definition

Commented [BNL5]: Model definition

Commented [BNL6]: Model definition

37 1. The expiration of the agreed upon period of time established for the use of a shared vehicle
38 according to the terms of the vehicle sharing platform agreement if the shared vehicle is
39 delivered to the location agreed upon in the vehicle sharing platform agreement.

40 2. When the shared vehicle is returned to a location as alternatively agreed upon by the shared
41 vehicle owner and shared vehicle driver as communicated through a peer-to-peer vehicle sharing
42 platform, or

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

45 **§ _____. Peer-to-peer Insurance Coverage.**

46 A. A peer-to-peer vehicle sharing platform shall ensure that at all times, during each vehicle
47 sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor
48 vehicle liability insurance policy that covers bodily injury and property damage liability
49 coverage and uninsured motorist coverage and that provides primary insurance coverage in an
50 amount not less than the applicable financial responsibility limits set forth in Title 46.2 and §
51 38.2-2206, and:

Commented [BNL7]: Model (d)

Commented [BNL8]: Or “this title” if placed in Title 46.2

52 1. Recognizes that the shared vehicle insured under the policy is made available and used
53 through a peer-to-peer vehicle sharing platform; or

54 2. Does not exclude use of a shared vehicle by a shared vehicle driver.

55 B. A peer-to-peer vehicle sharing platform shall assume the liability, except as provided in
56 subsection C, of a shared vehicle owner for bodily injury and property damage to third parties,
57 and uninsured motorist losses during the vehicle sharing period in an amount stated in the
58 vehicle sharing platform agreement which amount may not be less than the applicable financial
59 responsibility limits set forth in Title 46.2 and § 38.2-2206.

Commented [BNL9]: Model (a)

Commented [BNL10]: Or “this title”

60 C. Notwithstanding the definition of “vehicle sharing termination time,” the assumption of
61 liability under subsection B does not apply to any shared vehicle owner when:

Commented [BNL11]: Model (b)

62 1. A shared vehicle owner performs an act, practice, or omission that constitutes fraud, or the
63 shared vehicle owner makes an intentional misrepresentation of material fact, to the peer-to-peer
64 vehicle sharing platform before the vehicle sharing period in which the loss occurred, or

65 2. Acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant
66 to the terms of the vehicle sharing platform agreement.

67 D. The insurance described under subsection A may be satisfied by motor vehicle liability
68 insurance maintained by:

Commented [BNL12]: Model (e)

69 1. A shared vehicle owner;

70 2. A shared vehicle driver;

71 3. A peer-to-peer vehicle sharing platform; or
72 4. Any combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer vehicle
73 sharing platform.

74 E. The peer-to-peer vehicle sharing platform shall assume primary liability for a claim when it is
75 in whole or in part providing the insurance required under subsections A and D and:

76 1. A dispute exists as to who was in control of the shared vehicle at the time of the loss; and
77 2. The peer-to-peer vehicle sharing platform does not have available, did not retain, or fails to
78 provide the information required by section [redacted].

79 The vehicle owner's insurer shall indemnify the vehicle sharing platform to the extent of its
80 obligation under the applicable insurance policy, if it is determined that the shared motor
81 vehicle's owner or his designee was in control of the shared vehicle at the time of the loss.

82 If any insurer providing insurance coverage under subsection D pays a claim that they were not
83 obligated to pay, they shall be entitled to indemnification from the insurer of the party that had
84 the obligation to pay the claim.

85 F. If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with
86 subsection D has lapsed or does not provide the required coverage, the insurer providing the
87 insurance maintained by a peer-to-peer vehicle sharing platform shall provide coverage pursuant
88 to subsection A beginning with the first dollar of a claim and shall have the duty to defend such
89 claim except under circumstances set forth in subsection C.

90 G. Coverage under a motor vehicle liability insurance policy maintained by the peer-to-peer
91 vehicle sharing platform shall not be dependent on another automobile insurer first denying a
92 claim nor shall another motor vehicle insurance policy be required to first deny a claim.

93 H. Nothing in this chapter:

94 1. Limits the liability of the peer-to-peer vehicle sharing platform for any act or omission of the
95 peer-to-peer vehicle sharing platform itself that results in injury to any person as a result of the
96 use of a shared vehicle through a peer-to-peer vehicle sharing platform; or

97 2. Limits the ability of the peer-to-peer vehicle sharing platform to, by contract, seek
98 indemnification from the shared vehicle owner or the shared vehicle driver for economic loss
99 sustained by the peer-to-peer vehicle sharing platform resulting from a breach of the terms and
100 conditions of the vehicle sharing platform agreement.

102 I. A peer-to-peer vehicle sharing platform shall either provide or offer for sale to the shared
103 vehicle owner or shared vehicle driver, collision and other than collision coverage for physical
104 loss to the shared vehicle during the vehicle sharing period. Such coverage shall be in an amount
105 not less than the actual cash value of the shared vehicle.

Commented [BNL13]: Insert reference to recordkeeping section

Commented [BNL14]: Model (h) with changes.

Commented [BNL15]: Change made per conversation on 8/9.

Commented [BNL16]: Model (i)

Commented [BNL17]: Model (j)

Commented [BNL18]: Or article, etc.

Commented [BNL19]: Physical damage coverage is either provided by the platform or offered for sale (per BOI)

106 J. Any insurer providing coverage under subsection D, or an individual who suffers a loss arising
107 from the use of a shared vehicle or their attorney, or a personal representative of the estate of a
108 decedent who died as a result of a motor vehicle accident involving a shared vehicle if not
109 represented by counsel, and who provides the peer-to-peer vehicle sharing platform with the
110 date, approximate time, and location of the accident, and, if available, the name of the shared
111 vehicle owner, and, if available, the accident report, may request in writing from the peer-to-peer
112 sharing platform the identity of any insurer that may have provided coverage and the limits of
113 liability, regardless of whether the insurer contests the applicability of the policy to the claim,
114 and whether, at the approximate time of the accident, the shared vehicle was in a vehicle sharing
115 period. The peer-to-peer vehicle sharing platform shall respond within 30 days with the
116 requested information if such information is in the peer-to-peer sharing platform's possession.
117 Any further exchange of information shall be covered pursuant to § 8.01-417.

Commented [BNL20]: No changes made – topic of discussion for 8/16

118 **§ Exemption: Vicarious Liability**

119 A peer-to-peer vehicle sharing platform and a shared vehicle owner shall be exempt from
120 vicarious liability and under any state or local law that imposes liability solely based on vehicle
121 ownership.

Deleted: in accordance with 49 U.S.C. § 30106

122 **§ Notification of Implications of Lien**

Commented [CR(22)]: This language was moved to the Registration and Usage document for discussion purposes.

123 **§ Insurable Interest**

124 A. Notwithstanding any other law to the contrary, a peer-to-peer vehicle sharing platform shall
125 have an insurable interest in a shared vehicle during the vehicle sharing period.

126 B. A peer-to-peer vehicle sharing platform may own and maintain as the named insured one or
127 more policies of motor vehicle liability insurance that provides coverage for:

128 1. Liabilities assumed by the peer-to-peer vehicle sharing platform under a vehicle sharing
129 platform agreement; or

130 2. Any liability of the shared vehicle owner; or

131 3. Damage or loss to the shared vehicle; or

132 4. Any liability of the shared vehicle driver.

133 **§ Recordkeeping: Use of Vehicle in Vehicle Sharing**

Commented [CR(23)]: This language was moved to the Registration and Usage document for discussion purposes.

134 **§ Consumer Protections; disclosures**

135 Each vehicle sharing platform agreement made in Virginia shall disclose to the shared vehicle owner and
136 the shared vehicle driver:

138 1. Any right of the peer-to-peer vehicle sharing platform to seek indemnification from the shared vehicle
139 owner or the shared vehicle driver for economic loss sustained by the peer-to-peer vehicle sharing
140 platform resulting from a breach of terms and conditions of the vehicle sharing platform agreement;

141 2. That a motor vehicle liability insurance policy provided by the platform to the shared vehicle owner for
142 the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any
143 claim asserted by the peer-to-peer vehicle sharing platform.

144 3. That the peer-to-peer vehicle sharing platform's insurance coverage on the shared vehicle owner and
145 the shared vehicle driver is in effect only during each vehicle sharing period and that for any use of the
146 shared vehicle by the shared vehicle driver after the vehicle sharing termination time, the shared vehicle
147 driver and the shared vehicle owner may not have insurance coverage.

148 4. The daily rate, fees, taxes, and if applicable, any insurance or protection package costs that are charged
149 to the shared vehicle owner or the shared vehicle driver; and

150 5. That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a
151 shared vehicle;

152 6. An emergency telephone number to personnel capable of fielding roadside assistance and other
153 customer service inquiries;

154 7. If there are conditions under which a shared vehicle driver must maintain a personal automobile
155 insurance policy with certain applicable coverage limits on a primary basis in order to book a shared
156 motor vehicle.

157 Alternative #7. That any financial responsibility requirements imposed on the shared vehicle driver as a
158 condition of maintaining a driver's license remain in effect during the use of a shared vehicle.

159 8. That the use of the shared vehicle through a peer-to-peer vehicle sharing platform, without physical
160 damage coverage, may violate the terms of the contract with the lienholder.

161 9. That there may not be physical damage coverage under the shared vehicle owner's policy. However, if
162 the physical damage coverage is purchased from or provided by the peer-to-peer vehicle sharing platform
163 then no such disclosure is required.

164 **§ Certain insurance information; disclosures**

165 During the course of registering a vehicle on a peer-to-peer vehicle sharing platform or during any
166 investigation of a claim filed pursuant to the use of a peer-to-peer shared vehicle registered in Virginia, if
167 the peer-to-peer vehicle sharing platform becomes aware of a shared vehicle owner's failure to have the
168 required liability insurance, the peer-to-peer vehicle sharing platform shall provide to the Department, in a
169 manner prescribed by the Commissioner, a notice of the failure to have the required liability insurance
170 policy.

Commented [CR(24)]: Alternative #7 per DMV with VA requirements

Commented [CR(25)]: Deleted: is no

Commented [BNL26]: Proposed by DMV for discussion on 8/16.

171 **§ 38.2-1800. Definitions.**

172 As used in this chapter:

173 "Agent," "insurance agent," "producer," or "insurance producer," when used without
174 qualification, means an individual or business entity that sells, solicits, or negotiates contracts of
175 insurance or annuity in the Commonwealth.

176 "Appointed agent," "appointed insurance agent," "appointed producer," or "appointed insurance
177 producer," when used without qualification, means an individual or business entity licensed in
178 the Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes
179 authorized within the scope of such license and who is appointed by a company licensed in the
180 Commonwealth to sell, solicit, or negotiate on its behalf contracts of insurance of the classes
181 authorized within the scope of such license and, if authorized by the company, may collect
182 premiums on those contracts.

183 "Business entity" means a partnership, limited partnership, limited liability company,
184 corporation, or other legal entity other than a sole proprietorship.

185 "Dental plan organization authority" means the authority in the Commonwealth to sell, solicit, or
186 negotiate dental benefit contracts on behalf of dental plan organizations licensed under Chapter
187 61 (§ 38.2-6100 et seq.).

188 "Dental services authority" means the authority in the Commonwealth to sell, solicit, or negotiate
189 dental services plan contracts on behalf of dental services plans licensed under Chapter 45 (§
190 38.2-4500 et seq.).

191 "Filed" means received by the Commission.

192 "Health agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate
193 insurance as defined in §§ 38.2-108 and 38.2-109, and including contracts issued by insurers,
194 health services plans, health maintenance organizations, dental services plans, optometric
195 services plans, and dental plan organizations licensed in the Commonwealth.

196 "Home protection insurance authority" means the authority in the Commonwealth to sell, solicit,
197 or negotiate home protection insurance as defined in § 38.2-129 on behalf of insurers licensed in
198 the Commonwealth.

199 "Home state" means the District of Columbia and any state or territory of the United States,
200 except Virginia, or any province of Canada, in which an insurance producer maintains such
201 person's principal place of residence or principal place of business and is licensed by that
202 jurisdiction to act as a resident insurance producer.

203 "Legal services insurance authority" means the authority in the Commonwealth to sell, solicit, or
204 negotiate legal services insurance as defined in § 38.2-127 on behalf of insurers licensed in the
205 Commonwealth.

206 "License" means a document issued by the Commission authorizing an individual or business
207 entity to act as an insurance producer for the lines of authority specified in the document. Except
208 as provided in § 38.2-1833, the license itself does not create any authority, actual, apparent or
209 inherent, in the licensee to represent, commit, or bind an insurer.

210 "Licensed agent," "licensed insurance agent," "licensed producer," or "licensed insurance
211 producer," when used without qualification, means an individual or business entity licensed in
212 the Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes
213 authorized within the scope of such license.

214 "Life and annuities insurance agent" means an agent licensed in the Commonwealth to sell,
215 solicit, or negotiate life insurance and annuity contracts as defined in §§ 38.2-102, 38.2-103,

216 38.2-104, 38.2-105.1, 38.2-106, and 38.2-107.1, respectively, on behalf of insurers licensed in
217 the Commonwealth.

218 "Limited burial insurance authority" means the authority in the Commonwealth to sell, solicit, or
219 negotiate burial insurance society membership where the certificates of membership are used
220 solely to fund preneed funeral contracts on any individual, on behalf of insurers licensed under
221 Chapter 40 (§ 38.2-4000 et seq.); or to represent an association referred to in § 38.2-3318.1,
222 limited to soliciting members of that association for association group life insurance certificates
223 where the funds are used solely to fund preneed funeral contracts.

224 "Limited lines credit insurance agent" means an agent licensed in the Commonwealth whose
225 authority is restricted to selling, soliciting, or negotiating, on behalf of insurers licensed in the
226 Commonwealth, one or more of the following coverages to individuals through a master,
227 corporate, group or individual policy: (i) credit life insurance and credit accident and sickness
228 insurance, but only to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.); (ii) credit
229 involuntary unemployment insurance as defined in § 38.2-122.1;(iii) credit property insurance, as
230 defined in § 38.2-122.2;(iv) mortgage accident and sickness insurance; (v) mortgage redemption
231 insurance; (vi) mortgage guaranty insurance; and (vii) any other form of insurance offered in
232 connection with an extension of credit that is limited to partially or wholly extinguishing that
233 credit obligation and that the Commission specifically determines may be sold, solicited, or
234 negotiated by those holding a limited lines credit insurance agent license. Each insurer that sells,
235 solicits or negotiates any of the coverages set forth in this definition shall provide to each
236 individual whose duties will include selling, soliciting or negotiating such coverages a platform
237 of instruction that may, at the discretion of the Commission, be submitted for approval by the
238 Commission or reviewed by the Commission subsequent to its implementation.

239 "Limited lines life and health agent" means an individual or business entity authorized by the
240 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or
241 any other type of authority that the Commission may deem it necessary to recognize for the
242 purposes of complying with § 38.2-1836: dental services authority; limited burial insurance
243 authority; mutual assessment life and health insurance authority; optometric services authority;
244 and dental plan organization authority. Limited lines life and health insurance shall not include
245 life insurance, health insurance, property insurance, casualty insurance, and title insurance.

246 "Limited lines property and casualty agent" means an individual or business entity authorized by
247 the Commission whose license authority to sell, solicit, or negotiate is limited to the following,
248 or any other type of authority that the Commission may deem it necessary to recognize for the
249 purposes of complying with § 38.2-1836: home protection insurance authority; legal services
250 insurance authority; mutual assessment property and casualty insurance authority; ocean marine
251 insurance authority; pet accident, sickness and hospitalization insurance authority; portable
252 electronics insurance authority; self-storage insurance authority; and travel insurance. Unless
253 otherwise defined, "limited lines property and casualty insurance" shall not include life
254 insurance, health insurance, property insurance, casualty insurance, and title insurance.

255 "Mortgage accident and sickness insurance authority" means the authority in the Commonwealth
256 to sell, solicit, or negotiate mortgage accident and sickness insurance on behalf of insurers
257 licensed in the Commonwealth.

258 "Mortgage guaranty insurance authority" means the authority in the Commonwealth to sell,
259 solicit, or negotiate mortgage guaranty insurance on behalf of insurers licensed in the
260 Commonwealth.

261 "Mortgage redemption insurance authority" means the authority in the Commonwealth to sell,
262 solicit, or negotiate mortgage redemption insurance on behalf of insurers licensed in the
263 Commonwealth. As used in this chapter, "mortgage redemption insurance" means a
264 nonrenewable, nonconvertible, decreasing term life insurance policy written in connection with a
265 mortgage transaction for a period of time coinciding with the term of the mortgage. The initial
266 sum shall not exceed the amount of the indebtedness outstanding at the time the insurance
267 becomes effective, rounded up to the next \$1,000.

268 "Motor vehicle rental contract enroller" means an unlicensed hourly or salaried employee of a
269 motor vehicle rental company or peer-to-peer vehicle sharing platform as defined in § that is in
270 the business of providing primarily private motor vehicles to the public under a rental agreement
271 for a period of less than six months, and receives no direct or indirect commission from the
272 insurer, the renter or the vehicle rental company.

273 "Motor vehicle rental contract insurance agent" means a person who (i) is a selling agent of a
274 motor vehicle rental company or peer-to-peer vehicle sharing platform as defined in § that is in
275 the business of providing primarily private passenger motor vehicles to the public under a rental
276 agreement for a period of less than six months and (ii) whose license in the Commonwealth is
277 restricted to selling, soliciting, or negotiating only the following insurance coverages, and solely
278 in connection with and incidental to the rental contract:

- 279 1. Personal accident insurance that provides benefits in the event of accidental death or injury
280 occurring during the rental period;
- 281 2. Liability coverage sold to the renter in excess of the rental company's obligations under §
282 38.2- 2204, 38.2-2205, or Title 46.2, as applicable;
- 283 3. Personal effects insurance that provides coverages for the loss of or damage to the personal
284 effects of the renter and other vehicle occupants while such personal effects are in or upon the
285 rental vehicle during the rental period;
- 286 4. Roadside assistance and emergency sickness protection platforms; and
- 287 5. Other travel-related or vehicle-related insurance coverage that a motor vehicle rental company
288 offers in connection with and incidental to the rental of vehicles. The term "motor vehicle rental
289 contract insurance agent" does not include motor vehicle rental contract enrollers.

290 "Mutual assessment life and health insurance authority" means the authority in the
291 Commonwealth to sell, solicit, or negotiate mutual assessment life and accident and sickness
292 insurance on behalf of insurers licensed under Chapter 39 (§ 38.2-3900 et seq.), but only to the
293 extent permitted under § 38.2-3919.

294 "Mutual assessment property and casualty insurance authority" means the authority in the
295 Commonwealth to sell, solicit, or negotiate mutual assessment property and casualty insurance
296 on behalf of insurers licensed under Chapter 25 (§ 38.2-2500 et seq.), but only to the extent
297 permitted under § 38.2-2525.

298 "NAIC" means the National Association of Insurance Commissioners.

299 "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or
300 prospective purchaser of a particular contract of insurance concerning any of the substantive
301 benefits, terms or conditions of the contract, provided that the person engaged in that act either
302 sells insurance or obtains insurance from insurers for purchasers.

303 "Ocean marine insurance authority" means the authority in the Commonwealth to sell, solicit, or
304 negotiate those classes of insurance classified in § 38.2-126, except those classes specifically
305 classified as inland marine insurance, on behalf of insurers licensed in the Commonwealth.

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Commented [ALS28]: Added P2P language for clarification.

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306 "Optometric services authority" means the authority in the Commonwealth to sell, solicit, or
307 negotiate optometric services plan contracts on behalf of optometric services plans licensed
308 under Chapter 45 (§ 38.2-4500 et seq.).

309 "Personal lines agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate
310 insurance as defined in §§ 38.2-110 through 38.2-114, 38.2-116, 38.2-117, 38.2-118, 38.2-124,
311 38.2-125, 38.2-126, 38.2-129, 38.2-130, and 38.2-131 for transactions involving insurance
312 primarily for personal, family, or household needs rather than for business or professional needs.

313 "Pet accident, sickness and hospitalization insurance authority" means the authority in the
314 Commonwealth to sell, solicit, or negotiate pet accident, sickness and hospitalization insurance
315 on behalf of insurers licensed in the Commonwealth.

316 "Property and casualty insurance agent" means an agent licensed in the Commonwealth to sell,
317 solicit, or negotiate both personal and commercial lines of insurance as defined in §§ 38.2-110
318 through 38.2-122.2, and §§ 38.2-124 through 38.2-134 on behalf of insurers licensed in the
319 Commonwealth.

320 "Resident" means (i) an individual residing in Virginia; (ii) an individual residing outside of
321 Virginia whose principal place of business is in Virginia, who is able to demonstrate to the
322 satisfaction of the Commission that the laws of his home state prevent him from obtaining a
323 resident agent license in that state, and who affirmatively chooses to qualify as and be treated as
324 a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in
325 the state in which the individual resides, if applicable; (iii) a partnership duly formed and
326 recorded in Virginia; (iv) a corporation incorporated and existing under the laws of Virginia; (v)
327 a limited liability company organized and existing under the laws of Virginia; or (vi) a foreign
328 business entity that is not licensed as a resident agent in any other jurisdiction, and that
329 demonstrates to the satisfaction of the Commission that its principal place of business is within
330 the Commonwealth of Virginia.

331 "Restricted nonresident health agent" means a nonresident agent whose license authority in his
332 home state does not include all of the authority granted under a health agent license in Virginia.
333 The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia,
334 on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the
335 agent is authorized in his home state.

336 "Restricted nonresident life and annuities agent" means a nonresident agent whose license
337 authority in his home state does not include all of the authority granted under a life and annuities
338 agent license in Virginia. The license issued to such agent shall authorize the agent to sell,
339 solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or
340 classes of insurance for which the agent is authorized in his home state. "Restricted nonresident
341 personal lines agent" means a nonresident agent whose license authority in his home state does
342 not include all of the authority granted under a personal lines agent license in Virginia. The
343 license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on
344 behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the
345 agent is authorized in his home state.

346 "Restricted nonresident property and casualty agent" means a nonresident agent whose license
347 authority in his home state does not include all of the authority granted under a property and
348 casualty agent license in Virginia. The license issued to such agent shall authorize the agent to
349 sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds
350 or classes of insurance for which the agent is authorized in his home state.

351 "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on
352 behalf of an insurer. "Settlement agent" means a person licensed as a title insurance agent and
353 registered with the Virginia State Bar pursuant to Chapter 27.3 (§ 55-525.16 et seq.) of Title 55.
354 "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular
355 class of insurance from one or more insurers.
356 "Surety bail bondsman" means a person licensed as a surety bail bondsman pursuant to Article
357 11 (§ 9.1-185 et seq.) of Chapter 1 of Title 9.1.
358 "Surplus lines broker" means a person licensed pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of
359 this chapter, and who is thereby authorized to engage in the activities set forth in Chapter 48 (§
360 38.2-4800 et seq.).
361 "Terminate" means the cancellation of the relationship between an insurance producer and the
362 insurer, or the termination of an insurance producer's authority to transact insurance.
363 "Title insurance agent" means an agent licensed in the Commonwealth to sell, solicit, or
364 negotiate title insurance, and performing all of the services set forth in § 38.2-4601.1, on behalf
365 of title insurance companies licensed under Chapter 46 (§ 38.2-4600 et seq.).
366 "Uniform Application" means the current version of the NAIC Uniform Application for resident
367 and nonresident producer licensing.
368 "Uniform Business Entity Application" means the current version of the NAIC Uniform
369 Business Entity Application for resident and nonresident business entities.
370 "Variable contract agent" means an agent licensed in the Commonwealth to sell, solicit, or
371 negotiate variable life insurance and variable annuity contracts on behalf of insurers licensed in
372 the Commonwealth.
373 "Viatical settlement broker" means a person licensed pursuant to Chapter 60 (§ 38.2-6000 et
374 seq.), in accordance with Article 6.1 (§ 38.2-1865.1 et seq.) of this chapter, and who is thereby
375 authorized to engage in the activities set forth in Chapter 60 (§ 38.2-6000 et seq.).

376 **§ 59.1-207.29. Scope**

377 This chapter shall apply (i) to all persons in the business of leasing rental motor vehicle from
378 locations in the Commonwealth under an agreement which imposes upon the lessee an obligation
379 to pay for any damages cause to the leased vehicle, and (ii) to all peer-to-peer vehicle sharing
380 platforms as defined in § in the Commonwealth facilitating peer-to-peer vehicle sharing as
381 defined in § under a vehicle sharing platform agreement as defined in § which imposes upon the
382 shared vehicle driver as defined in § an obligation to pay for any damages caused to the shared
383 vehicle. The provisions of this chapter apply to the collision damage waiver portion of the rental
384 agreement or vehicle sharing platform agreement.

385 **§ 59.1-207.31. Required notice.**

386 A. No lessor or peer-to-peer vehicle sharing platform as defined in § shall sell or offer to sell to a
387 lessee or shared vehicle driver a collision damage waiver as part of a rental agreement or vehicle
388 sharing platform agreement as defined in § unless the lessor or peer-to-peer vehicle sharing
389 platform as defined in § first provides the lessee or shared vehicle driver as defined in § the
390 following written notice: NOTICE THIS CONTRACT OFFERS, FOR AN ADDITIONAL
391 CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR
392 DAMAGE TO THE VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE

Commented [BNL29]: Include cross-references to definitions or amend 59.1-207.30 definitions section that applies here.

Deleted: peer-to-peer

394 COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR
395 OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE
396 RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN
397 INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER
398 IS NOT MANDATORY AND MAY BE WAIVED.

399 B. Such notice shall be made on the face of the rental or vehicle sharing platform agreement as
400 defined in § either by stamp, label, or as part of the written contract, shall be set apart in boldface
401 type and in no smaller print than ten-point type, and shall include a space for the lessee to
402 acknowledge his receipt of the notice.

403 **§ 59.1-207.32. Prohibited exclusion.**

404 No collision damage waiver subject to this chapter shall contain an exclusion from the waiver for
405 damages caused by the ordinary negligence of the lessee or shared vehicle driver as defined in §.
406 Any such exclusion in violation of this section shall be void. This section shall not be deemed to
407 prohibit an exclusion from the waiver for damages caused intentionally by the lessee or shared
408 vehicle driver as defined in § or as a result of his willful or wanton misconduct or gross
409 negligence, driving while intoxicated or under the influence of any drug or alcohol, or damages
410 caused while engaging in any speed contest.
411

Appendix F: Stakeholder Submissions and Responses to Report



Cross, Russell <russell.cross@dmv.virginia.gov>

Peer-to-Peer Tax Issue

Mark Haskins <markhaskins2000@yahoo.com>

Wed, Jul 17, 2019 at 3:09 PM

To: "Harrison Patrick (DMV)" <patrick.harrison@dmv.virginia.gov>, Russell Cross <russell.cross@dmv.virginia.gov>

Cc: "Lewis, Clark, Sr." <clark.lewis@troutman.com>, "Michael W. Woods" <michael.woods@troutman.com>, "Tomi L. Gerber" <tomi.gerber@ehi.com>, "Mark A. Chilcott" <mark.chilcott@ehi.com>, Michael Bruce <michael.bruce1@ehi.com>

Patrick and Russell,

Enterprise wanted me to share some information I found while researching the issue of a potential tax credit available under Virginia Code Sec. 58.1-1740. I was able to put my hands on the legislation and the background information related to the 1981 legislation that created the daily rental tax. I heard from some of the folks involved that the fact that there is a tax credit available against the local portion of the rental tax for tangible personal property taxes paid, is one of the factors affecting your recommendation to have a lower differential tax rate.

As you can see, the attached bill created the daily rental tax, the credit, and the tangible personal property tax exemption within the definition of merchants' capital. When you read all three of these provisions together, it is apparent that the credit was intended to only apply to the tangible personal property tax for the last 6 months of 1981. This was intended to be a transitional provision until the merchants' capital definition kicked in. This credit has been obsolete since 1982.

This is supported by the fact that it is a credit that no one uses. The credit is not mentioned in the old DMV regulations that were issued when DMV administered the tax. When TAX issued Guidelines in 2012 and 2013 on the Rental Tax, no mention of the credit was made. Also, there is no mention of the credit or how to compute it or how to take it in TAX's forms and instructions for the Rental Tax. We should have eliminated this section when the administration of the tax was moved from DMV to TAX.

Enterprise stands opposed to having a differential tax rate for Peer-to-Peer rentals. We believe that by having a lower rate for Peer-to-Peer rentals, you are creating winners and losers when there is no reason to do so. We believe that an analogous situation occurs when individuals sell used merchandise on a platform such as eBay. The sales tax rate that is applied to sales made on eBay is not impacted by the fact that some sellers are selling merchandise that was previously subject to sales tax. Regardless of whether the merchandise being sold was originally purchased exempt from the sales tax as a sale for resale or whether sales tax was paid by the original purchaser, all items sold on eBay are subject to the same sales tax rate.

Enterprise would like to thank you for the efforts that DMV is making to make this an inclusive project and we understand that it is difficult for you to balance the different parties positions. We welcome the the opportunity to discuss this with you further. If you have any questions, please feel free to contact me at any time.

Thanks.

Mark C. Haskins
Enterprise

 1981_HB1178.pdf
9173K



Schneider, Angela <angela.schneider@dmv.virginia.gov>

Fwd: FW: P2P Insurance Draft 8.6.19.DOCX - PLEASE REVIEW ASAP

1 message

Cross, Russell <russell.cross@dmv.virginia.gov>

Wed, Aug 14, 2019 at 2:37 PM

To: Angela Schneider <angela.schneider@dmv.virginia.gov>, Melissa Velazquez <melissa.velazquez@dmv.virginia.gov>

For Report

----- Forwarded message -----

From: **Brenner, Nicole L.** <NBrenner@reedsmith.com>

Date: Tue, Aug 13, 2019 at 11:12 AM

Subject: FW: P2P Insurance Draft 8.6.19.DOCX - PLEASE REVIEW ASAP

To: Cross, Russell <russell.cross@dmv.virginia.gov>

Russell – for posterity, I’m passing along Nancy’s email below with her comments on changes to the draft. Please note #3 (#1 and 2 are non-issues).

Nicole L. Brenner

+1(804)344-3407

nbrenner@reedsmith.com

Reed Smith LLP

Riverfront Plaza - West Tower

[901 East Byrd Street, Suite 1900](#)[Richmond, VA 23219-4068](#)

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Fax +1 804 344 3410

From: Egan, Nancy <nancy.egan@apci.org>**Sent:** Monday, August 12, 2019 5:11 PM**To:** Brenner, Nicole L. <NBrenner@reedsmith.com>**Cc:** LaGow, Chris <chris@lagowlobby.com>; Passmore, Robert <robert.passmore@apci.org>**Subject:** RE: P2P Insurance Draft 8.6.19.DOCX - PLEASE REVIEW ASAP

EXTERNAL E-MAIL

Nicole,

Once again thank you for drafting of the August 6 draft of the P2P insurance legislation. APCIA members strongly support the Model language as the basis for any legislation. We only have a few items to address after the meeting:

1. Once again, APCIA's support for any legislation is premised on a separate bill containing language that permits insurers to exclude coverage for P2P activity. If this bill does not pass, we cannot support any separate legislation. As stated in the model:

Exclusions in Motor Vehicle Liability Insurance Policies

Sec. 3. An authorized insurer that writes motor vehicle liability insurance 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 motor vehicle liability insurance policy, including but not limited to:

- a. liability coverage for bodily injury and property damage;
- c. uninsured and underinsured motorist coverage;
- d. medical payments coverage;
- e. comprehensive physical damage coverage; and
- f. collision physical damage coverage

Nothing in this Article invalidates or limits 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.

2. Lines 79-80. This language should be amended to reflect the model language:

(F) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (D) 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 subsection C.

3. Lines 100-111. We object to the disclosure of limits. The trial bar had stated that they needed to know the name of the insurer since there could be several insurers that could possibly be covering the loss. As stated, the legislation states that a P2P vehicle must be covered at all times at the FR limits. In addition, there is currently language in place for the pre-litigation discovery of policy limits. See VA Code section 8.01-417 C and D. Basically, the law in VA allows the plaintiff attorney to ask for the limits and the physical address of the tortfeasor, BUT they have to provide the insurer with the following:

The date of the accident

The name and last known address of the tortfeasor

A copy of the accident report

All medical records and bills, plus any wage loss information

A further condition is placed on the insurer's obligation to provide the policy limits. The medical special damages and /or the wage losses claimed must equal \$12,500. If the information is provided and the condition is met, the insurer is obligated to provide the requested information within 30 days. Subsection C deals with auto personal injury claims; subsection D deals with wrongful death claims, and the information that is supposed to be sent to the insurer by the plaintiff attorney or estate representative is slightly different, but consistent with the nature of the claim.

Once again, thank you and let me know if you have any further questions.

Nancy

Nancy J. Egan, Esq.

State Government Relations Counsel, DE, MD, VA, WV

American Property Casualty Insurance Association (APCIA)

Nancy.egan@apci.org.

Cell: 443-841-4174

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PO Box 16373

Baltimore, MD. 21210



External Signed

* * *

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Russell Cross

Virginia DMV | Senior Policy Analyst | Strategic Management Services

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P2P Insurance Draft 8.6.19.pdf

314K

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Valerie M. O'Brien
Executive Director
vobrien@vtla.com

August 13, 2019

VIA ELECTRONIC (nbrenner@reedsmith.com)
AND FIRST-CLASS MAIL

Nicole L. Brenner, Esquire
REED SMITH, LLP
901 East Byrd Street, Suite 1900
Richmond, Virginia 23219-4068

Dear Nicole:

I write to set forth the Virginia Trial Lawyers Association's position regarding proposed insurance language for purposes of a potential DMV bill addressing the P2P industry.

As you will recall, the insurance drafting subcommittee met multiple times throughout the summer. When we adjourned on Tuesday, August 6, it appeared the stakeholders involved in the drafting subcommittee had reached a consensus. VTLA supports the language as it stood when we adjourned August 6; any further changes to the language may cause VTLA to withdraw its support for a DMV P2P bill.

In particular, however, it has come to my attention that there has been a movement about by *one stakeholder* to try and change the agreed-to subsection J in the "Peer-to-peer Insurance Coverage" to either: (1) remove the disclosure of liability limits language; or (2) hem in the disclosure of liability limits to a threshold of medical expenses. (Frankly, I do not understand why this issue has just now arisen seeing as the proposed subsection J had been in the drafts that were circulated for discussion and feedback since July 24, 2019).

Please note VTLA's position: *Any* change to subsection J that differs from the language the stakeholders all agreed to when we adjourned on August 6, will unequivocally result in VTLA withdrawing its support for the DMV bill.

The reason for VTLA's position is that, unlike a run-of-the-mill auto accident case, or one involving a TNC, the proposed P2P legislation provides for there to be a panoply of liability policies, held by different individuals, and in different amounts. An injured individual should not be compelled to file a lawsuit in every P2P case just to divine what policies may or may not provide coverage for a claim and in what amount, because of some arbitrary threshold of damages.



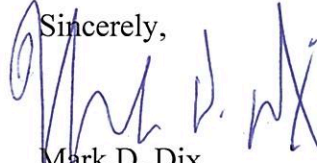
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Valerie M. O'Brien
Executive Director
vobrien@vtla.com

Thank and please call if any questions.

Sincerely,

Mark D. Dix
Legislative Counsel

MDD/

cc: Commissioner Richard D. Holcomb
Mr. Russell Cross
(via electronic and first-class mail)



Virginia Association of Counties

Connecting County Governments since 1934



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August 13, 2019

The Honorable Richard D. Holcomb
Commissioner of the Virginia Department of Motor Vehicles
2300 West Broad Street
Richmond, VA 23220

Dear Commissioner Holcomb,

On behalf of the Virginia Association of Counties (VACo), I'd like to thank you for continuing to include our organization in the Peer-to-Peer Vehicle Rental Study. We've appreciated the chance to work with stakeholders to effectively analyze and discuss the unique policy considerations that are connected to this concept.

VACo has concerns about the tax rates that will be levied on these peer-to-peer shared vehicles. After review and analysis by our staff and our members, we believe that these vehicles should be taxed at the combined rate of 10% that is currently levied on other rental vehicles – 4% levy for the special fund; 4% levy for localities; and 2% levy for the general fund – as opposed to the 6% combined rate that has been discussed at previous study meetings.

Proponents of the reduced tax rate argue that it compensates for taxes that an individual owner of a vehicle used for peer-to-peer rental pays that a conventional rental company does not (such as the motor vehicle sales and use tax). However, the motor vehicle rental tax is levied on the rental and paid by the renter, not the owner. Levying a reduced motor vehicle rental tax rate on peer-to-peer rentals would provide favorable tax treatment to this option for vehicle rentals rather than treating comparable services alike.

We welcome the opportunity to discuss this matter further and thank you for your consideration.

Sincerely,

Dean A. Lynch, CAE
VACo Executive Director

1207 E. Main St., Suite 300
Richmond, Va. 23219-3627

Phone: 804.788.6652
Fax: 804.788.0083

Email: mail@vaco.org
Website: www.vaco.org

From: **Rafferty, Elizabeth** <erafferty@williamsmullen.com>
Date: Tue, Aug 27, 2019 at 8:32 AM
Subject: Peer to peer vehicle rental study - recommendation from MWAA
To: Cross, Russell <russell.cross@dmv.virginia.gov>
Cc: Cushing, Patrick <pcushing@williamsmullen.com>, Albo, David <dalbo@williamsmullen.com>, Cooper, Michael <Michael.Cooper@mwaa.com>

Russell,

Thanks so much to you and everyone at DMV who worked to develop the recommendations and drafts for the peer to peer vehicle sharing workgroup. It is clear much thought and effort was put into those drafts. We represent the Metropolitan Washington Airport Authority (MWAA) and appreciate the opportunity to be included.

During the meeting Friday, the PowerPoint presentation indicated that airports currently have the statutory authority to negotiate terms with third parties that want to conduct business on airport property and the stakeholder group agreed it was appropriate for Airports to negotiate these terms with the peer to peer platforms. MWAA would like to make a recommendation for the inclusion of language that explicitly states that if a peer to peer platform operates on airport property they must do so by agreement of the airport – giving the same authority to airports over peer to peer platforms as TNC's.

We drafted some language that mirrors the TNC statute and I have included it below.

No peer to peer vehicle sharing platform or partner shall conduct any operation on the property of or into any airport unless such operation is authorized by the airport owner and operator and is in compliance with the rules and regulations of that airport. The Department may take action against a peer to peer vehicle sharing platform that violates any regulation of an airport owner and operator, including the suspension or revocation of the-peer to peer vehicle sharing platform's certificate.

We would like to see that this is included in the report submitted to the Senate Transportation and House Rules.

Please let us know if you have any questions.

Thanks,

Elizabeth

Elizabeth O. Rafferty | Director of Government Relations | Williams Mullen

Williams Mullen Center | 200 South 10th Street, Suite 1600 | P.O. Box 1320 (23218) | Richmond, VA 23219

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Officers

To: Patrick Harrison, DMV Assistant Commissioner
Russell Cross, DMV Sr. Policy Analyst

President

Anita James Price
Roanoke Vice Mayor

From: Michelle Gowdy, Executive Director

Subj.: Peer to Peer Rentals - Tax Issue

Date: September 6, 2019

President-Elect

Thomas R. Smigiel, Jr.
Norfolk Council Member

VML appreciates the stakeholder process DMV has set up to work on this issue. Your efforts to educate us on the various aspects of Peer-to-Peer Vehicle Rentals, and your willingness to listen are doubly appreciated. However, VML is not comfortable with the current proposal and asks how is the public interest being served by taxing the same activity at different rates?

Vice President

Phie Kier
Staunton Vice-Mayor

With that said, VML still finds problematic any proposal to reduce the tax rate for the Vehicle Rental Tax. Tying the proposal's rationale to §58.1-1740 of the Code overlooks the reason the General Assembly designated as a local revenue a significant portion of the Vehicle Rental Tax. The legislature decided in 1981 to exempt rental cars from tangible personal property taxes. To keep localities' finances intact, the General Assembly defined rental cars as merchants' capital, and imposed a vehicle rental tax on the gross proceeds of such rentals. As you know, the one-time tax credit provided in §58.1-1740 was for the "rentor" and not the "renter" of the vehicle as included in the DMV proposal.

Past President

Patricia P. Woodbury
Newport News Council Member

Executive Director

Michelle Gowdy

In fiscal years 2019 and 2020, the annual appropriation for local governments' share of the rental tax is a substantial \$46.5 million. These dollars flow to localities' general fund, and are used to support elementary and secondary education, public safety, and other priority programs and services.

Magazine

Virginia Town & City

We are also concerned that the proposed tax rate reduction will affect more than just local finances. We believe that the proposal's unintended consequences will clash with the state's efforts from the 2018 Session to funnel cash to the Washington Metropolitan Area Transit Authority Capital Fund (HB 1539 and SB 856). *Over 200,000 Virginians rely on WMATA each workday.* We are also troubled that the proposal would syphon money from the Rail Enhancement Fund, hurting state efforts to improve passenger service to the Northeast and to Western Virginia. Some \$40.0 million a year is collected from the Vehicle Rental Tax for the Transportation Secretariat.

VML recommends that the stakeholders focus their attention on incentives other than taxes. We welcome the opportunity to discuss this with you further. If you have any questions, please feel free to contact me at any time.

P.O. Box 12164

Richmond, Virginia 23241

Thanks.

13 East Franklin Street

Richmond, Virginia 23219

804/649-8471

www.vml.org

Michelle Gowdy
Executive Director
Virginia Municipal League

October 24, 2019

Commissioner Richard D. Holcomb
Virginia Department of Motor Vehicles
P.O. Box 27412
Richmond, VA 23269

RE: Peer-to-Peer Vehicle Rental Study Report

Dear Commissioner Holcomb:

On behalf of Enterprise Holdings, I am pleased to submit the following information for consideration and inclusion in the final report related to your agency's Peer-to-Peer Vehicle Rental Study. Enterprise greatly appreciates the work completed by you, your staff, and the other agencies represented in the three committee working groups. Enterprise is grateful for the opportunity to have participated in the work, and we hope to provide support and constructive input throughout the remainder of the process and into the future legislative activities that will surely follow.

As you know, Enterprise Leasing Co of Norfolk/Richmond, LLC is the wholly owned subsidiary of Enterprise Holdings that operates the Enterprise Rent-A-Car, National Car Rental, and Alamo Rent A Car brands across Virginia. Enterprise Holdings [Enterprise] is a 62-year old, family owned, family operated, entity that offers mobility solutions including car rental, car sharing, commuter vanpooling, and other multi-modal mobility service models.

For more than six decades, Enterprise has been "sharing" our fleet of vehicles with consumers. Here in the Commonwealth of Virginia, we accomplish that with more than 2400 employees, operating a fleet of 42,500 vehicles, through a network of 245 locations. We recognize that the rental of personal vehicles through peer-to-peer rental programs is a growing business model and should absolutely be welcomed by Virginia. Enterprise always welcomes innovation and competition in our industry, including the peer-to-peer car sharing business model. We hope our extensive experience in renting, or sharing, vehicles with consumers has brought value to this endeavor.

We believe it is critical to point out the differences, and similarities, amongst the various business models in our industry; including car rental, car sharing, peer-to-peer car rental, and personal car sharing. There are many terms used to describe *"the temporary transfer of possession of a vehicle, without a driver, in exchange for consideration."* However, whether you brand it car rental or car sharing, it's the exact same service being provided to consumers; only the business models for providing the service are different.

It is important to distinguish this activity from other transportation types that use "sharing" in their branding. This is *not* TNC activity marketed as ridesharing by Uber and Lyft; "rides" aren't being provided, "vehicles" are being provided. In many ways, this *is* the Airbnb of car rental:

- Vehicle owners make their cars available for rent through a peer-to-peer program;

- Consumers rent the vehicles from the program; and
- The program pays the vehicle owner a portion of the proceeds and retains the rest themselves.

The only distinction between a “Peer-to-Peer Sharing” transaction and any other car rental transaction is that the vehicle being “rented” or “shared” is not owned by the company facilitating the rental. But companies doing business as “Peer-to-Peer Car Sharing Programs” are asserting that they aren’t in the business of renting cars. Because they claim not to be renting cars, they don’t follow Virginia’s laws for the rental of vehicles to the public; nor do they collect and remit the taxes and fees the Commonwealth has deemed applicable to car rental transactions.

Please be assured, when the public goes to their websites or on their apps, the public is going there to rent cars. We have included numerous photographs and screenshots from various peer-to-peer companies’ own locations and websites, demonstrating that they absolutely market themselves to consumers a company making cars available for rent. One such company’s San Francisco headquarters building includes a marquee over the building that says, “Rent the car, Own the experience.” This photo was taken in April of 2019.

That same company’s CEO can be seen in video speaking about their 2016 change in business model, indicating they “switched to daily rental” and added weekly and monthly rentals. In fact, he states, “We have people renting cars for months at a time.” We have provided screen shots, from the home page of another company’s website that features, “Instantly rent cars near you. Unlock from your phone by the hour or day.” In today’s environment, it’s good marketing to call your business model sharing, but the service being provided to Virginia consumers is car rental and should be subject to existing car rental regulations.

In an attempt to justify their call for a separate regulatory structure, stakeholders with an interest in the peer-to-peer business model commonly make two false statements. The first inaccurate statement is that the rental industry, or Enterprise specifically, gets a tax break when we purchase our vehicles; and the second is that, if held to current rental laws, vehicle owners would be double taxed. Please know:

- The rental industry does not get any special tax breaks; our wholesale purchases are tax exempt – just like any other retailer of goods and services throughout Virginia.
- Vehicle *owners* are not being double-taxed when *peer-to-peer programs* are required to collect and remit the taxes and fees owed, by vehicle *renters*.

Enterprise does not support legislation that would allow any party to be double taxed. We adamantly dispute any characterization of our position as creating double taxation or tax breaks for our industry. We have included a separate document that outlines the tax policy behind car rental transactions in more detail. We are happy to provide extensive information, from independent tax authorities, if it is helpful to the committee.

Enterprise does believe it is necessary, due to the nature of renting privately owned and insured vehicles to the public, to create regulations governing the insurance obligations amongst the multiple interests in peer-to-peer vehicle rental. Enterprise supports a regulatory scheme that:

- Protects the vehicle owner from liability during the car rental period;
- Shields the owner’s personal automobile insurance policy from responsibility for losses during the car rental period, unless that policy knowingly chooses to afford coverage; and
- Ensures (state)’s limits of financial responsibility are available for injured third parties.

Beyond the new insurance structure, we believe that Virginia's car rental laws should be modernized to ensure there are no barriers to technology-enabled rental transactions that peer-to-peer companies, and many other car rental delivery methods, are providing. Creating two regulatory structures for the consumer protection, safety, and tax laws around the rental of vehicles would be ineffective public policy; however, modernizing the existing regulatory structure would enable innovation and robust competition for new business models to creatively serve the public.

We believe any legislation should include:

- Specific, clear definitions of peer-to-peer rental activity:
 - Programs rent vehicles owned by several different types of vehicle owners. The owners of vehicles available on peer-to-peer programs include private individuals renting their personal cars; power-hosts encouraged by the programs to create small businesses – which may or may not be properly licensed – with fleets of 4 to 40+ vehicles; and even global auto manufacturing companies.
 - Overly broad definitions of peer-to-peer rental activity could unintentionally allow large fleet operators to skirt existing rental car laws.
- The modernization of all Virginia consumer protection laws protecting consumers who utilize all types of car rental services:
 - Rather than creating new pricing, disclosure, and safety requirements for this activity, we believe a better approach would be to update existing laws to ensure there are no barriers for this, or any, business model.
 - Virginia already has laws that protect consumers who purchase car rental services – they need only be updated to apply to any business model.
- Express authority for airports to regulate peer-to-peer vehicle rental services provided to their customers:
 - Peer-to-peer companies who advertise their services as available at airports must adhere to airport regulations and remit the taxes and fees paid by all other concessionaires servicing those airports.
 - Many rental companies, who service airports without on-airport facilities, follow these same rules, and pay these same taxes and fees. No company should be allowed to offer services to airport customers without following the airport's rules.
- Clearly defined tax obligations:
 - A consumer renting a car owes tax on that purchase; and
 - Programs offering the service should be obligated to collect and remit the taxes owed by the consumer.

Enterprise, the majority of the rental industry, consumer groups, and other good government groups do not believe the language provided jointly by APCIA and several peer-to-peer rental companies; commonly circulated as "Peer-to-Peer Car Sharing Program Act Draft, 4/10/19" sufficiently meets these critical public policy interests. Specifically, we believe the following areas of the draft are concerning.

- Chapter 2. Definitions
 - "Peer-to-Peer Car Sharing" is defined as the use of a vehicle by an individual other than the vehicle's owner, through a peer-to-peer car sharing program. The "Program" is

defined as a business platform that enables the “sharing” of vehicles for “financial consideration.”

- This activity precisely describes the rental of vehicles through a technology enabled platform – which all current car rental companies do.
 - This definition allows for the suggested “separate treatment” of car rental:
 - NOT just a private individual renting out their own car for extra money; but
 - ALSO, large fleet owners renting their fleet on a platform;
 - For example, if a vehicle manufacturer encouraged its dealerships to place inventory on a platform, that would be covered by this proposed treatment.
 - The definitions expressly EXEMPT this activity from the definitions of car rental activity, car rental company, car rental agreement, and rental car.
 - The result would be two separate sets of regulatory requirements for car rental activity:
 - One for companies who own and rent their own fleets; and
 - One for companies who rent their fleets through another company’s website.
- Chapter 3. Insurance
 - The draft limits how financial responsibility for the activity can be provided to the purchase of an insurance policy.
 - States allows financial responsibility to be demonstrated in multiple ways
 - A policy of insurance;
 - A cash deposit;
 - A certificate of self-insurance; or
 - Certifying “ability to pay” as a corporation.
 - We support allowing these alternatives for those who wish to participate in this activity.
 - The draft includes an exemption for the “program’s” assumption of liability if (Sec. 1(b)):
 - The vehicle owner has made any material misrepresentation or omission to the program.
 - This language will allow for significant denials of coverage under circumstances that are not well-defined – exposing the vehicle owner and/or their personal policy of insurance.
 - The draft allows insurance companies to enforce, without limit, any exclusion of coverage for motor vehicles “made available for rent, sharing or hire or for any business use.”
 - Unlike our model legislation, it contains NO protection for individuals who participate in the rental of their private vehicle from being denied/cancelled/non-renewed by their personal insurance company, solely because they chose to participate.
 - Sec. 5 contains language that requires the “program” to share information regarding the use of vehicles that may violate the privacy of participants. The vehicle owner’s consent should be required before sharing information about their activity with third parties.

- Sec. 6 refers to federal law that protects vehicle owners “engaged in the trade or business of renting or leasing motor vehicles;” from vicarious liability for the acts of the driver of the vehicle.
 - Given the express exemption in the definitions from “rental” terms, this could present legal challenges, exposing the vehicle owner to liability.
 - Our model accomplishes the same by deeming the “program” the owner of the vehicle during the rental period.
- Chapter 4. Consumer Protections
 - Sec. 2 – Driver license verification language is lifted from Maryland car rental law. Our model subjects this activity to the same standard of verification as any other car rental – and allows for the updating of the statute to allow for technology-enabled transactions that all car rental companies engage in.
 - Sec. 4 – Safety recalls are addressed outside of the federal rental vehicle safety requirements, with significantly diminished protection to the public. Our model seeks to ensure that the program is recognized as a company in the business of renting vehicles, and therefore held to the appropriate federal safety standards.
- In addition to the above concerns with specific language in the draft, Enterprise Holdings believes the language overlooks the need for:
 - Definitional terms consistent with existing Virginia laws, so as not to unintentionally impact consumer protections and revenue sources related to the rental and sale of all tangible personal property in the Commonwealth.
 - Consistency of Virginia consumer protection and safety standards for consumers of rented motor vehicles, as that term is currently defined.
 - Prohibition of rental activity, as currently defined in the Commonwealth, directed to airport customers unless the peer-to-peer rental company has either executed a concessionaire agreement or received an affirmative waiver from the airport.
 - Tax treatment that: 1.) ensures all consumers of rental services, as currently defined in the Commonwealth, pay the same tax rate; but 2.) contemplates the possibility of a tax credit to owners that reflects the portion of the time the vehicle is used for resale and not as a personal vehicle.
 - Ensures all disclosure, notice, and other regulatory obligations can be provided through electronic means for all rental activity that is conducted through technology-enabled delivery models.

And finally, we appreciate the opportunity to provide feedback on the draft DMV report shared with stakeholders on October 15, 2019. We want to express our appreciation for the incredibly thorough effort your team undertook in capturing and communicating the information that was discovered and discussed through the rigorous work of the study group. We would like to raise the following comments.

- We welcome the use of the term “peer to peer vehicle rental services” and “peer-to-peer vehicle rental” as used in the legislature’s charge letters and in the introduction of the study. However, the report does at times rely upon the term “sharing.” We believe it is important to note that there is no legal definition of the word “sharing” that contemplates a for-profit

business transaction such as the business activity on which the study was centered. We suggest that the report clearly indicate that “sharing” is the peer-to-peer stakeholders’ self-defined substitute term for the legally defined activity of “rental.”

- With respect to the section of the report that references legislation in other states, we would request that the legislation from California, Washington and Oregon be noted as including provisions that the activity being defined is not intended to be “for-profit” activity. Each of the laws enacted included some provision that either the peer-to-peer program or the peer-to-peer vehicle owner were not profiting from the activity. This is a critical distinction that justifies the activity being defined separately from “motor vehicle rental” activity. This is not the case in the activity being addressed in this study.
- We welcome the inclusion on Page 11 of the statement that “[t]he activity of peer to peer vehicle sharing falls within the definition of rental found above,” and suggest a further expansion of this point as it impacts the discussion in the Taxation section of the report. We believe it is accurate to add, “Therefore, under current law, the MVRT should be collected and remitted on peer to peer motor vehicle rental transactions.”
- With respect to the discussion of linking the Virginia marketplace facilitator law to the definition of peer-to-peer rental activity on Page 14, there is one additional advantage we would like to suggest. This linkage would create nexus with the peer-to-peer platforms. If the definition of a “sharing platform” was linked to the definition of “marketplace facilitator” the recordkeeping and tax remittal responsibilities would become clear. It would be expressly provided that the sharing platform would have the responsibility to collect and remit all taxes imposed and collected, thus ensuring there is no barrier for individual vehicle owners who wish to participate in the business model.
- We welcome the recognition on Page 21 that the MVRT applies to peer-to-peer vehicle rental (or sharing as the participants call it) and that few owners are currently registering with TAX to collect and remit the tax. However, by further stating that, alternatively, vehicle owners are paying the MVSUT and the TPPT, the report seems to legitimize this practice. The report should point out that peer-to-peer vehicle owners who are not registering, collecting, and remitting the MVRT are not in compliance with current Virginia law and are subject to penalties and interest for not complying with the requirements of the MVRT.
- With respect to the first paragraph on Page 22, we are not aware of any situation when policymakers have considered the entire tax burden on a good or service to establish tax rates in developing Virginia tax law. We believe the fact that a lower sales tax rate was not set for used items sold on platforms, such as eBay, when the marketplace facilitator law was enacted in 2019 directly contradicts this statement. Our understanding is that this was an assertion made by certain stakeholders, but that the representatives from the Commonwealth’s own tax agencies disputed this assertion. We respectfully request that this statement be (a) clarified as a stakeholder opinion, (b) removed, or (c) substantiated with specific examples.
- The second full paragraph on Page 23 should address that the tax credit was enacted in 1981 as a transitional provision to only apply to the tangible personal property tax for the last six months of 1981. It was intended as a transactional provision until the merchants’ capital definition became effective. The credit has been obsolete since 1982.

If you or your team have any questions about our comments on either the opposition's draft "model legislation" or on the draft study report, please reach to us. We are appreciative of the opportunity to provide this input.

In summary, Enterprise supports modernizing Virginia's existing laws to ensure there are no barriers to the rental of privately-owned vehicles through peer-to-peer car rental companies, while also ensuring:

- **Our residents are getting the same consumer protections, regardless of what company they use to rent a car;**
- **Our airports have the express authority to regulate this rental activity at their airports; and**
- **The already enacted taxes and fees owed on car rental activity don't go uncollected.**

Thank you for your time and consideration during this process. Enterprise looks forward to continuing to work with you and your staff. If you have any questions, please feel free to contact me at 314-512-4894.

Very truly yours,



Tomi L. Gerber
Vice President – Public & Government Affairs
Enterprise Holdings

October 25, 2019

Dear Commissioner:

We appreciate the time and effort of the Department of Motor Vehicles staff in this year's peer-to-peer ("P2P") vehicle sharing stakeholder process. As always, the DMV staff was thorough and thoughtful. We regret that there was not full consensus among all of the stakeholders.

We, the undersigned, have worked in good faith throughout this process and are pleased to have arrived at consensus on the items below. As you are aware, the consensus of the undersigned stakeholders (and their representatives throughout the peer-to-peer stakeholder process), including Turo (Tray Adams & Sean Vinck), Getaround (Nick Green), Allstate and Drift (Rich Savage), American Property Casualty Insurance Association (Nancy Egan & Chris LaGow), Maven/General Motors (Edward Mullen & Nicole Brenner), Virginia Farm Bureau (Sam Rooks & Kevin Logan), the Independent Insurance Agents of Virginia (Joe Hudgins & Bob Bradshaw), the Alliance of Automobile Manufacturers (Fred Helm), and the Virginia Trial Lawyers Association (Mark Dix and Elliott Buckner) is largely in line with the recommendations made by the DMV staff as well as the national model bill on this topic. This consensus framework is the result of a holistic compromise that balances a number of considerations, including features of law unique to Virginia. Critically, our collective agreement on the terms below is contingent on **all items** being included in legislation (*i.e.* consensus is lost if certain items are excluded).

We have agreed on the following concepts:

- **Definitions**

- P2P vehicle sharing is distinct from the rental of daily rental vehicles.
- P2P platforms connect owners with drivers for the purpose of sharing vehicles.
- The sharing period, platform agreement, and termination time are adequately defined, such that there are clear insurance coverage requirements.

- **Registration and Usage**

- P2P vehicle sharing platforms shall collect and verify records pertaining to the use of the vehicle including a record of the identity of the person with whom the vehicle is shared.
- P2P vehicle sharing platforms check for vehicle recalls prior to a vehicle being registered and made available for sharing.

- **Insurance**

- The P2P platform ensures that there is liability coverage for the owner and the driver at all times during the sharing period for applicable financial responsibility limits, which either recognizes that the policy covers P2P vehicle sharing or does not exclude use of a shared vehicle, and must provide coverage on a primary basis.
- This coverage may be provided by the platform, owner, or driver. If coverage by the owner or driver lapses, the platform provides the coverage from the first dollar of the claim and has the duty to defend.
- The P2P platform assumes liability for the owner for bodily injury, property damage, and UM/UIM during the sharing period. The owner negates this assumption of liability in the case of fraud.
- The platform is liable when it was providing coverage, in whole or in part, and there is a dispute about who was in control of the vehicle and the P2P did not comply with recordkeeping requirements.
- Insurers are provided indemnification if they paid a claim they were not obligated to pay.
- Platforms provide or offer for sale physical damage coverage.
- Owner and P2P platform are exempt from vicarious liability solely on the basis of vehicle ownership.
- P2P platforms may insure the shared vehicles (without ownership interest).

- Notification of implication of liens:
 - The platform must notify the owner when he/she registers the vehicle with the platform that vehicle sharing may violate the terms of the contract with the lienholder.
 - This notification is provided to the owner and the driver each time the vehicle is shared, unless physical damage coverage is provided.
- P2P platform maintains records for five years on the identity of the driver, times the vehicle is used, fees paid by driver, and revenues received by the owner.
 - This information is shared with the owner, the owner's insurer, or the driver's insurer to facilitate claims coverage investigations; in addition, information shall be provided to injured individuals, their attorneys, or their estate representatives regarding the insurer and the insurance policy by the P2P platform.
 - P2P platforms must make several consumer protection disclosures related to insurance.
- The parties contemplate separate legislation that specifically allows automobile insurers to exclude any and all coverage, including the duty to defend, for peer-to-peer car sharing on a shared vehicle owner's policy. It also would allow automobile insurers to offer such coverage, if they choose to do so.

- **Taxation**

- P2P vehicles shared on a P2P platform that were subject to the motor vehicle sales and use tax at the time of titling (therefore, not a rental vehicle or a government vehicle) and are subject to the tangible personal property tax (unlike a rental vehicle) are not subject to the daily vehicle rental tax - which applies to vehicles that are not subject to the motor vehicle sales and use tax nor the tangible personal property tax. The sharing should be subject to a "P2P tax" on the sharing activity at a rate that is appreciably lower than the rate applicable to traditional car rentals. Such rate, among other things, reflects the ordinary transaction rate on comparable short-term uses of tangible personal property under Virginia law.
 - This is consistent with the policy established by §58.1-1740, which provides for an offset from tangible personal property tax (a local tax) when vehicles pay the daily rental vehicle tax (on the rental activity).

We again appreciate the Department's time and efforts in bringing the stakeholders together and reviewing legislation that has passed on this topic in other states.

We appreciate your consideration of our consensus.

Very truly yours,

Tray Adams & Sean Vinck (Turo)

Nick Green (Getaround)

Rich Savage (Allstate and Drift)

Nancy Egan & Chris LaGow (American Property Casualty Insurance Association)

Sam Rooks & Kevin Logan (Virginia Farm Bureau)

Joe Hudgins & Bob Bradshaw (Independent Insurance Agents of Virginia)

Fred Helm (Alliance of Automobile Manufacturers)

Mark Dix & Elliott Buckner (Virginia Trial Lawyers Association)

Eric Henning, Edward A. Mullen, & Nicole L. Brenner (Maven/General Motors)



October 25, 2019

Commissioner Richard D. Holcomb
Virginia Department of Motor Vehicles
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Dear Commissioner Holcomb:

Our firm is national legislative counsel for Getaround, Inc., a leading peer-to-peer carsharing platform that empowers members to safely share their personal vehicles by the hour and day. Using innovative technology, our platform connects people whose cars are sitting idle with people who need to use a car.

Thank you for the opportunity to participate in the Department of Motor Vehicles' study committee on carsharing in Virginia, and we are grateful to you and the Department's staff for conducting a thorough and thoughtful study committee process. This letter provides additional comments as Virginia contemplates its policies on carsharing.

There is no urgent need for legislation in Virginia to address carsharing. Indeed, multiple carsharing platforms operate in Virginia today, do so legally, and comply with and exceed the minimum insurance and consumer protection requirements of state law. It is deeply important to Getaround that robust insurance coverage applies at all times that the vehicle is being shared. For that reason, every transaction facilitated on our platform includes at least \$1 million in insurance coverage.

Nonetheless, we understand the legislature's desire to work proactively in this area. We support the enactment of comprehensive carsharing legislation in Virginia, just as we have supported the enactment of similar legislation across the country—including the bill that ultimately became law in Colorado this year. Comprehensive, common-sense legislation is important for the public, consumers, and our industry. It is notable that in this study committee, every participating stakeholder representing the carsharing platforms, the insurance industry, and the trial bar reached consensus on the key components of a framework on insurance and consumer protection requirements. The outstanding points of disagreement were relatively minor and have largely been resolved through further dialogue, as the joint letter those stakeholders submitted to you today demonstrates.

Disagreement among a different, small contingent of participating stakeholders, however, prevented the study committee from reaching consensus on the issue of taxation. With that in mind, we encourage legislators in Virginia to take the same approach as their counterparts in other states on this issue. These states have uniformly recognized that carsharing is a different activity than traditional rental car

October 25, 2019

Page 2

businesses. In fact, at least seven states have passed laws on carsharing. Every law has distinguished between carsharing and traditional rental cars, imposing different – and in most instances – more rigorous insurance and regulatory requirements on carsharing than what applies to traditional rental cars.

And on the issue of taxes, specifically, none of those states have extended their rental-car specific excise taxes to carsharing activities—choosing instead to create new carsharing taxes with rates that are appreciably lower than rental car taxes. As these states have recognized, burdening carsharing with extraordinary taxes is unsound public policy for several reasons:

First, when state law imposes rigorous, costly insurance and regulatory requirements on an activity like carsharing, it is appropriate to take those costs into consideration in assigning the tax rate. That would also be the case in Virginia should the legislature pass a law that reflects the majority stakeholder consensus on insurance and consumer protection requirements. By contrast, traditional rental car companies have fewer state regulatory requirements and also receive tax advantages under state law that carsharing owners do not have—all of which factor into the ultimate costs borne by the end-user.

Second, states have enacted rental car specific excise taxes to target the out-of-state customers that traditional rental cars largely serve, who are not Getaround's primary customers. In Virginia, the rental car tax rate is more than double the ordinary state sales tax. Why? Not because the legislature believes driving a car is an unusual drain on public resources. Rather, Virginia like most other states has recognized that "nonresident travelers and tourists make up a large segment of those using rental car services."¹ By contrast, the vast majority of Getaround's users are local residents that contribute heavily in income, sales, and other taxes, and need cars for short periods of time to go about their daily lives. Someone who needs a car for a few hours to run an errand, get to work, or pick the kids up from school would never think to visit a distant rental car counter, but that is exactly the customers who benefit from carsharing—and they should not be subjected to unusually high tax burdens.

Third, states have recognized that carsharing has unique economic benefits for both vehicle owners and users, which will be reduced if carsharing is subject to extraordinary tax burdens. Owning a car is expensive. Car payments, maintenance, insurance, and parking all add up. In 2016, AAA estimated that car ownership costs \$8,500 annually.² For owners, sharing a car can offset those costs. Households that share a car can save an average of \$154 to \$435 per month.³ More money in the pockets of car owners and car users means more money stays in the community, rather than going elsewhere in the form of car insurance premiums and auto loan interest. For users, fewer people can afford to own a car, and so carsharing democratizes car ownership and empowers residents with the knowledge that they have access to a convenient option to make local trips.

¹ Tax Foundation, *Reforming Rental Car Excise Taxes* (Mar. 26, 2019), available at <https://taxfoundation.org/reforming-rental-car-excise-taxes/>.

² Shaheen, Bell, Cohen, & Balaji. *Travel Behavior: Shared Mobility and Transportation Equity*, at p. 31 (2017).

³ *Id.* at p. 33.

October 25, 2019

Page 3

Finally, carsharing benefits communities. Studies have concluded that a single shared vehicle can take 9 to 15 privately owned vehicles off the road,⁴ and possibly even up to 20 personally owned vehicles.⁵ Where carsharing thrives, cities have fewer vehicles on the road and less congestion. Thus, according to one study, carsharing members decrease their personal vehicle miles traveled by 36%, on average.⁶ A University of California-Berkeley working paper found that carsharing eliminated 10 to 29 million vehicle miles traveled per year, per city studied.⁷

* * *

Thank you again for considering these comments. We look forward to working with you, the Department's staff, and all interested parties as the legislative process begins.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas G. Green". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nicholas G. Green

⁴ Bieszczat, A., & J. Schwieterman. "Carsharing: Review of Its Public Benefits and Level of Taxation." *Transportation Research Record*, no. 2319, 2012, pp. 105–112. <https://doi.org/10.3141/2319-12>.

⁵ *Id.*

⁶ *Id.* at p. 106.

⁷ Martin, E., & Shaheen. "Impacts of Car2Go on Vehicle Ownership, Modal Shift, Vehicle Miles Traveled, and Greenhouse Gas Emissions: An Analysis of Five North American Cities." Working Paper. 2016. http://innovativemobility.org/wp-content/uploads/2016/07/Impactsofcar2go_FiveCities_2016.pdf.