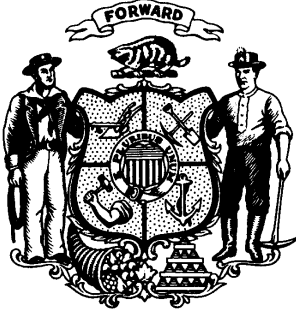


State of Wisconsin



2023 Assembly Bill 395

Date of enactment:
Date of publication*:

2023 WISCONSIN ACT

AN ACT to amend 77.99, 77.995 (2), 344.57 (5), 344.57 (6) and 344.57 (7); and to create 344.51 (4), 344.581 and 632.362 of the statutes; relating to: requirements for and insurance related to peer-to-peer motor vehicle sharing programs.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 77.99 of the statutes is amended to read:

77.99 Imposition. A local exposition district under subch. II of ch. 229 may impose a tax at the rate of 3 percent of the sales price on the rental, but not for rental and not for rental as a service or repair replacement vehicle, within the district's jurisdiction under s. 229.43, of Type 1 automobiles, as defined in s. 340.01 (4) (a), by establishments primarily engaged in short-term rental of passenger cars without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54 (1), (4), (7) (a), (7m), (9) or (9a). If the state makes a payment under s. 229.50 (7) to a district's special debt service reserve fund, a majority of the district's authorized board of directors may vote to increase the tax rate under this subchapter to 4 percent. A resolution to adopt the taxes imposed under this section, or an increase in the tax rate, shall be effective on the first January 1, April 1, July 1, or October 1 following the adoption of the resolution or tax increase. For purposes of this section, a peer-to-peer motor vehicle sharing program, as defined in s. 632.362 (1) (g), or a shared vehi-

cle owner, as defined in s. 632.362 (1) (i), is not an establishment primarily engaged in short-term rental of passenger cars without drivers, if the applicable taxes under s. 77.52 or 77.53 have been paid for the purchase of the shared motor vehicle.

SECTION 2. 77.995 (2) of the statutes is amended to read:

77.995 (2) There is imposed a fee at the rate of 5 percent of the sales price on the rental, but not for rental and not for rental as a service or repair replacement vehicle of Type 1 automobiles, as defined in s. 340.01 (4) (a); of recreational vehicles, as defined in s. 340.01 (48r); of motor homes, as defined in s. 340.01 (33m); and of camping trailers, as defined in s. 340.01 (6m) by establishments primarily engaged in short-term rental of vehicles without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54 (1), (4), (7) (a), (7m) or (9a). There is also imposed a fee at the rate of 5 percent of the sales price on the rental of limousines. For purposes of this subsection, a peer-to-peer motor vehicle sharing program, as defined in s. 632.362 (1) (g), or a shared vehicle owner, as defined in s. 632.362 (1) (i), is not an establishment primarily engaged in short-term rental of vehicles without drivers, if the applicable taxes under s. 77.52 or

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

77.53 have been paid for the purchase of the shared motor vehicle.

SECTION 3. 344.51 (4) of the statutes is created to read:

344.51 (4) This section does not apply to a motor vehicle sharing agreement, as defined in s. 632.362 (1) (b); a peer-to-peer motor vehicle sharing program, as defined in s. 632.362 (1) (g); or a shared vehicle owner, as defined in s. 632.362 (1) (i).

SECTION 4. 344.57 (5) of the statutes is amended to read:

344.57 (5) “Rental agreement” means a written agreement setting forth the terms and conditions governing the use of a private passenger vehicle provided for rent by a rental company. “Rental agreement” does not include a motor vehicle sharing agreement, as defined in s. 632.362 (1) (b).

SECTION 5. 344.57 (6) of the statutes is amended to read:

344.57 (6) “Rental company” means a person in the business of providing private passenger vehicles for rent to the public. “Rental company” does not include a person operating a peer-to-peer motor vehicle sharing program, as defined in s. 632.362 (1) (g), or a shared vehicle owner, as defined in s. 632.362 (1) (i).

SECTION 6. 344.57 (7) of the statutes is amended to read:

344.57 (7) “Renter” means the person who rents a private passenger vehicle from a rental company under a rental agreement. “Renter” does not include a shared vehicle driver, as defined in s. 632.362 (1) (h).

SECTION 7. 344.581 of the statutes is created to read:

344.581 Peer-to-peer motor vehicle sharing. (1) DEFINITIONS. In this section:

(a) “Motor vehicle sharing agreement” has the meaning given in s. 632.362 (1) (b).

(b) “Motor vehicle sharing duration” has the meaning given in s. 632.362 (1) (d).

(c) “Peer-to-peer motor vehicle sharing program” has the meaning given in s. 632.362 (1) (g).

(d) “Shared vehicle driver” has the meaning given in s. 632.362 (1) (h).

(e) Notwithstanding s. 344.01 (2) (cm), “shared vehicle owner” has the meaning given in s. 632.362 (1) (i).

(2) OPERATOR’S LICENSE REQUIRED. A peer-to-peer motor vehicle sharing program may not enter into a motor vehicle sharing agreement with an individual who will operate a shared motor vehicle unless the individual has attained the age of 18 and satisfies any of the following:

(a) The individual holds an operator’s license under

ch. 343 that authorizes the individual to operate a motor vehicle of the class of the shared motor vehicle.

(b) The individual is a nonresident of this state who holds a license issued by the state or country of the individual’s residence that authorizes the individual to operate a motor vehicle of the class of the shared motor vehicle in that state or country.

(3) RESPONSIBILITY FOR CERTAIN EQUIPMENT. A peer-to-peer motor vehicle sharing program has sole responsibility for any equipment, including a global positioning system or other special equipment, that is put in or on a motor vehicle to monitor or facilitate the motor vehicle sharing transaction. The peer-to-peer motor vehicle sharing program shall agree to indemnify and hold harmless the shared vehicle owner for any damage to or theft of equipment described under this subsection during the motor vehicle sharing duration that is not caused by the shared vehicle owner. The peer-to-peer motor vehicle sharing program has the right to seek indemnity from the shared vehicle driver for any loss or damage to equipment described under this subsection during the motor vehicle sharing duration.

(4) SAFETY RECALLS. (a) At the time a motor vehicle owner registers as a shared vehicle owner through a peer-to-peer motor vehicle sharing program and before the shared vehicle owner makes a motor vehicle available for sharing, the peer-to-peer motor vehicle sharing program shall do all of the following:

1. Verify that the shared motor vehicle is not the subject of a safety recall for which the repairs have not been made.

2. Notify the shared vehicle owner of the shared vehicle owner’s responsibilities under par. (b).

(b) A shared vehicle owner that receives notice of a safety recall on the shared motor vehicle shall do all of the following, as applicable:

1. Refrain from making the motor vehicle available for sharing until the safety recall repair has been made.

2. If the motor vehicle has been made available for sharing before receipt of the notice of recall, remove the motor vehicle from the peer-to-peer motor vehicle sharing program as soon as practicable after receipt of the notice and until the safety recall repair has been made.

3. If the motor vehicle is in possession of the shared vehicle driver at the time of receipt of the notice of recall, notify the peer-to-peer motor vehicle sharing program of the recall as soon as practicable after receipt of the notice.

(5) RECORD RETENTION. For each individual who will operate a shared motor vehicle under a motor vehicle sharing agreement, a peer-to-peer motor vehicle sharing program shall keep a record of the individual’s name and address, the individual’s operator’s license

number, and the state or foreign country that issued the individual's operator's license.

SECTION 8. 632.362 of the statutes is created to read:

632.362 Peer-to-peer motor vehicle sharing. (1) DEFINITIONS. In this section:

(a) "Motor vehicle" has the meaning given in s. 344.01 (2) (b).

(b) "Motor vehicle sharing agreement" means an agreement providing the terms and conditions, applicable to a shared vehicle driver and shared vehicle owner, that govern the use of a shared motor vehicle through a peer-to-peer motor vehicle sharing program.

(c) "Motor vehicle sharing delivery period" means the period during which a shared motor vehicle is being delivered to the location of the motor vehicle sharing initiation time, if applicable, as documented by the governing motor vehicle sharing agreement.

(d) "Motor vehicle sharing duration" means the period that commences with the motor vehicle sharing delivery period or, if there is no motor vehicle sharing delivery period, that commences with the motor vehicle sharing initiation time and, in either case, ends at the motor vehicle sharing termination time.

(e) "Motor vehicle sharing initiation time" means the time when the motor vehicle to be shared becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared motor vehicle is scheduled to begin as documented in the records of a peer-to-peer motor vehicle sharing program.

(f) "Motor vehicle sharing termination time" means the earliest of the following:

1. The expiration of the time agreed upon for the use of the shared motor vehicle according to the terms of the motor vehicle sharing agreement, if the shared motor vehicle is delivered to the location that is specified in the motor vehicle sharing agreement.

2. The time the shared motor vehicle is returned by the shared vehicle driver to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer motor vehicle sharing program, which alternatively agreed upon location shall be incorporated into the motor vehicle sharing agreement.

3. The time the shared vehicle owner regains possession and control of the shared motor vehicle.

(g) "Peer-to-peer motor vehicle sharing program" means a business platform that connects motor vehicle owners with individuals to enable the authorized use of a motor vehicle by an individual other than the owner for financial consideration.

(h) "Shared vehicle driver" means an individual who is authorized to drive a shared motor vehicle under a motor vehicle sharing agreement through a peer-to-

peer motor vehicle sharing program and who is not the shared vehicle owner.

(i) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle that is available for sharing through a peer-to-peer motor vehicle sharing program.

(2) INSURANCE COVERAGE DURING SHARING. (a) A peer-to-peer motor vehicle sharing program shall, except as provided in par. (b), assume liability of a shared vehicle owner for bodily injury and property damage to 3rd parties and for uninsured motorist and personal injury protection losses in amounts stated in the motor vehicle sharing agreement that are no less than the amounts specified in ss. 344.33 (2) and 632.32 (4) (a) during the motor vehicle sharing duration. An insurer writing a policy with respect to a peer-to-peer motor vehicle sharing program shall comply with s. 632.32 (4m).

(b) Notwithstanding the definition of motor vehicle sharing termination time, the assumption of liability under par. (a) does not apply to a shared vehicle owner when any of the following occurs:

1. The shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer motor vehicle sharing program before the motor vehicle sharing duration in which the loss occurred.

2. The shared vehicle owner acts in concert with a shared vehicle driver who fails to return the shared motor vehicle pursuant to the terms of a motor vehicle sharing agreement.

(c) Notwithstanding the definition of motor vehicle sharing termination time, the assumption of liability under par. (a) applies to bodily injury, property damage, and uninsured motorist and personal injury protection losses by damaged 3rd parties as required by ss. 344.33 (2) and 632.32 (4) (a).

(d) A peer-to-peer motor vehicle sharing program shall ensure that, during each motor vehicle sharing duration, the shared vehicle owner and the shared vehicle driver are aware of the availability of underinsured motorist coverage and are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts set forth in ss. 344.33 (2) and 632.32 (4) (a) and that satisfies any of the following:

1. The policy recognizes that the shared motor vehicle insured under the policy is made available and used through a peer-to-peer motor vehicle sharing program.

2. The policy does not exclude use of a shared motor vehicle by a shared vehicle driver.

(e) The insurance requirement described under par. (d) may be satisfied by motor vehicle liability insurance maintained by any of the following:

1. A shared vehicle owner.

2. A shared vehicle driver.
3. A peer-to-peer motor vehicle sharing program.
4. Any combination of the persons described in subds. 1. to 3.

(f) The coverage maintained under par. (e) that is satisfying the insurance requirement under par. (d) shall be primary during each motor vehicle sharing duration and, in the event that a claim occurs in another state with minimum financial responsibility limits higher than the amounts specified in ss. 344.33 (2) and 632.32 (4) (a) during the motor vehicle sharing duration, the coverage maintained under par. (e) shall satisfy the difference in minimum coverage amounts, up to the applicable policy limits.

(g) The insurer, insurers, or peer-to-peer motor vehicle sharing program providing coverage under pars. (d) and (e) shall assume primary coverage if any of the following applies:

1. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss, and the peer-to-peer motor vehicle sharing program does not have available, does not retain, or fails to provide the information specified under sub. (9).

2. A dispute exists as to whether the shared motor vehicle was returned to an alternatively agreed upon location specified in the motor vehicle sharing agreement.

(h) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with par. (e) has lapsed or does not provide the coverage required, then insurance maintained by the peer-to-peer motor vehicle sharing program shall provide the coverage required under par. (d) beginning with the first dollar of the claim and shall have the duty to defend the claim except under circumstances described in par. (b).

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

(j) Nothing in this section does any of the following:

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

2. Limits the ability of a peer-to-peer motor vehicle sharing program to seek indemnification, under the terms of a motor vehicle sharing agreement, from the shared vehicle owner or shared vehicle driver for economic loss sustained by the peer-to-peer motor vehicle sharing program resulting from a breach of the terms of the motor vehicle sharing agreement.

(3) **INSURABLE INTEREST.** A peer-to-peer motor ve-

hicle sharing program shall have an insurable interest in a shared motor vehicle during the motor vehicle sharing duration. Nothing in this subsection creates liability on the peer-to-peer motor vehicle sharing program to maintain the coverage required under sub. (2) (d). The peer-to-peer motor vehicle sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for any of the following:

(a) Liabilities to be assumed by the peer-to-peer motor vehicle sharing program under a motor vehicle sharing agreement.

(b) Any liability of the shared vehicle owner.

(c) Damage or loss to the shared motor vehicle.

(d) Any liability of the shared vehicle driver.

(4) **EXCLUSIONS IN MOTOR VEHICLE LIABILITY POLICIES.** (a) An insurer that writes motor vehicle liability insurance in this state may exclude any coverage and may refuse to defend or indemnify any claim under a shared vehicle owner's liability policy, including any of the following coverages:

1. Liability coverage for bodily injury and property damage.

2. Personal injury protection.

3. Uninsured and underinsured motorists coverage.

4. Medical payments.

5. Comprehensive physical damage.

6. Collision physical damage.

(b) Nothing in this section invalidates or limits any exclusion contained in a motor vehicle liability insurance policy, including any policy in use or approved for use that excludes coverage for motor vehicles that are made available for rent, sharing, or hire or for any business use.

(c) Nothing in this section invalidates, limits, or restricts an insurer's ability, as otherwise allowed under law, to underwrite an insurance policy or to cancel or not renew an insurance policy.

(5) **REQUIRED DISCLOSURES.** Each peer-to-peer motor vehicle sharing program shall include in any agreement made in this state with a shared vehicle owner or shared vehicle driver all of the following disclosures:

(a) Any right of the peer-to-peer motor vehicle sharing program to seek indemnification from the shared vehicle owner or shared vehicle driver for economic loss sustained by the peer-to-peer motor vehicle sharing program resulting from a breach of the terms and conditions of the motor vehicle sharing agreement.

(b) That a motor vehicle liability insurance policy issued to a shared vehicle owner for the shared motor vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted against him or her by the peer-to-peer motor vehicle sharing program.

(c) That the peer-to-peer motor vehicle sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during the motor vehicle sharing duration and that, for any use of the shared motor vehicle by the shared vehicle driver other than during the motor vehicle sharing duration, the shared vehicle driver and the shared vehicle owner might 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 motor vehicle liability insurance policy of the shared vehicle owner might not provide coverage for a shared motor vehicle.

(f) An emergency telephone number of personnel who are capable of fielding roadside assistance and other customer service inquiries.

(g) Any conditions under which a shared vehicle driver, in order to make a reservation for a shared motor vehicle, must maintain a personal motor vehicle insurance policy that is primary coverage with certain applicable coverage limits.

(6) NOTIFICATION OF IMPLICATIONS OF LIEN. At the time a motor vehicle owner registers as a shared vehicle owner through a peer-to-peer motor vehicle sharing program and before the shared vehicle owner makes a motor vehicle available for sharing, the peer-to-peer motor vehicle sharing program shall notify the shared vehicle owner that, if the shared motor vehicle has a lien against it, the use of the shared motor vehicle through the peer-to-peer motor vehicle sharing program, including any use without coverage for physical damage, may violate the terms of any agreement with the lienholder.

(7) LIABILITY EXEMPTION. Any peer-to-peer motor vehicle sharing program and any shared vehicle owner are exempt from liability consistent with 49 USC 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

(8) CONTRIBUTION AGAINST INDEMNIFICATION. A motor vehicle insurer that defends or indemnifies a claim against a shared motor vehicle that is excluded under the terms of the policy shall have the right to seek recovery against the motor vehicle insurer of the peer-to-peer motor vehicle sharing program if the claim is made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the motor vehicle sharing duration and is excluded under the terms of the policy.

(9) RECORD RETENTION. A peer-to-peer motor vehicle sharing program shall collect and verify records pertaining to the use of a shared motor vehicle, including times used, motor vehicle pick up and drop off locations, fees paid by a shared vehicle driver, and revenues received by the shared vehicle owner. To facilitate a claims coverage investigation, settlement, negotiation, or litigation, the peer-to-peer motor vehicle sharing program shall provide, upon request, the records collected under this subsection to the shared vehicle owner, the insurer of the shared vehicle owner, or the insurer of the shared vehicle driver. The peer-to-peer motor vehicle sharing program shall retain the records collected under this subsection for a period not less than the applicable time limit for bringing an action specified under ch. 893.

SECTION 9. Effective date.

(1) This act takes effect on the first day of the 10th month beginning after publication.