

'Last-Minute' Amendment Establishes New Law for Peer-to-Peer Car Rentals, Catches Litigators Off Guard

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Max Mitchell [↗](#)

Bureau Chief

The Legal Intelligencer

An amendment to a Senate bill has set new insurance ground rules for peer-to-peer carshare rentals, but the truncated process by which it became law has caught some litigators off guard and raised questions among some attorneys about whether the new rules go far enough to protect drivers.

The new law was introduced in the House Appropriations Committee as an amendment to Senate Bill 1222 on July 7, at a time when negotiations for the state budget were being finalized. The measure passed that evening and became law July 11, becoming effective immediately.

The amendment outlines the coverage requirements for companies engaging in peer-to-peer carsharing, mandating an additional layer of insurance so injured third parties won't be left uninsured if a car owner's policy includes exceptions for livery, or business activities.

As may be typical for some highly politicized issues—a category insurance coverage does not usually fall into—the vote broke down along partisan lines, with 22 Republicans supporting the measure and 15 Democrats voting against it.

According to a spokeswoman for the Democratic leader for the committee’s Democratic chair, Rep. Matthew Bradford, D-Montgomery, the reason for voting against it came down to the process.

“The amendment was added at the very last minute to SB 1222 in the Appropriations Committee and was not vetted through, nor voted on, by the Insurance Committee, as per normal process. For that reason, Democrats voted no on both the amendment in committee and the bill as amended on the floor,” Bradford’s press secretary, Megan Augustine, said in an email.

Rep. Stan Saylor, R-York, who is the committee’s Republican chair, did not return a message seeking comment.

Some litigators, too, said the way the measure was passed was unusual and, when contacted by The Legal Intelligencer, several attorneys practicing in this area were unaware that new law in this area had gone into effect.

Schmidt Kramer’s Scott Cooper, who focuses on representing plaintiffs in auto insurance disputes, said that, without a hearing, attorneys who practice in this area were unable to voice their concerns about the measure.

“There was no input from trial lawyers,” Cooper said. “If there was a hearing there could be some discussion or negotiations.”

However, not all litigators agreed that the measure was a complete surprise. Post & Schell's Bryan Shay noted that legislators have been eyeing setting parameters for peer-to-peer carsharing for more than a year, and even introduced bills on the topic, including SB 548, which was introduced in April 2021.

The two bills are very similar in substance, and, according to records, SB 548, which was introduced in the Consumer Protection and Professional Licensure, was referred to the Appropriations Committee on June 22 of this year. Noting language from the memorandum of support for SB 548, Shay said the basic idea for these efforts are to put carshare companies on a more equal footing with car rental companies and to ensure additional protections for owners, drivers and third parties now that carsharing is on the rise.

"The language isn't a total surprise," Shay said. "It's an example of the insurance industry and the law needing to adapt to address a changing circumstance and a changing use of automobiles."

From the defense and carrier standpoint, Shay said, the most important takeaway is that the new law does not invalidate exclusions that are already in place, and it requires carsharing companies to provide coverage that would otherwise be out of bounds under the owner's policy.

However, litigators on the plaintiffs side have raised questions about the measure, saying it does not go far enough to protect the parties.

Baldwin Matzus founder Kila Baldwin, who heads the trial lawyer group, Pennsylvania Association for Justice, said in an email it was

“unfortunate” that the new amendment only provided for minimum coverage levels “that haven’t been increased in over 40 years.”

“It also allows for insurers to exclude coverage under your constituent’s auto policies in the event they rent a [peer-to-peer] car, so the renter will have to use the [peer-to-peer] insurance, which is only provided at the minimum levels required under Title 75,” Baldwin said. “The language also states that UI and UIM coverage is required at the amounts in Title 75, but people aren’t required to have UI and UIM coverage at all under the law.”

“We applaud the legislature for approving another important mode of transportation, but consumers need to know that their personal auto insurance may have an exclusion in their policy for using their car for this purpose,” Baldwin said. “We’re concerned they will have to rent these cars using the companies’ minimum insurance policies, which likely won’t provide adequate coverage in the event of an accident.”

Cooper also said the new law does not address some of the minutia that could arise, such as how it will apply to cars that are leased, rather than owned, and does not give guidelines about how premiums are supposed to be set for this new product.

But, either way, lawyers agree it is likely a lot of these new disputes will be headed to courts.

“The carshare programs seem to be a new model for people to make money if they have a car, but don’t use it,” Shay said. “It’s definitely still in flux. I’m interested to see how it plays out in practice.”