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February 11, 2020

The Honorable Robert Olson
Chairman, Senate Financial Institutions and Insurance Committee
Room 236-E, State Capitol Building
300 SW 10th Ave.
Topeka, Kansas 55512

Re: Letter in Support of SB 352 -- February 13, 2020 Hearing

Dear Chairman Olson and Committee Members:

The National Association of Mutual Insurance Companies' (NAMIC) membership includes more than 1,400 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write \$268 billion in annual premiums. In Kansas, we have 194 member companies, including 11 domiciled companies, which underwrite 57% of the state's automobile insurance coverage.

NAMIC's support for proper insurance coverage in the emerging automobile sharing market is based on the principles of protection and fairness, protection for those who share their vehicles or drive them as well as those who suffer personal loss when the shared vehicle is in an accident or damaged and fairness for the driver, owner and, importantly, for those who will not participate in this business venture and should not have their auto insurance premiums subsidize it, either directly or indirectly.

Towards this end, NAMIC and other stakeholders engaged in a process to develop a comprehensive insurance solution. In late 2019, the National Conference of Insurance Legislators (NCOIL) created a model law. The model law accomplished much, but it also left gaps that do not completely protect the public and it was understood at the time that NAMIC and others would seek to close them when the issue was debated in the states.

SB 352 is the beginning of the debate in Kansas. While it is almost completely based on the NCOIL model, it differs in aspects, both by omitting some model language and changing it in other places. This letter identifies the important changes and, further, offers improvements which build on the fairness principle. Attached to this letter is a copy of the bill with our suggested changes in red.

Because of the length of the letter, we will address the more important issues first.

The Honorable Robert Olson
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I

The most important change we suggest is to delete the language in Section 3(f)(2) on page 3, lines 17-20:

“The shared vehicle's insurer shall indemnify the peer-to-peer vehicle sharing program to the extent of its obligation under, if any, the applicable insurance policy, if it is determined that the shared vehicle's owner was in control of the shared vehicle at the time of the loss.”

and replace it with:

“A peer-to-peer car sharing program may seek indemnity from a shared vehicle owner if the shared vehicle owner is determined to have been the operator of the shared vehicle at the time of the loss.”

While this seems to be mere wordsmithing, there is a problem with it as written. The current language makes the owner's insurer the subject of the sentence, which when combined with the use of “shall” could reverse the traditional common law subrogation practices. Making the P2P company the subject and changing the word to “may” properly balances the situation and preserves existing subrogation practices.

II

The second most important change we suggest is to add the following language after Section 5(b) on page 4 after line 21:

“(c) Nothing in this Act invalidates, limits or restricts an insurer's ability under existing law to underwrite any insurance policy. Nothing in this Act invalidates, limits or restricts an insurer's ability under existing law to cancel and non-renew policies, including for participation in a peer-to-peer car sharing program.”

This section is necessary to ensure fairness to insureds who do not want to engage in car-sharing and who do not want to indirectly subsidize those who do. It also underscores the principle of freedom of contract.

III



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The third issue of importance to NAMIC is at the beginning of Section 3 on page 2. The first change we recommend is to insert the word “primary” between “assume” and “liability” in line 16. The second is to delete the words “Except as provided in subsection (b),”. The result is that Section 3 will now start:

“Sec. 3. (a) A peer-to-peer vehicle sharing program shall assume primary liability of a shared vehicle owner for . . .”

This removes any potential confusion as to what coverage goes first.

IV

This issue is related to III as it assists in underscoring the need for clarity in the responsibility for liability. Due to possible disputes as to when the definition of “Vehicle sharing termination time” ends, NAMIC suggests that the following subdivision (4) be added to Section(2)(k) on page 2 starting after “vehicle” in line 14:

; or

(4) If a dispute arises as to whether the car sharing termination time has transpired, or if a car return calls into question whether the car sharing termination time has occurred, the peer-to-peer car sharing program shall extend primary coverage for the loss. If during the investigation of the claim it becomes apparent that one of the parties to the car sharing program agreement was negligent, engaged in misrepresentation, or is otherwise responsible for the loss, the car sharing program may seek recovery from one or both parties directly through subrogation. Other insurance responsibilities and legal rights of the parties to car sharing program shall be governed by Section 3.

Adopting this will allow the removal of current Section 3(b) on page 2, lines 22 to 31, which creates confusion as to coverage during the initial stage of a termination time dispute. With the changes, it is clear that the P2P steps up first, which is appropriate.

V

Language needs to be added to Section 3(e) on page 3, lines 6-8 to protect the driver when a shared vehicle is driven into a state with different financial responsibility limits. We suggestion the following:

(e) The insurance described under subsection (d) that satisfies the insurance



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requirement of subsection (c) shall be primary during each vehicle sharing period and, in the event that a claim occurs in another state with minimum state financial responsibility limits higher than K.S.A. 40-3107 during the car sharing period, the peer-to-peer car sharing program shall satisfy the difference in minimum coverage amounts.

VI

We also urge that new subsection (i) (with current subsection (i) be made (j)) to address the situation where the P2P program may be liable for actions taken on their own. We do not express an opinion as to the proper amount. New subsection(i) would read as follows:

(i) In addition to any other insurance coverage required by this chapter, a peer-to-peer car sharing program shall maintain insurance in an amount of at least \$[XXXXXX] that provides coverage for the program's liability for an act or omission of the program that is the proximate cause of death, bodily injury, or property damage to any person in any one accident because of the operation of a shared vehicle through the program.

VII

To address gaps and ambiguities, we suggest the following additions to Section 6 on page 4, lines 22 -30. It would now read:

Sec. 6. A peer-to-peer vehicle sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, the times used, car sharing pick up and drop off locations, fees paid by the shared vehicle driver and revenues received by the shared vehicle owner. The program shall 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, settlement, negotiation or litigation. The peer-to-peer vehicle sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

The "settlement, negotiation or litigation" language is particularly important in that "claims coverage investigation" does not implicitly cover all four concepts. It would be unfair for the P2P program to be required to provide the information for the first step but then be allowed to pull it back later.



The Honorable Robert Olson
February 11, 2020

NAMIC appreciates your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,

Mark Johnston
Regional Vice President – Midwest

cc: Ms. Marlee Carpenter, KAPCIC

SENATE BILL No. 352

By Committee on Transportation 2-3

1 AN ACT concerning transportation; relating to peer-to-peer vehicle
2 sharing; insurance requirements; liability; recordkeeping; consumer
3 protection; enacting the peer-to-peer vehicle sharing program.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. Sections 1 through 14, and amendments thereto, shall be
7 known and may be cited as the peer-to-peer vehicle sharing program act.

8 Sec. 2. As used in this act:

9 (a) "Act" means the peer-to-peer vehicle sharing program act.

10 (b) "Peer-to-peer vehicle sharing" means the authorized use of a
11 shared vehicle by an individual other than the shared vehicle's owner
12 through a peer-to-peer vehicle sharing program.

13 (c) "Peer-to-peer vehicle sharing program" means a business platform
14 that connects vehicle owners with drivers to enable the sharing of vehicles
15 for financial consideration.

16 (d) "Vehicle sharing program agreement" means the terms and
17 conditions applicable to a shared vehicle owner, a shared vehicle driver
18 and a peer-to-peer vehicle sharing program that govern the use of a shared
19 vehicle through a peer-to-peer vehicle sharing program.

20 (e) "Shared vehicle" means a vehicle that is available for sharing
21 through a peer-to-peer vehicle sharing program.

22 (f) "Shared vehicle driver" means an individual who has been
23 authorized to drive the shared vehicle by the shared vehicle owner under a
24 vehicle sharing program agreement.

25 (g) "Shared vehicle owner" means the registered owner of a vehicle
26 made available for sharing to shared vehicle drivers through a peer-to-peer
27 vehicle sharing program.

28 (h) "Vehicle sharing delivery period" means the period of time during
29 which a shared vehicle is being delivered to the location of the vehicle
30 sharing start time, if applicable, as documented by the governing vehicle
31 sharing program agreement.

32 (i) "Vehicle sharing period" means the period of time that commences
33 with the vehicle sharing delivery period or, if there is no vehicle sharing
34 delivery period, that commences with the vehicle sharing start time and, in
35 either case, that ends at the vehicle sharing termination time.

36 (j) "Vehicle sharing start time" means the time when the shared

15
16 Sec. 3. (a) ~~Except as provided in subsection (b), a~~ A peer-to-peer
17 vehicle sharing program shall assume primary liability of a shared
 vehicle owner
18 for bodily injury or property damage to third parties for uninsured and
19 underinsured motorist or personal injury protection losses during the
20 vehicle sharing period in amounts stated in the peer-to-peer vehicle sharing
21 program agreement that shall not be less than those set forth in K.S.A. 40-
22 3107, and amendments thereto.

23 (b) ~~Notwithstanding the definition of "vehicle sharing termination~~
24 ~~time" set forth in section 2, and amendments thereto, the assumption of~~
25 ~~liability under subsection (a) shall not apply to any shared vehicle owner~~
26 ~~when:~~

27 ~~(1) A shared vehicle owner makes an intentional or fraudulent~~
28 ~~material misrepresentation or omission of fact to the peer-to-peer vehicle~~
29 ~~sharing program before the vehicle sharing period in which the loss~~
30 ~~occurred; or~~

31 ~~(2) acting in concert with a shared vehicle driver who fails to return~~
32 ~~the shared vehicle.~~

33
34 Note that Section 3.1(c) from the model is not in this place.

35
36 (d) A peer-to-peer vehicle sharing program shall ensure that, during
37 each vehicle sharing period, the shared vehicle owner and the shared
38 vehicle driver are insured under a motor vehicle liability insurance policy
39 that provides insurance coverage in amounts no less than the minimum
40 amounts set forth in K.S.A. 40-3107, and amendments thereto, and the
41 policy:

42 (1) Recognizes that the vehicle insured under the policy has been
43 made available as a shared vehicle and is used through a peer-to-peer
44 vehicle sharing program; or

45 (2) does not exclude use of the vehicle by a shared vehicle driver.

46 (d) The insurance described under subsection (eb) may be satisfied by
47 motor vehicle liability insurance maintained by:

1 (1) A shared vehicle owner;
 2 (2) a shared vehicle driver;
 3 (3) a peer-to-peer vehicle sharing program; or
 4 (4) (A) a shared vehicle owner or a shared vehicle driver; and
 5 (B) a peer-to-peer vehicle sharing program.
 6 (e) The insurance described under subsection (d) that satisfies the
 7 insurance requirement of subsection (c) shall be primary during each
 8 vehicle sharing period and, in the event that a claim occurs in another state
with minimum state financial responsibility limits higher than K.S.A. 40-3107
during the car sharing period, the peer-to-peer car sharing program shall satisfy the
difference in minimum coverage amounts.

9 (f) (1) The peer-to-peer vehicle sharing program shall assume
 10 primary liability for a claim when it is in whole or in part providing the
 11 insurance required under subsections (c) and (d) and:

12 (A) A dispute exists as to who was in control of the shared vehicle at
 13 the time of the loss; and

14 (B) the peer-to-peer vehicle sharing program does not have available,
 15 did not retain or fails to provide the information required under section 6,
 16 and amendments thereto.

17 ~~(2) The shared vehicle's insurer shall indemnify the peer-to-peer~~
 18 ~~vehicle sharing program to the extent of its obligation under, if any, the~~
 19 ~~applicable insurance policy, if it is determined that the shared vehicle's~~
 20 ~~owner was in control of the shared vehicle at the time of the loss.~~

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 38 A peer-to-peer car sharing program may seek indemnity from a shared
vehicle owner if the shared vehicle owner is determined to have been the
operator of the shared vehicle at the time of the loss.

1
 2 (g) If insurance maintained by a shared vehicle owner or shared
 3 vehicle driver in accordance with subsection (d) has lapsed or does not
 4 provide the required coverage, insurance maintained by a peer-to-peer
 5 vehicle sharing program shall provide the coverage required by subsection
 6 (c) beginning with the first dollar of a claim and shall have the duty to
 7 defend such claim except under circumstances described in subsection (b).

8 (h) Coverage under a motor vehicle liability insurance policy
 9 maintained by the peer-to-peer vehicle sharing program shall not be
 10 dependent on another motor vehicle insurer first denying a claim nor shall
 11 another motor vehicle insurance policy be required to first deny a claim.

12 (i) In addition to any other insurance coverage required by this
chapter, a peer-to-peer car sharing program shall maintain insurance in an amount
of at least \$[XXXXXXX] that provides coverage for the program's liability for an
act or omission of the program that is the proximate cause of death, bodily injury,
or property damage to any person in any one accident because of the operation of a
shared vehicle through the program.

13 (j) Nothing in this section shall be construed to:

14 (1) Limit the liability of the peer-to-peer vehicle sharing program for
 15

16 any act or omission of the peer-to-peer vehicle sharing program itself that
17 results in injury to any person as a result of the use of a shared vehicle
18 through the peer-to-peer vehicle sharing program; or
19 (2) limit the ability of the peer-to-peer vehicle sharing program to
20 contractually seek indemnification from the shared vehicle owner or the
21 shared vehicle driver for economic loss sustained by the peer-to-peer
22 vehicle sharing program resulting from a breach of the terms and
23 conditions of the vehicle sharing program agreement.
24 Sec. 4. Between the time that a vehicle owner registers as a shared
25 vehicle owner on a peer-to-peer vehicle sharing program and the time that
26 the shared vehicle owner makes a vehicle available as a shared vehicle on

1 the program, the program shall notify the shared vehicle owner, that if the
 2 shared vehicle has a lien against it, the use of the shared vehicle through a
 3 peer-to-peer vehicle sharing program, including use without physical
 4 damage coverage, could violate the terms of the contract with the
 5 lienholder.

6 Sec. 5. (a) An authorized insurer that writes motor vehicle liability
 7 insurance in the state may exclude any and all coverage and the duty to
 8 defend or indemnify for any claim afforded under a shared vehicle owner's
 9 motor vehicle liability insurance policy, including, but not limited to:

- 10 (1) Liability coverage for bodily injury and property damage;
- 11 (2) personal injury protection coverage as defined in K.S.A. 40-3103,
 12 and amendments thereto;
- 13 (3) uninsured and underinsured motorist coverage;
- 14 (4) medical benefits coverage as defined in K.S.A. 40-3103, and
 15 amendments thereto;
- 16 (5) comprehensive physical damage coverage; or
- 17 (6) collision physical damage coverage.

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

(c) Nothing in this Article invalidates, limits or restricts an insurer's ability under existing law to underwrite any insurance policy. Nothing in this Article invalidates, limits or restricts an insurer's ability under existing law to cancel and non-renew policies, including for participation in a peer-to-peer car sharing program.

22 Sec. 6. A peer-to-peer vehicle sharing program shall collect and
 23 verify records pertaining to the use of a vehicle, including, but not limited
 24 to, the times used, car sharing pick up and drop off locations, fees paid
 by the shared vehicle driver and revenues
 25 received by the shared vehicle owner. The program shall provide that
 26 information upon request to the shared vehicle owner, the shared vehicle
 27 owner's insurer or the shared vehicle driver's insurer to facilitate a claim
 28 coverage investigation, settlement, negotiation or litigation. The peer-to-
 peer vehicle sharing program shall
 29 retain the records for a time period not less than the applicable personal
 30 injury statute of limitations.

31 Sec. 7. A peer-to-peer vehicle sharing program and a shared vehicle
 32 owner shall be exempt from vicarious liability in accordance with 49
 33 U.S.C. § 30106 and under any state or local law that imposes liability
 34 solely based on vehicle ownership.

35 Sec. 8. A motor vehicle insurer that defends or indemnifies a claim
 36 against a shared vehicle that is excluded under the terms of its policy shall
 37 have the right to seek contribution against the motor vehicle insurer of the

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peer-to-peer vehicle 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 vehicle sharing period; and
- (2) excluded under the terms of its policy.

Sec. 9. (a) Notwithstanding any other law, statute, rule or regulation to the contrary, a peer-to-peer vehicle sharing program shall have an

1 insurable interest in a shared vehicle during the vehicle sharing period.

2 (b) Nothing in this section shall be construed to require that a peer-to-
3 peer vehicle sharing program maintain the coverage mandated by section
4 3, and amendments thereto.

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

8 (1) Liabilities assumed by the peer-to-peer vehicle sharing program
9 under a peer-to-peer vehicle sharing program agreement;

10 (2) any liability of the shared vehicle owner;

11 (3) damage or loss to the shared motor vehicle; or

12 (4) any liability of the shared vehicle driver.

13 Sec. 10. (a) Every vehicle sharing program agreement made in the
14 state of Kansas shall disclose the following information to the shared
15 vehicle owner and the shared vehicle driver, as appropriate:

16 (1) Any right of the peer-to-peer vehicle sharing program to seek
17 indemnification from the shared vehicle owner or the shared vehicle driver
18 for economic loss sustained by the peer-to-peer vehicle sharing program
19 resulting from a breach of the terms and conditions of the vehicle sharing
20 program agreement;

21 (2) a motor vehicle liability insurance policy issued to the shared
22 vehicle owner for the shared vehicle or to the shared vehicle driver does
23 not provide a defense or indemnification for any claim asserted by the
24 peer-to-peer vehicle sharing program;

25 (3) the peer-to-peer vehicle sharing program's insurance coverage on
26 the shared vehicle owner and the shared vehicle driver is in effect only
27 during each vehicle sharing period and that, for any use of the shared
28 vehicle by the shared vehicle driver after the vehicle sharing termination
29 time, the shared vehicle driver and the shared vehicle owner may not have
30 insurance coverage;

31 (4) the daily rate, fees and, if applicable, any insurance or protection
32 package costs that are charged to the shared vehicle owner or the shared
33 vehicle driver;

34 (5) the shared vehicle owner's motor vehicle liability insurance may
35 not provide coverage for a shared vehicle; and

36 (6) there may be conditions under which a shared vehicle driver must
37 maintain a personal motor vehicle liability insurance policy with certain
38 applicable coverage limits on a primary basis in order to reserve a shared
39 motor vehicle.

40 (b) Every vehicle sharing program agreement made in the state of
41 Kansas shall also provide an emergency telephone number to personnel
42 capable of fielding roadside assistance and other customer service
43 inquiries.

1 (c) A vehicle sharing program agreement is subject to the retailers'
2 sales tax imposed pursuant to K.S.A. 79-3603(h), and amendments thereto,
3 and such agreement shall not be considered an isolated or occasional
4 transaction.

5 Sec. 11. (a) A peer-to-peer vehicle sharing program shall not enter
6 into a peer-to-peer vehicle sharing program agreement with a driver unless
7 the driver who will operate the shared vehicle:

8 (1) Holds a driver's license issued by the state of Kansas that
9 authorizes the driver to operate vehicles of the class of the shared vehicle;
10 or

11 (2) is a nonresident who:

12 (A) Has a driver's license issued by the state or country of the driver's
13 residence that authorizes the driver in that state or country to drive
14 vehicles of the class of the shared vehicle; and

15 (B) is at least the legal age required of a resident to drive in the state
16 of Kansas.

17 (b) A peer-to-peer vehicle sharing program shall maintain a record of
18 the name, address, driver's license number and place of issuance of the
19 driver's license of the shared vehicle driver and every other person, if any,
20 who will also drive the shared vehicle.

21 Sec. 12. A peer-to-peer vehicle sharing program shall have sole
22 responsibility for any equipment, such as a GPS system or other special
23 equipment, that is installed in or on the shared vehicle to monitor or
24 facilitate the vehicle sharing transaction, and shall agree to indemnify and
25 hold harmless the shared vehicle owner for any damage to or theft of such
26 equipment during the vehicle sharing period not caused by the shared
27 vehicle owner. The peer-to-peer vehicle sharing program shall have the
28 right to seek indemnity from the shared vehicle driver for any loss or
29 damage to such equipment that occurs during the sharing period.

30 Sec. 13. (a) Between the time that a vehicle owner registers as a
31 shared vehicle owner on a peer-to-peer vehicle sharing program and before
32 the time that the shared vehicle owner makes a vehicle available as a
33 shared vehicle on the peer-to-peer vehicle sharing program, the peer-to-
34 peer vehicle sharing program shall:

35 (1) Verify that the shared vehicle does not have any safety recalls on
36 the vehicle for which repairs correcting the safety recalls have not been
37 made; and

38 (2) notify the shared vehicle owner of the requirements under
39 subsection (b); and

(3) Notify the shared vehicle owner that the shared vehicle owner's personal
insurance may exclude peer-to-peer car sharing activity.

40 (b) (1) If a vehicle owner has received an actual notice of a safety
41 recall on the owner's vehicle, the owner may not make such vehicle
42 available as a shared vehicle on a peer-to-peer vehicle sharing program
43 until the safety recall repair has been made.

1 (2) If a shared vehicle owner receives an actual notice of a safety
2 recall on a shared vehicle while the shared vehicle is available on the peer-
3 to-peer vehicle sharing program, the shared vehicle owner shall remove
4 the shared vehicle from the peer-to-peer vehicle sharing program as soon
5 as practicable after receiving the notice of the safety recall and shall not
6 replace it on the peer-to-peer vehicle sharing program until the safety
7 recall repair has been made.

8 (3) If a shared vehicle owner receives an actual notice of a safety
9 recall while the shared vehicle is being used and is in the possession of a
10 shared vehicle driver, as soon as practicable after receiving the notice of
11 the safety recall, the shared vehicle owner shall notify the peer-to-peer
12 vehicle sharing program about the safety recall so that the shared vehicle
13 owner may address the safety recall repair.

14 Sec. 14. (a) A peer-to-peer vehicle sharing program, shared vehicle
15 owner or motor vehicle rental company shall, upon request of an airport,
16 including, but not limited to, any entity responsible for regulating
17 commerce at such airport within the state of Kansas, enter into an
18 agreement prior to:

19 (1) Listing shared vehicles or rental motor vehicles parked on airport
20 property or at airport facilities;

21 (2) facilitating the use of shared vehicles or rental motor vehicles to
22 transport airport customers to or from airport property or airport facilities,
23 regardless of whether that use is yet to be initiated or has a vehicle sharing
24 start time that occurs on or off airport property or airport facilities; or

25 (3) promoting or marketing shared vehicles or rental motor vehicles
26 to transport airport customers to or from airport property or airport
27 facilities, regardless of whether that use is yet to be initiated or has a
28 vehicle sharing start time that occurs on or off airport property or airport
29 facilities.

30 (b) The agreement required in subsection (a) shall set forth the same
31 or reasonably similar standards, regulations, procedures, fees and access
32 requirements applicable to any peer-to-peer vehicle sharing program, peer-
33 to-peer vehicle sharing and motor vehicle rental company.

34 Sec. 15. This act shall take effect and be in force from and after
35 January 1, 2021, and its publication in the statute book.

1 vehicle becomes subject to the control of the shared vehicle driver at or
2 after the time the reservation of a shared vehicle is scheduled to begin as
3 documented in the records of a peer-to-peer vehicle sharing program.

4 (k) "Vehicle sharing termination time" means the earliest of the
5 following events:

6 (1) The expiration of the agreed-upon period of time established for
7 the use of a shared vehicle according to the terms of the vehicle sharing
8 program agreement if the shared vehicle is delivered to the location agreed
9 upon in the vehicle sharing program agreement;

10 (2) when the shared vehicle is returned to a location as alternatively
11 agreed upon by the shared vehicle owner and shared vehicle driver as
12 communicated through a peer-to-peer vehicle sharing program; or

13 (3) when the shared vehicle owner or the shared vehicle owner's
14 authorized designee takes possession and control of the shared vehicle; or

(4) If a dispute arises as to whether the car sharing termination time has transpired, or if a car return calls into question whether the car sharing termination time has occurred, the peer-to-peer car sharing program shall extend primary coverage for the loss. If during the investigation of the claim it becomes apparent that one of the parties to the car sharing program agreement was negligent, engaged in misrepresentation, or is otherwise responsible for the loss, the car sharing program may seek recovery from one or both parties directly through subrogation. Other insurance responsibilities and legal rights of the parties to car sharing program shall be governed by Section 3.