

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 893 (Papan)
Version: June 12, 2023
Hearing Date: June 27, 2023
Fiscal: Yes
Urgency: No
CK

SUBJECT

Personal vehicle sharing programs

DIGEST

This bill applies existing regulatory provisions governing rental vehicle companies to personal vehicle sharing programs, including the ability of airports to regulate the operation of such programs at airports in California.

EXECUTIVE SUMMARY

Existing law provides a regulatory structure for rental passenger vehicle transactions. This includes specific obligations on rental companies regarding pricing and the charging of mandatory fees and fees for optional items and services, as provided. Existing law also authorizes airports to require rental companies to charge customer facility charges (CFC) that are used to finance consolidated rental car facilities and internal transportation systems. They may also require fees to be charged for the use of certain airport transportation systems. The California Tourism Marketing Act also requires special assessments to be collected on rental transactions commenced at airports.

Outside of the traditional rental car industry have emerged peer-to-peer vehicle sharing services facilitated through applications or online. Companies facilitate the booking of third parties' vehicles for short-term rentals. This bill refers to them as "personal vehicle sharing programs."

This bill applies portions of the above regulatory structure, as specified, to personal vehicle sharing programs to a similar extent as rental car companies. This includes authorization for airports to regulate access and require sharing programs to charge CFCs and obtain permits before facilitating the sharing or renting of vehicles, including advertising vehicles for pickup at such airports. Sharing programs are required to certify the payment of specified sales and use taxes on vehicles before those vehicles are made available for sharing or rent.

The bill is sponsored by Enterprise. It is supported by a variety of organizations, including the California Airports Council and the American Car Rental Association. It is opposed by Turo and TechNet.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “customer facility charge” (CFC) to mean any fee, including an alternative fee, required by an airport to be collected by a rental company from a renter for any of the following purposes:
 - a) to finance, design, and construct consolidated airport vehicle rental facilities;
 - b) to finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated vehicle rental facilities, and acquire vehicles for use in that system;
 - c) to finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems. The fees designated as a customer facility charge shall not otherwise be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport. (Gov. Code § 50474.21(a).)
- 2) Permits any airport to require rental companies to collect a CFC or an alternative-CFC to finance projects, as specified above, under specified conditions. (Gov. Code § 50474.3.)
- 3) Provides that when providing a quote, or imposing charges for a rental, the rental company may separately state the rental rate, additional mandatory charges, if any, and a mileage charge, if any, that a renter must pay for the vehicle for the rental period. A rental company is prohibited from charging any other fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle. If additional mandatory charges are imposed, the rental company must make certain disclosures to the consumer. Fees for optional items and services can be charged as provided. (Civ. Code § 1939.19.)
- 4) Establishes the California Tourism Marketing Act, which, in relevant part, requires special assessments to be collected on rental transactions commenced at airports. (Gov. Code § 13995.65.5.)
- 5) Defines “personal vehicle sharing program” (PVSP) as a legal entity qualified to do business in the State of California engaged in the business of facilitating the sharing of private passenger vehicles for noncommercial use by individuals within the state. (Ins. Code § 11580.24(b).)

- 6) Provides that a private passenger motor vehicle insured by its owner pursuant to a specified policy of insurance shall not be classified as a commercial vehicle, for-hire vehicle, permissive use vehicle, or livery solely because its owner allows it to be used for personal vehicle sharing as long as all of the following circumstances apply:
 - a) the personal vehicle sharing is conducted pursuant to a personal vehicle sharing program;
 - b) the annual revenue received by the vehicle's owner which was generated by the personal vehicle sharing of the vehicle does not exceed the annual expenses of owning and operating the vehicle, including depreciation, interest, lease payments, auto loan payments, insurance, maintenance, parking, fuel, cleaning, automobile repair, and costs associated with personal vehicle sharing, including the installation, operation, and maintenance of computer hardware and software, signage identifying the vehicle as a personal sharing vehicle, and any fees charged by a personal vehicle sharing program; and
 - c) the owner of the private passenger motor vehicle does not knowingly place the vehicle into commercial use, as defined, by a personal vehicle sharing user while engaged in personal vehicle sharing. (Ins. Code § 11580.24(a).)

This bill:

- 1) Defines "personal vehicle sharing program" as a person or entity that for monetary compensation facilitates sharing or renting passenger vehicles to the public, including via a peer-to-peer internet website, application, or other platform that connects a vehicle owner with a vehicle driver to facilitate sharing or renting a vehicle for consideration, and includes a personal vehicle sharing program as defined in Section 11580.24 of the Insurance Code.
- 2) Authorizes a commercial airport facility to regulate access to an airport and require a PVSP to collect a CFC pursuant to Section 50474.21 of the Government Code. Applies the CFC provisions to PVSPs and any person or entity that for monetary compensation facilitates sharing or renting passenger vehicles to the public, including via a peer-to-peer internet website, application, or other platform that connects a vehicle owner with a vehicle driver to facilitate sharing or renting a vehicle for consideration.
- 3) Requires a PVSP, before facilitating the sharing or renting of vehicles, to obtain a permit or other written authorization from the airport operator that sets forth the terms, standards, regulations, procedures, fees, and access requirements for the activity. Defines "facilitating the sharing or renting of vehicles" to include listing, publishing, or advertising vehicles or motor vehicles parked on airport property or at airport facilities.

- 4) Provides that the above provisions do not affect the authority of any political subdivision or the state to do any of the following:
 - a) regulate access to an airport it owns or operates;
 - b) enter into written agreements;
 - c) set access fees or permit requirements; or
 - d) regulate existing airport access permits granted by an airport to personal vehicle sharing programs.

- 5) Prohibits a PVSP, on and after July 1, 2024, from allowing a vehicle to be placed on a digital network or software application of the PVSP for the purpose of making the vehicle available for rental unless one of the following certifications, as applicable, is fulfilled:
 - a) if the request is to list a motor vehicle that was purchased in California, and that motor vehicle would first be made available for sharing on or after July 1, 2024, certification that one of the following occurred:
 - i. all sales and use taxes were paid on the purchase price of the motor vehicle;
 - ii. the purchaser elected to have sales and use taxes collected on receipts from renting the motor vehicle in lieu of paying applicable taxes on the purchase price of the motor vehicle; or
 - iii. the purchase of the motor vehicle was not subject to taxation due to an exemption available under law.
 - b) if the request is to list a motor vehicle that was not purchased in California, and that motor vehicle would first be made available for sharing on or after July 1, 2024, certification that one of the following occurred:
 - i. applicable taxes were paid on the purchase price of the vehicle; or
 - ii. applicable taxes were not paid on the purchase price of the vehicle.

- 6) Applies the tourism assessment established in Government Code Section 13995.65.5 to a PVSP in the same manner as a business in the passenger car rental category for each sharing or rental transaction that begins at an airport.

COMMENTS

1. Background

For insight on exactly what personal vehicle sharing programs (PVSP) are, Turo, a leading PVSP describes itself as:

Turo is the world's largest car sharing marketplace where you can book any car you want, wherever you want it, from a vibrant community of trusted hosts across the US, Canada, and the UK. Whether you're flying in from afar or looking for a car down the street, searching for a rugged truck or something smooth and swanky, guests can take the wheel of the perfect car for any occasion, while hosts can take the wheel of their futures by building an accessible, flexible, and scalable car sharing business from the ground up.¹

Behind the plain language of this bill is an ongoing legal fight over whether PVSPs, such as Turo and Getaround, should be regulated solely as PVSPs or as rental car companies. Various stakeholders, including local governments, rental car companies, and labor groups, believe that they should be classified as rental car companies, or at the very least should have to play by the same set of rules. Turo, a PVSP, and other technology groups, fight such a classification, and the attendant regulations.

It came to a head when the City Attorney of San Francisco brought suit against Turo on behalf of the People of the State of California. The suit, in relevant part, alleged that Turo is unlawfully and unfairly operating a rental car business at the San Francisco International Airport without obtaining the proper permits. Turo vehemently disagrees with being categorized as a rental car company and argued it is a PVSP that should not be subject to laws in the state regulating rental car companies. It cross-complained seeking a declaratory judgment that it is not a rental car company under California law. The superior court ruled in the City's favor on Turo's claim, and Turo appealed. The California Court of Appeal concluded that Turo was not a rental car company as that term is defined in California statutes.²

This bill seeks to apply a number of provisions of existing law to PVSPs that ensure it is paying its fair share, similar to rental car companies, with regard to airport infrastructure, tourism assessments, and use and sales taxes. It defines a PVSP as a person or entity that for monetary compensation facilitates sharing or renting passenger vehicles to the public, including via a peer-to-peer internet website, application, or other platform that connects a vehicle owner with a vehicle driver to facilitate sharing or renting a vehicle for consideration, and includes a personal vehicle sharing program as defined in Section 11580.24 of the Insurance Code.

2. PVSPs at the airport

a. *Customer facility charges*

Many airports have adopted the practice of locating rental car services in consolidated facilities that house all car rental companies in one location. Common-use

¹ *About Turo*, Turo, <https://turo.com/us/en/about>. All internet citations are current as of June 16, 2023.

² *Turo Inc. v. Superior Court* (2022) 80 Cal. App. 5th 517.

transportation systems, including shuttle bus systems and automated trains, are often used to transport rental car customers to and from terminals and the consolidated rental car facility. These facilities and their associated transport systems are financed largely via customer facility charges (CFCs) collected from rental car patrons who choose to rent a vehicle from a company housed in the consolidated rental facility.

Initial authority allowed public airports in California to collect a \$10 fee per contract to finance, design, and construct consolidated rental car facilities. In 2010, the Legislature revised the CFC fee structure in response to feedback from the airports that the existing \$10 per contract fee was inadequate to fund some proposed consolidated rental car facilities. SB 1192 (Oropeza, Ch. 642, Stats. 2010) permitted airports to impose a CFC calculated on an alternative basis. The alternative-CFC fee structure allowed an airport to charge a daily fee for up to five days for each individual rental car contract. The maximum daily fee started at \$6 per day and increased according to a statutory schedule. Currently, the maximum amount of the daily fee that can be charged is \$9 per day for a maximum of five days per rental contract for a maximum charge of \$45. SB 1192 also expanded the range of uses for which CFC revenue could be spent, including purchasing vehicles for a common-use transport system and for terminal modifications undertaken to provide access to a common-use transport system.

b. Regulating PVSPs at the airport

One of the focal points of the regulatory feud between the PVSPs and the rental car companies and local jurisdictions is operation at the airport. As described, it is at the center of the litigation between Turo and San Francisco. This bill makes clear that commercial airport facilities are authorized to regulate access to an airport and provides them authority to charge PVSPs a CFC. The bill further requires PVSPs to obtain a permit or other authorization from the airport before “facilitating the sharing or renting of vehicles.” That term includes listing, publishing, or advertising vehicles or motor vehicles parked on airport property or at airport facilities. The permit must set forth the terms, standards, regulations, procedures, fees, and access requirements for the activity.

There are already a number of airports that have contractual arrangements with PVSPs that scope out the relationship between the parties and ensure that the PVSP is abiding by rules and regulations and properly compensating said airports for their impact on airport infrastructure and operations. With recent amendments, including a modification to this section, Getaround, a PVSP, has withdrawn their opposition and moved to a support position.

Turo continues to oppose the measure and specifically asks for a delayed implementation of this section of the bill. In response, the author has agreed to an amendment that will delay the effective date of this provision to July 1, 2024.

3. Industry assessments to support California tourism

The California Tourism Marketing Act was enacted in order to retain and expand the tourism industry in California. (Gov. Code § 13995 et seq.) The Act was deemed necessary to market travel to and within California by requiring a series of assessments imposed on businesses across the state in the various tourism industry segments. The California Travel and Tourism Commission, established by the Act, is tasked with targeting an amount determined to be sufficient to market effectively travel and tourism to and within the state.

The Act provides that, for purposes of calculating the assessment for a business within the passenger car rental category, the assessment shall be collected only on each rental transaction that commences at either an airport or at a hotel or other overnight lodging with respect to which a city, city and county, or county is authorized to levy a tax, as provided. (Gov. Code § 13995.65.5.)

This bill simply applies this assessment to PVSPs in the same manner as a rental car company but only for sharing or rental transactions that begin at the airport. As PVSPs obviously gain a benefit from increased tourism in California, with visitors needing the use of a vehicle while on vacation, the provision arguably ensures these companies pay their fair share.

4. Certification of tax payments

Concerns have arisen about the practices some operators using PVSPs are deploying in connection with the payment of use and sales taxes. In order to provide greater transparency and ensure taxes are properly paid, the bill, starting July 1, 2024, requires one of two certifications be made by users before the PVSP can allow them to place a vehicle on a digital network or software application of the PVSP for the purpose of making the vehicle available for rental or sharing.

If the request is to list a motor vehicle that was purchased in California, the user must certify that one of the following occurred: (1) all sales and use taxes were paid on the purchase price of the motor vehicle; (2) the purchaser elected to have sales and use taxes collected on receipts from renting the motor vehicle in lieu of paying applicable taxes on the purchase price of the motor vehicle; or (3) the purchase of the motor vehicle was not subject to taxation due to an exemption available under law.

If the request is to list a motor vehicle that was not purchased in California, the user must certify that one of the following occurred: (1) applicable taxes were paid on the purchase price of the vehicle; or (2) applicable taxes were not paid on the purchase price of the vehicle.

This is a straightforward provision that represents a significant narrowing from the original version of the bill.

5. Stakeholder positions

According to the author:

Over the past 15 years, the business landscape has seen many new innovations flowing from dynamic technology.

Many new businesses emerged as disruptors within traditional business sectors forcing change and adaptation.

Such a challenge has now emerged in the car rental space in that of the peer-to-peer rental platforms or “personal vehicle sharing programs” (PVSPs) – an avenue for individuals to rent their private vehicles to consumers. Unlike traditional car rental enterprises, PVSPs are commercial exchanges between individuals facilitated by a third party platform rather than a transaction between a consumer and a business exclusively. While the transactions are somewhat different, the end result is the same – a consumer rents a car. That is, however, where the similarities end.

Unlike traditional car rental services, PSVPs are, as yet, not operating under a similar regulatory structure nor are they obligated to support local and state services through fees that traditional enterprises pay. This is despite the fact the impacts of peer-to-peer operations are similar to traditional car rental services yet they do not contribute to supporting the public and private infrastructure that supports, for example, the tourism industry that very much drives car rental business.

Assembly Bill 893 will ensure that vehicles rented through third party platforms pay local and state fees that support public services, bringing peer to peer platforms into compliance with airport regulations. Most car rentals occur at or around publicly owned airports using airport property. While all other commercial operators pay permit fees, peer-to-peer operators are able to skirt these. This represents a loss of several million dollars annually to local and state agencies and undermines the state’s tourism marketing efforts.

This bill simply addresses gaps in current law by clarifying that persons or entities that meet the definition of a PSVP must follow existing regulations and, further, participate in the virtuous cycle of both serving and promoting industry in the State.

The California Airports Council (CAC) writes in specific support of the provisions of the bill authorizing the charging of CFCs:

Specifically, the CAC supports Section 3 of AB 893. Car share services, like any other vendor or for-profit company seeking to do business at a California airport, must have an agreement and permit from the airport in order to profit from California commercial airport activity. With car sharing services, this is not consistently the case. For example, the San Diego International Airport (SAN) was among several airports that issued cease and desist letters to the car sharing service Turo until such time as an airport operating permit was issued. The SAN letter was issued on September 14, 2017. To date, this letter has not been honored and Turo continues to offer their services specifically at SAN and various other airports where permits have not been issued.

Writing in opposition, Turo argues:

Several California airports have successfully implemented permits for peer-to-peer car sharing, with clear drop-off locations and tailored insurance requirements. When permitted, this industry operates effectively. However, AB 893 imposes an unprecedented statewide ban on Turo at airports where the industry is not yet permitted. These permits often involve lengthy drafting and execution processes for airports.

Another concerning aspect of AB 893 is the provision (sec. 6) that mandates airports to enforce rental car facility charges, regardless of whether the peer-to-peer car sharing company and its customers utilize that specific area of the airport under a permit. This provision unfairly favors traditional rental car companies and hinders the proper permitting process for peer-to-peer car sharing companies. We strongly believe that each airport should have the authority to make this decision independently.

This poorly thought-out proposal would limit customer choice, stifle competition, and provide undue preference to large conglomerates, favoring entrenched special interests at the expense of consumers and taxpayers.

TechNet writes in an oppose-unless-amended position:

TechNet greatly appreciates the amendments to AB 893 that allow personal vehicle sharing programs to impose driver eligibility requirements that are designed to help ensure the safety of those on the road and reduce the risk of loss and damage to shared vehicles.

We respectfully request that the bill provides additional clarification to the definition of "personal vehicle sharing program" in Section 1939.01 (m) by removing "or renting" from the description. This would provide clarification that these companies do not operate in the same manner as a

rental company and would align the definition more closely with what is described in Section 11580.24 of the Insurance Code. Similarly, we are concerned that the wording in Section 5 of the bill may also conflate personal vehicle sharing programs with rental car companies and require requirements on these two industries to be applied in the same manner that may not reflect the important distinctions between them.

Writing in support, the California Labor Federation argues:

In the last decade, peer-to-peer platforms, often referred to as personal vehicle sharing platforms, have entered the market. These companies follow the model of Uber and AirBnB in “disrupting” established markets by shifting the burden of operating and staffing a fleet or hotel onto individuals. Similarly, personal vehicle sharing platforms have also evaded regulations and laws that apply to their rental car company competitors. That gives sharing companies an unfair competitive advantage against companies that follow the law and provide good union jobs to workers.

Personal vehicle sharing platforms that rent cars to consumers are not defined in state law as rental car companies and are not currently regulated under California law. This not only puts rental car companies and their workers at a disadvantage, but it deprives renters of important consumer protections.

AB 893 aims to level the playing field in the rental car market by requiring that all rental transactions, regardless of whether brick and mortar or a platform, must adhere to the same requirements under California law.

SUPPORT

American Car Rental Association (ACRA)
California Airports Council
California Labor Federation, AFL-CIO
California Teamsters Public Affairs Council
California Travel Association (CALTRAVEL)
Enterprise Holdings
Getaround

OPPOSITION

Orange County Coalition of Police and Sheriffs
TechNet

Relay Rides d.b.a. Turo

RELATED LEGISLATION

Pending Legislation: AB 534 (McCarty, 2023) eliminates the deadline by which airports must initiate the process for obtaining the authority to require or increase an alternative CFC and removes provisions that end authority to charge a CFC when the bonds, or other forms of indebtedness, used for financing are paid. AB 534 is currently on the Senate Floor.

Prior Legislation:

AB 2873 (Low, Ch. 591, Stats. 2018) prohibits PVSPs from facilitating or otherwise arranging for transportation with a recalled vehicle, as soon as practicable but not more than 48 hours after a vehicle is subject to a recall, or not more than 48 hours after receiving notification of a recall by a third party.

SB 1192 (Oropeza, Ch. 642, Stats. 2010) *See* Comment 2.

PRIOR VOTES:

Assembly Floor (Ayes 60, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)
