



Opponent Testimony of Sean Vinck, Senior Counsel with Turo
Senate Bill 161
Ohio Senate Transportation Committee
Thursday, June 13, 2019

Chairman McColley, Vice Chair Uecker, Ranking Member Antonio, and members of the Senate Transportation, Commerce, and Workforce Development Committee, thank you for the opportunity to testify today in opposition to Senate Bill 161. My name is Sean Vinck, Senior Counsel to Turo, a peer-to-peer car sharing company headquartered in San Francisco, California.

Turo is a small business with about 300 employees worldwide. We have more than 2,000 Ohio customers who share cars and earn on average about \$150 a month - helping to offset the cost of car ownership. Our customers - your hard-working constituents - are working families, veterans, single parents, retirees, and everyday people that reflect the diversity of the State of Ohio. Not only do our customers benefit financially by participating in peer-to-peer car sharing, but they have much needed flexibility in determining when to share their vehicles. In short, the people who use our platform come from working families trying to make ends meet, and use car sharing as a way to generate additional income.

Turo customers are also:

- Active duty military or veterans (17%)
- Teachers or educators (13%)
- Senior citizens (13%)
- First responders (6%)
- People who identify with a community of color (over 50%)

I want to be clear from the outset that we are not opposed to regulation or paying our fair share of taxes; however, we do oppose any effort to force-fit peer-to-peer car sharing into the rental car company regulatory model. We believe that the regulatory and tax structure that Ohio eventually adopts should be tailored to the business of peer-to-peer car sharing, based upon the unique attributes of the peer-to-peer business model.

Ohio can strike an appropriate balance between the important objectives of consumer protection, public safety, and a level playing field on one hand. On the other hand, equally compelling priorities such as fostering innovation, empowering individuals to make use

of assets to generate income and enabling a broader range of transportation options for people who live in and visit Ohio.

Many states are deliberating similar legislation, with over a dozen having enacted it to date. In an attempt to maintain consistency from state to state, the P2P industry worked with other interested parties to create a model bill. Three states including Ohio's neighbor to the west, Indiana, have enacted that model just this year. While we appreciate the efforts made by the bill sponsors and by the other interested parties thus far, we continue to harbor serious concerns regarding SB 161. Those concerns generally arise from areas in which SB 161 deviates from the national model bill. Our specific points of concern are as follows:

Taxation – Turo agrees that peer-to-peer car sharing will necessarily trigger obligations to pay certain taxes. As we've discussed with the sponsors and other stakeholders, it does seem that the peer-to-peer car sharing transaction between a car owner ("host") and a customer is subject to sales tax. Under Ohio law as it exists today, the host is the vendor and the customer is liable for the tax.

It is important to note that, since Ohio has not yet enacted "marketplace facilitator" legislation in the wake of the *Wayfair* decision, there is no requirement in current law that entities lacking a physical presence in Ohio, such as Turo, collect and remit taxes.

However, with the enactment of "marketplace facilitator" legislation, currently pending in the biennial budget bill, non-nexus platforms such as Turo that satisfy the new statutory test for "substantial nexus" based upon aggregate economic activity, would have an obligation to collect and remit applicable sales & use tax on Ohio transactions. The marketplace facilitator language in the budget bill conforms to the same structure as the bill that the Supreme Court approved in *Wayfair*. It treats all non-nexus entities in a standardized, non-discriminatory, and constitutionally sound manner. As a result, the legislature can have confidence that its post-*Wayfair* tax regime is legally sound by following the approach approved by the Supreme Court,

Unfortunately, Senate Bill 161 would needlessly complicate and confuse the issue.

Senate Bill 161 labels peer-to-peer vehicle sharing platforms as "vendors"—creating more problems than it solves. If merely facilitating a taxable transaction makes a platform a vendor, then why is the legislature considering a marketplace facilitator bill to clarify how platforms must collect and remit taxes on behalf of the parties to the sale and lease?

The taxation provisions of SB 161 would send a message throughout the business community—one that relied on the need for marketplace facilitator legislation to trigger those obligations—that the Department of Taxation may simply declare them “vendors” and trigger retroactive liability for past uncollected tax. It would create exactly the kind of uncertainty that has no place in tax law and administration. And while the Department of Taxation believes such a change would lessen the risk of litigation, it actually increases the chances of a lawsuit because of the consequences the change would bring, creating claims under the state constitution, federal law (including the Internet Tax Fairness Act that prohibits differential tax treatment of internet versus non-internet businesses), and the U.S. Constitution.

The far easier and simpler path is to treat these facilitators no differently than any other party that facilitates a taxable transaction. Give them the same clear rules for collection, remittance, audit, and tax liability that Ohio is contemplating for every other facilitator. *If there is any doubt that a peer-to-peer vehicle sharing platform is a “marketplace facilitator” under the proposed bill, then make clear in this legislation that they qualify as such.*

\$1 Million Insurance—As presently drafted, the legislation mandates that peer-to-peer platforms maintain at least \$1 million in insurance for an ambiguously-defined scope of liability. We do not feel that Ohio should impose an inflexible statutory mandate in this area by defining a specific monetary threshold for the coverage required. However, if the will is to maintain the \$1 million in insurance, the liability that is referenced in this section of the bill should be more precisely and carefully defined. As such, we suggest the following change to 4516.11:

(c) Separate from and in addition to the financial responsibility and insurance requirements under section 4516.10, a peer-to-peer car sharing program shall maintain insurance in an amount of at least one million dollars providing coverage only for the peer-to-peer car sharing program's liability resulting from an act or omission of the peer-to-peer car sharing program itself causing death, bodily injury, or property damage to any person in any one accident as a result of the use of shared vehicle through the peer-to-peer car sharing program

Safety Recalls — The P2P industry provided language from the national model bill regarding safety recalls that was generally acceptable to the interested parties, except for the ambiguity around what was “reasonable,” or even “commercially

reasonable,” relative to the P2P platform’s processes and responsibility. After the most recent interested party meeting, the P2P industry was instructed to revisit our processes with our internal business experts. In doing so, it appears that the safety recall language recently enacted in Indiana serves the dual purpose of removing that ambiguity *and* being supported by all parties in the Indiana negotiation process. Thus, we believe it is useful the legislature here in Ohio to consider the Indiana statute.

An additional concern as it relates to safety recalls is definitional. The legislation references “safety recalls,” and after discussing with industry partners, we feel it would be clearer to reference existing federal code as it relates to “manufacturer safety recall,” which is conducted pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the United States Code.

CSPA –SB 161 contains provisions relative to the Consumer Sales Practices Act and P2P car sharing that do not reflect the agreement reached in interested party meetings with the legislative sponsors. We believe this mistake was inadvertent, but it does speak to the challenges with trying to create a new regulatory scheme for an emerging industry in a relatively short period of time. The agreement reached in interested party meetings would change 4516.06 to read as follows:

Sec. 4916.06. Peer-to-peer car sharing is subject to sections 1345.01 to 1345.13 of the Revised Code. The reference to sections 1345.01 to 1345.13 of the Revised Code in this section is intended to clarify and be declaratory of the law as it existed before the enactment of this section.

Nothing in this chapter shall create liability for any peer-to-peer car sharing program under section 1345.01 to 1345.13 of the Revised Code when an alleged violation results from false, misleading or inaccurate information provided to the peer-to-peer car sharing program and upon which the program relied on that information in good faith.

“Non-commercial motor vehicle” definition - SB 161 would define peer-to-peer car sharing as involving only "non-commercial motor vehicles.” We urge legislators to delete the "non-commercial" language from the bill. It is imperative that language be removed because it would effectively ban any Ohio resident wanting to share a personal vehicle on a peer-to-peer platform from making any money from any P2Pcar sharing transaction. If the purpose of the bill is to foster growth in a new industry, it would be completely counterproductive to prohibit participants from generating any profit from sharing a vehicle. This would remove the incentive for any vehicle owner to make a car available and would in

effect stifle the industry before it gets off the ground. We are certain this impact was unintended, and we ask you to strike the language.

It's incredibly important for the state to get this right: as the growth of peer to peer car sharing nationwide shows, consumers want to add car sharing to their transportation options. But it is still a young and emerging market and a rushed series of regulations may do far more harm than good – and even worse, regulate the market out of existence before we even know what the mature market will look like. Peer to peer car sharing businesses are committed to deliberating and ultimately enacting regulatory, insurance and taxing authority specific to this emerging industry.

On behalf of Turo, Inc., I deeply appreciate the opportunity to share these thoughts with the Committee. I am delighted to answer any questions.

Thank you.