STATE OF NEW YORK

427

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sens. SEWARD, BRESLIN, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the vehicle and traffic law, in relation to enacting the "personal motor vehicle sharing act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "personal motor vehicle sharing act".

§ 2. The insurance law is amended by adding a new article 35 to read as follows:

ARTICLE 35

PERSONAL MOTOR VEHICLE SHARING PROGRAMS

Section 3501. Definitions.

3502. Requirements for doing business.

3503. Liability provisions.

3504. Group insurance for personal motor vehicle sharing programs.

§ 3501. Definitions. In this article the following terms shall have the following definitions:

(a) "Motor vehicle" shall:

(1) have the meaning set forth in section one hundred twenty-five of the vehicle and traffic law;

(2) have a gross weight rating of ten thousand pounds or less; and

(3) not be used for the commercial delivery or transportation of goods or materials.

(b) "Personal passenger motor vehicle" means a motor vehicle owned and registered in the state, and insured or subject to being insured under a private passenger motor vehicle liability insurance policy insuring a single individual or individuals residing in the same household, as the

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD04829-01-7

named insured, but does not include a motor vehicle with fewer than four wheels.

(c) "Personal motor vehicle sharing" means the use of private passenger motor vehicles by persons other than the vehicles' owner, in connection with a personal motor vehicle sharing program.

(d) "Personal motor vehicle sharing program" means a program engaged in facilitating the sharing of private passenger motor vehicles.

(e) "Personal motor vehicle sharing program provider" or "program provider" means the person or entity that is responsible for operating or administering the personal motor vehicle sharing program.

(f) "Personal motor vehicle sharing owner" or "owner" means the registered owner of the personal passenger motor vehicle.

(g) "Personal motor vehicle sharing renter" or "renter" means a person, other than the vehicle owner, who rents the owner's vehicle through a personal motor vehicle sharing program.

(h) "Rental period" shall have the meaning set forth in subsection (c) of section three thousand five hundred three of this article.

(i) "Group policy" means an insurance policy issued pursuant to section three thousand five hundred four of this article.

§ 3502. Requirements for doing business. (a) No private passenger motor vehicle insured or subject to being insured by its owner pursuant to a policy of insurance subject to section three thousand four hundred twenty-five or article fifty-three of this chapter shall be classified as a commercial vehicle, for-hire vehicle, permissive use vehicle, taxicab or livery solely because its owner allows it to be used for personal motor vehicle sharing as long as all of the following circumstances apply:

(1) the personal motor vehicle sharing is compliant with a personal motor vehicle sharing program as provided for in this article;

(2) the owner of the private passenger motor vehicle does not knowingly place the vehicle into use as a commercial vehicle or as a vehicle for hire by a personal motor vehicle sharing renter while engaged in personal motor vehicle sharing; and

(3) the number of personal passenger motor vehicles a single individual or individuals residing in the same household may enroll in the program before the private passenger motor vehicle liability insurance company may cancel or refuse coverage for such contract solely due to the number of vehicles enrolled under such private passenger motor vehicle liability insurance policy shall be limited to four motor vehicles.

(b) A program provider shall, for each vehicle that it facilitates the use of, do all of the following:

(1) During the rental period for a vehicle engaged in personal motor vehicle sharing, procure group insurance coverage for each vehicle and authorized operator of the vehicle. Such insurance shall, at a minimum, provide for each vehicle coverage at least equal to the minimum insurance requirements for private passenger motor vehicles as provided by section three hundred forty-five of the vehicle and traffic law, subsection (a) of section three thousand five hundred four of this article, article fifty-one of this chapter and such other laws of the state with respect to mandatory liability, uninsured and underinsured, and first-party benefits coverage as may be enacted from time to time. The program provider shall not provide liability coverage less than three times the minimum insurance requirements for private passenger vehicles. The program shall also offer property and casualty coverage including comprehensive and collision protection, as further described in

subsections (d) and (e) of section three thousand five hundred four of this article;

(2) Provide the registered owner of the motor vehicle with suitable proof of compliance with the insurance requirements of this section and the requirements of sections three hundred eleven and three hundred forty-five of the vehicle and traffic law and article fifty-one of this chapter, a copy of which shall be maintained in the vehicle by the vehicle's registered owner during any time when the vehicle is operated by the renter, or person other than the owner pursuant to a personal motor vehicle sharing program;

(3) Shall not permit the vehicle to be operated for commercial use or as a vehicle for hire by a personal motor vehicle sharing renter while engaged in personal motor vehicle sharing;

(4) Provide each personal motor vehicle renter for each vehicle rental transaction under the personal motor vehicle sharing program at the time of each rental:

(A) access to an insurance identification card as defined in subdivision ten of section three hundred eleven of the vehicle and traffic law, or other documentation able to be carried in the vehicle at all times during the rental that insurance coverage referred to in paragraph one of this subsection is in full force and effect; and

(B) means via a toll free number, email address or such other form of communication which a law enforcement police officer, a representative of the department of motor vehicles or other officer of this state or any political subdivision thereof may confirm in real time that insurance coverage provided for in paragraph one of this subsection is in effect;

(5) Shall comply with the requirements of subdivision two of section three hundred twelve of the vehicle and traffic law;

(6) Require that the vehicles used in the personal motor vehicle sharing program are limited to personal passenger motor vehicles;

(7) Facilitate the installation, operation and maintenance of its own signage and computer hardware and software to the extent necessary for the vehicle to be used in the program;

(8) Indemnify and hold harmless the vehicle's owner for the cost of damage or theft of equipment installed by the program under paragraph seven of this subsection for any damage caused to the vehicle by the installation, operation or maintenance of such equipment;

(9) Collect, maintain and make available to the vehicle's owner, the owner's primary motor vehicle liability insurer, the renter's primary automobile insurer, excess or umbrella insurer and any government agency as required by law, within ten business days of a request at the cost of the program, the following information pertaining to incidents which occurred during the renter's rental period:

(A) verifiable records of the program use period for each vehicle, and (to the extent electronic equipment for monitoring the following information is installed in the vehicle) verifiable electronic records of the time, initial and final locations of the vehicle, and (to the extent mileage is collected) miles driven; and

(B) in instances where an insurance claim has been filed with a group insurer, any and all information relevant to the claim, including payments by the program concerning accidents, damages and injuries; and

(10) Ensure that the owner and renter are given notice prior to the first use or operation of a motor vehicle pursuant to enrollment in a personal motor vehicle sharing program, that:

(A) during the rental period, the owner's insurer may exclude any and all coverage afforded to its policy and the owner's insurer, shall have the right to notify an insured that it shall have no duty to defend or indemnify any person or organization for liability for any loss that occurs during the rental period; and

(B) the group policy and physical damage coverage contract may not provide coverage outside of the rental period.

§ 3503. Liability provisions. (a) Notwithstanding any other provision of law or any provision in a private passenger motor vehicle owner's automobile insurance policy, in the event of a loss or injury that occurs during the rental period or while the personal motor vehicle is otherwise under the control of a personal motor vehicle sharing program provider, subject to subsection (h) of this section the program provider shall be deemed the owner of the vehicle under section three hundred eighty-eight of the vehicle and traffic law and such other statutes that may impose liability upon an owner of a private passenger motor vehicle solely based on such ownership as if the program provider were the owner of the vehicle. The program provider shall retain such liability irrespective of a lapse in the insurance policy of the program or whether such liability is covered under the insurance policy of the program.

(b) Section three hundred eighty-eight of the vehicle and traffic law shall not apply to the personal motor vehicle owner while the vehicle is under the possession and control of a personal motor vehicle sharing renter or otherwise under the control of a personal motor vehicle sharing program. Nothing in this section shall limit the liability of the program provider for its acts or omissions, or limit the liability of the personal motor vehicle sharing renter for the renter's acts or omissions, that result in injury to any persons as a result of the use or operation of a motor vehicle while in custody of a personal motor vehicle sharing program. Nothing in this section shall limit the ability of the program to, by contract, seek indemnification from the vehicle's registered owner for any claims paid by the program for any loss or injury resulting from fraud or material intentional misrepresentation by the vehicle's registered owner, provided that the vehicle sharing program discloses in the contract that:

(1) the program is entitled to seek indemnification in these circumstances; and

(2) the registered owner's insurance policy may not provide defense or indemnification for any loss or injury resulting from fraud or material intentional misrepresentation.

(c) A program provider's group policy shall provide coverage during the rental period as recorded in the program provider's records for an owner's motor vehicle registered in this state, from when the renter takes possession and control of the vehicle, or when otherwise under the control of the program provider and the program provider shall continue to be liable pursuant to this section until both of the following occur:

(1) the personal passenger motor vehicle is retrieved by the owner, or returned to a location agreed to by the owner and renter, or designated by the personal motor vehicle sharing program; and

(2) one of the following occurs:

(A) the expiration of the time period established for the particular use of the vehicle;

(B) the intent to terminate the personal motor vehicle sharing use is verifiably communicated to the program provider or the owner; or

(C) the vehicle's owner takes possession and control of the personal passenger motor vehicle.

(d) The insurer or insurers providing group liability insurance to the personal motor vehicle sharing program pursuant to subsection (a) of section three thousand five hundred four of this article and group physical damage insurance to the personal motor vehicle sharing program pursuant to subsection (d) of section three thousand five hundred four of this article shall assume liability for a claim in which a dispute exists regarding who was in control of the vehicle when the loss occurred giving rise to the claim, and the owner's private passenger motor vehicle insurer shall indemnify the personal motor vehicle sharing program's group insurer or insurers to the extent of its obligation under the applicable insurance policy, if it is determined that the vehicle's owner was in control of the vehicle at the time of the loss. The program shall notify the registered owner's insurer of any such dispute within ten business days of becoming aware that such a dispute exists.

(e) In the event that the owner of the vehicle or its insurer is named as a defendant in a civil action for a loss or injury that occurs during any time within the rental period, or otherwise under the control of a personal motor vehicle sharing program, the personal motor vehicle sharing program's group liability insurance insurer under subsection (a) of section three thousand five hundred four of this article shall have the duty to defend and indemnify the vehicle's owner and the vehicle owner's insurer, subject to the provisions of subsections (b) and (d) of this section.

(f) Notwithstanding any other provision of law to the contrary, while a personal passenger motor vehicle is used by or under the control of a person other than its owner, pursuant to personal vehicle sharing facilitated through a personal vehicle sharing program, all of the following shall apply:

(1) the insurer of that vehicle on file with the department of motor vehicles may exclude any and all coverage for liability, uninsured, underinsured, collision physical damage and comprehensive physical damage benefits and first-party benefits that may otherwise be afforded pursuant to its policy; and

(2) the primary and excess insurer or insurers of the owner of the personal passenger motor vehicle used in a personal vehicle sharing program shall have the right to notify the insured that it has no duty to defend or indemnify any person or organization for liability for any loss that occurs during the rental period of the vehicle in a personal vehicle sharing program.

(g) No vehicle owner's policy of insurance that is subject to section three thousand four hundred twenty-five of this chapter shall be cancelled, voided, terminated, rescinded, non-renewed, solely on the basis that the personal passenger motor vehicle has been made available for personal vehicle sharing pursuant to a personal vehicle sharing program that is in compliance with the provisions of this section. Provided, however that:

(1) the provisions of this subsection shall not pertain to non-renewals in accordance with the provisions of subsection (f) of section three thousand four hundred twenty-five of this chapter;

(2) an insurer may refuse to enroll a vehicle in a usage-based insurance program, where such usage-based insurance program continually monitors usage electronically to determine acceleration, braking, miles driven and other indicia of driving behavior, if that vehicle is used in a personal vehicle sharing program under this article; and

(3) an insurer may cancel or non-renew a policy that insures a vehicle used in the personal vehicle sharing program if that vehicle is enrolled in such a usage-based insurance program. The insurer must immediately offer the insured a new policy with the same coverages and pre-existing rates, but without enrollment in the usage-based insurance program.

(h) Notwithstanding any other provision of law, a personal motor vehicle owner that makes a vehicle available for utilization in a personal motor vehicle sharing program, and the personal motor vehicle sharing program provider, shall not be subject to vicarious liability in accordance with the relevant provisions of federal law, or under section three hundred eighty-eight of the vehicle and traffic law or under any similar law that imposes liability solely based on vehicle ownership.

§ 3504. Group insurance for personal motor vehicle sharing programs. (a) An insurer which is authorized or eligible to do business in the state may issue, or issue for delivery in this state, a group policy of liability and property and casualty insurance to a personal motor vehicle sharing program provider to insure the personal motor vehicle sharing program, and its renters and occupants of the personal passenger motor vehicle, as well as the program provider, its agents, employees, directors, officers and assigns; and

(1) that such policy shall provide first party coverage, liability, property, comprehensive, collision, and uninsured/underinsured motorist coverage for the personal passenger motor vehicle and its authorized operators and occupants for claims and damages resulting from the use or operation of that vehicle during the rental period;

(2) that such policy shall be primary with respect to any other insurance available to the owner of the personal passenger motor vehicle and shall be excess over any other insurance available to the personal motor vehicle sharing renter; and

(3) that such insurer shall comply with the provisions of sections three hundred twelve-a and three hundred thirteen of the vehicle and traffic law; and

(4) that for the purposes of group insurance written under this section only, the rates charged by the insurer for group liability insurance as provided for in this section shall be filed with the department of financial services on a file and use basis.

(b) An insurer which issues an insurance policy described in subsection (a) of this section shall issue such policy identifying the personal motor vehicle sharing program and program provider as the named insured; and any such policy shall include a provision that provides coverage, without prior notice to the insurer, for all personal passenger motor vehicles during the rental period and such policy shall further include a provision that the vehicles' renters, authorized operators and occupants are included as insureds under the policy to the same extent that they would be insureds under a private passenger motor vehicle policy issued pursuant to section three thousand four hundred twenty-five of this chapter and section three hundred eleven of the vehicle and traffic law.

(c) A group policy as provided for in subsections (a) and (b) of this section shall only be issued in accordance with the provisions of this article.

(d) A program provider may contractually assume the risk of physical damage loss to personal passenger motor vehicles during the time that the vehicles are in the custody of the personal motor vehicle renter or personal motor vehicle sharing program; and

(1) that the terms of such contractual assumption may provide that the program provider is assuming the risk of physical damage loss to the vehicle in excess of a sum certain;

(2) that such assumption of risk of physical damage loss to the vehicle shall not be deemed to be physical damage insurance; and

(e) An insurer which is authorized or eligible to do business in the state may issue a group policy of physical damage insurance to a personal motor vehicle sharing program and to the owners of personal passenger motor vehicles participating in that program to insure against physical damage loss to vehicles while the vehicles are in the custody of the personal motor vehicle sharing program or personal motor vehicle sharing renter. Such group policy shall provide primary coverage for physical damage loss either by collision, comprehensive, or both, to the vehicle while it is in the custody of the personal motor vehicle sharing program or a personal motor vehicle sharing renter.

(f) If the group coverage provided for in subsection (e) of this section is placed with an eligible excess line insurer, compliance with the excess line statutes and regulations of this state shall be performed with respect to the group as a whole and not with respect to individual group members.

(g) An insurer which issues a group insurance policy described in subsection (e) of this section shall issue such policy identifying the personal motor vehicle sharing program as the named insured, and any such policy shall include a provision that provides primary coverage, without prior notice to the insurer, for all personal passenger motor vehicles during the rental period, and shall further include a provision that claims will be adjusted pursuant to section three thousand four hundred twelve of this chapter, and it shall further include physical damage coverage for damage or loss to the owner's vehicle incurred during the rental period at a level no less than that of third party physical damage coverage.

(h) A group policy as provided for in subsections (e), (f) and (g) of this section shall only be issued in accordance with the provisions of this section.

§ 3. Subdivision 4 of section 311 of the vehicle and traffic law is amended by adding a new paragraph (e) to read as follows:

(e) In the case of a personal passenger motor vehicle, as defined in section three thousand five hundred one of the insurance law, that is used in connection with a personal motor vehicle sharing program as defined in such section, the insurance requirements set forth in paragraph (a) of this subdivision shall be met by a group insurance policy issued pursuant to section three thousand five hundred four of the insurance law to a program provider and to the personal motor vehicle sharing renters of that program for any time that the vehicle is being used in connection with the personal motor vehicle sharing program.

§ 4. Subdivisions 2, 3, 4 and 5 of section 312 of the vehicle and traffic law are renumbered subdivisions 3, 4, 5 and 6, and a new subdivision 2 is added to read as follows:

2. In the case of financial security procured by a program provider of a personal motor vehicle sharing program as set forth in section three thousand five hundred four of the insurance law, the program provider shall provide the commissioner with proof of financial security in the form of a group insurance policy covering itself and the owners of all personal passenger motor vehicles registered in this state that participate in the program as insured group members, covering those vehicles while they are being used in conjunction with that program. Such proof

shall not be used in connection with the registration of the vehicles and no such vehicle shall be registered unless the owner of the vehicle separately complies with subdivision one of this section.

§ 5. Subdivision 1 of section 312-a of the vehicle and traffic law, as amended by chapter 781 of the laws of 1983, is amended to read as follows:

1. Upon issuance of an owner's policy of liability insurance**, a group liability insurance policy issued to a program provider of a personal motor vehicle sharing program pursuant to section three thousand five hundred four of the insurance law** or other financial security required by this chapter, an insurer shall issue proof of insurance in accordance with the regulations promulgated by the commissioner pursuant to paragraph (b) of subdivision two of section three hundred thirteen of this article.

§ 6. Paragraphs (a) and (b) of subdivision 2 of section 313 of the vehicle and traffic law, as amended by chapter 509 of the laws of 1998, are amended to read as follows:

(a) Upon the termination of an owner's policy of liability insurance **or a group liability insurance policy issued to a program provider of a personal motor vehicle sharing program pursuant to section three thousand five hundred four of the insurance law**, other than an owner's policy of liability insurance for a motorcycle, at the request of the insured or by cancellation by the insurer, the insurer shall file a notice of termination with reference to such policy, as opposed to any insured vehicle or vehicles under such policy, with the commissioner not later than thirty days following the effective date of such cancellation or other termination, in accordance with the regulations required by paragraph (c) of this subdivision. An insurer shall not file a notice of termination with the commissioner except as required by this subdivision.

(b) Upon the issuance of an owner's policy of liability insurance **or a group liability insurance policy issued to a program provider of a personal motor vehicle sharing program pursuant to section three thousand five hundred four of the insurance law,** the insurer shall file a notice or confirmation of issuance with reference to such policy not later than fourteen days following the effective date of such issuance, and not later than seven days following the effective date for policies issued after January first, two thousand one, in accordance with the regulations required by paragraph (c) of this subdivision.

§ 7. Consent orders. All consent orders agreed to by the department of financial services, concerning allegations of unauthorized and/or unlawful operation of a car sharing program in the state of New York, and involving incidents which allegedly occurred prior to the effective date of this act, shall be deemed, satisfied, expired, discontinued and non-renewable by all parties, on and after the effective date of this act.

§ 8. This act shall take effect immediately.