

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:

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

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

ARTICLE 35

PERSONAL MOTOR VEHICLE SHARING PROGRAMS

Section 3501. Definitions.

8 3502. Requirements for doing business.

9 3503. Liability provisions.

10 3504. Group insurance for personal motor vehicle sharing
11 programs.

12 § 3501. Definitions. In this article the following terms shall have
13 the following definitions:

14 (a) "Motor vehicle" shall:

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

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

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

20 (b) "Personal passenger motor vehicle" means a motor vehicle owned and
21 registered in the state, and insured or subject to being insured under a
22 private passenger motor vehicle liability insurance policy insuring a
23 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

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

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

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

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

11 (f) "Personal motor vehicle sharing owner" or "owner" means the regis-
12 tered owner of the personal passenger motor vehicle.

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

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

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

20 § 3502. Requirements for doing business. (a) No private passenger
21 motor vehicle insured or subject to being insured by its owner pursuant
22 to a policy of insurance subject to section three thousand four hundred
23 twenty-five or article fifty-three of this chapter shall be classified
24 as a commercial vehicle, for-hire vehicle, permissive use vehicle, taxi-
25 cab or livery solely because its owner allows it to be used for personal
26 motor vehicle sharing as long as all of the following circumstances
27 apply:

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

30 (2) the owner of the private passenger motor vehicle does not knowing-
31 ly place the vehicle into use as a commercial vehicle or as a vehicle
32 for hire by a personal motor vehicle sharing renter while engaged in
33 personal motor vehicle sharing; and

34 (3) the number of personal passenger motor vehicles a single individ-
35 ual or individuals residing in the same household may enroll in the
36 program before the private passenger motor vehicle liability insurance
37 company may cancel or refuse coverage for such contract solely due to
38 the number of vehicles enrolled under such private passenger motor vehi-
39 cle liability insurance policy shall be limited to four motor vehicles.

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

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

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

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

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

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

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

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

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

30 (6) Require that the vehicles used in the personal motor vehicle shar-
31 ing program are limited to personal passenger motor vehicles;

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

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

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

45 (A) verifiable records of the program use period for each vehicle, and
46 (to the extent electronic equipment for monitoring the following infor-
47 mation is installed in the vehicle) verifiable electronic records of the
48 time, initial and final locations of the vehicle, and (to the extent
49 mileage is collected) miles driven; and

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

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

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

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

8 § 3503. Liability provisions. (a) Notwithstanding any other provision
9 of law or any provision in a private passenger motor vehicle owner's
10 automobile insurance policy, in the event of a loss or injury that
11 occurs during the rental period or while the personal motor vehicle is
12 otherwise under the control of a personal motor vehicle sharing program
13 provider, subject to subsection (h) of this section the program provider
14 shall be deemed the owner of the vehicle under section three hundred
15 eighty-eight of the vehicle and traffic law and such other statutes that
16 may impose liability upon an owner of a private passenger motor vehicle
17 solely based on such ownership as if the program provider were the owner
18 of the vehicle. The program provider shall retain such liability irre-
19 spective of a lapse in the insurance policy of the program or whether
20 such liability is covered under the insurance policy of the program.

21 (b) Section three hundred eighty-eight of the vehicle and traffic law
22 shall not apply to the personal motor vehicle owner while the vehicle is
23 under the possession and control of a personal motor vehicle sharing
24 renter or otherwise under the control of a personal motor vehicle shar-
25 ing program. Nothing in this section shall limit the liability of the
26 program provider for its acts or omissions, or limit the liability of
27 the personal motor vehicle sharing renter for the renter's acts or omis-
28 sions, that result in injury to any persons as a result of the use or
29 operation of a motor vehicle while in custody of a personal motor vehi-
30 cle sharing program. Nothing in this section shall limit the ability of
31 the program to, by contract, seek indemnification from the vehicle's
32 registered owner for any claims paid by the program for any loss or
33 injury resulting from fraud or material intentional misrepresentation by
34 the vehicle's registered owner, provided that the vehicle sharing
35 program discloses in the contract that:

36 (1) the program is entitled to seek indemnification in these circum-
37 stances; and

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

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

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

50 (2) one of the following occurs:

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

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

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

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

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

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

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

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

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

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

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

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

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

13 § 3504. Group insurance for personal motor vehicle sharing programs.

14 (a) An insurer which is authorized or eligible to do business in the
15 state may issue, or issue for delivery in this state, a group policy of
16 liability and property and casualty insurance to a personal motor vehi-
17 cle sharing program provider to insure the personal motor vehicle shar-
18 ing program, and its renters and occupants of the personal passenger
19 motor vehicle, as well as the program provider, its agents, employees,
20 directors, officers and assigns; and

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

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

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

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

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

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

52 (d) A program provider may contractually assume the risk of physical
53 damage loss to personal passenger motor vehicles during the time that
54 the vehicles are in the custody of the personal motor vehicle renter or
55 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

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

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

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

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

18 (a) Upon the termination of an owner's policy of liability insurance
19 or a group liability insurance policy issued to a program provider of a
20 personal motor vehicle sharing program pursuant to section three thou-
21 sand five hundred four of the insurance law, other than an owner's poli-
22 cy of liability insurance for a motorcycle, at the request of the
23 insured or by cancellation by the insurer, the insurer shall file a
24 notice of termination with reference to such policy, as opposed to any
25 insured vehicle or vehicles under such policy, with the commissioner not
26 later than thirty days following the effective date of such cancellation
27 or other termination, in accordance with the regulations required by
28 paragraph (c) of this subdivision. An insurer shall not file a notice of
29 termination with the commissioner except as required by this subdivi-
30 sion.

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

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

46 § 8. This act shall take effect immediately.