STATE OF NEW YORK

6585

2017-2018 Regular Sessions

IN ASSEMBLY

March 9, 2017

Introduced by M. of A. WALTER -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to transportation network companies

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

Section 1. The insurance law is amended by adding a new section 3441 to read as follows:

§ 3441. Transportation network companies. (a) Notwithstanding any other provision of this chapter, this section shall apply to transportation network companies.

(b) For purposes of this section the following definitions shall apply:

(1) "Personal vehicle" means a motor vehicle used by a transportation network company driver and is owned or leased by the transportation network company driver.

(2) "Digital network" means any online-enabled application, software, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

(3) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity that is operating in this state that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides.

(4) "Transportation network company driver" or "driver" means an individual who:

(A) receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

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

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(B) uses a personal vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

(5) "Transportation network company rider" or "rider" means an individual or persons who use a transportation network company's digital network to connect with a transportation network driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

(6) "Prearranged ride" means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle.

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

(c) A transportation network company driver or transportation network company on the driver's behalf through a group policy, shall maintain primary automobile insurance that:

(1) recognizes that the driver is a transportation network company driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver:

(A) while the driver is logged on to the transportation network company's digital network; or

(B) while the driver is engaged in a prearranged ride.

(2) the following automobile insurance requirements shall apply while a participating transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation requests but is not engaged in a prearranged ride:

(A) primary automobile liability insurance in the amount of at least fifty thousand dollars for death and bodily injury per person, one hundred thousand dollars for death and bodily injury per incident, and twenty-five thousand dollars for property damage and coverage in satisfaction of the financial responsibility requirements set forth in section three thousand four hundred twenty of this article, article fifty-one of this chapter and regulations promulgated thereunder.

(B) the coverage requirements of this paragraph may be satisfied by any of the following:

(i) automobile insurance maintained by the transportation network company driver; or

(ii) automobile insurance provided through a group policy maintained by the transportation network company; or

(iii) any combination of clause (i) or (ii) of this subparagraph.

(3) the following automobile insurance requirements shall apply while a transportation network company driver is engaged in a prearranged ride:

(A) primary automobile liability insurance that provides at least one million dollars for death, bodily injury and property damage and coverage in satisfaction of the financial responsibility requirements set forth in section three thousand four hundred twenty of this article, article fifty-one of this chapter and regulations promulgated thereunder.

(B) the coverage requirements of this paragraph may be satisfied by any of the following:

(i) automobile insurance maintained by the transportation network company driver; or

(ii) automobile insurance provided through a group policy maintained by the transportation network company; or

(iii) any combination of clauses (i) and (ii) of this subparagraph.

(4) a transportation network company shall, upon entering into a contractual agreement with a transportation network company driver, provide notice to the transportation network company driver that the driver may need additional insurance coverage including motor vehicle physical damage coverage as described in paragraph nineteen of subsection (a) of section one thousand one hundred thirteen of this chapter if the driver's personal vehicle is subject to a lease or loan. A transportation network company shall also post this notice on its website in a prominent place.

(5) if insurance maintained by a driver in paragraph two or three of this subsection has lapsed or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required by this subsection beginning with the first dollar of a claim and have the duty to defend such claim.

(6) coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(7) insurance required by this subsection may be placed with an insurer authorized or eligible to write insurance in this state and shall be eligible for placement by an excess line broker licensed pursuant to article twenty-one of this chapter.

(8) insurance satisfying the requirements of this subsection shall be deemed to satisfy the financial responsibility requirements set forth in subdivision four of section three hundred eleven of the vehicle and traffic law, section three thousand four hundred twenty of this article, article fifty-one of this chapter, and regulations promulgated thereunder, and such other requirements that may apply for the purposes of satisfying the financial responsibility requirements with respect to the use or operation of a motor vehicle.

(9) a transportation network company driver shall carry proof of coverage satisfying paragraphs two and three of this subsection with him or her at all times during his or her use of a vehicle in connection with a transportation network company's digital network. In the event of an accident, a transportation network company driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request. Upon such request, a transportation network company driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the transportation network company's digital network or on a prearranged ride at the time of an accident.

(d) The transportation network company shall disclose in writing to transportation network company drivers the following before they are allowed to accept a request for a prearranged ride on the transportation network company's digital network:

(1) the insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network company provides while the transportation network company driver uses a personal vehicle in connection with a transportation network company's digital network; and

(2) that the transportation network company driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

(e) (1) Insurers that write automobile insurance in this state may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

(A) liability coverage for bodily injury and property damage;

(B) coverage provided pursuant to article fifty-one of this chapter;

(C) uninsured and underinsured motorist coverage; and

(D) motor vehicle physical damage coverage as described in paragraph nineteen of subsection (a) of section one thousand one hundred thirteen of this chapter.

(2) Such exclusions shall apply notwithstanding any requirement under the law to the contrary. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation.

(3) Nothing shall be deemed to preclude an insurer from providing coverage for the transportation network company driver's vehicle, if it so chose to do so by contract or endorsement.

(4) Automobile insurers that exclude the coverage described in subsection (c) of this section shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this article shall be deemed to invalidate or limit an exclusion contained in a policy including any policy in use or approved for use in this state prior to the enactment of this section that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

(5) An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy, shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of subsection (c) of this section at the time of loss.

(6) In a claims coverage investigation, transportation network companies and any insurer potentially providing coverage under subsection (c) of this section shall, within fifteen days after a claim has been filed, facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network company driver if applicable, including the precise times that a transportation network company driver logged on and off of the transportation network company's digital network in the twelve hour period immediately preceding and in the twelve hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any automobile insurance maintained under subsection (c) of this section.

§ 2. The insurance law is amended by adding a new section 3455 to read as follows:

§ 3455. Transportation network company group insurance policies. (a) For purposes of this section, the following definitions shall apply:

(1) "Transportation network company" shall have the meaning set forth in subsection (b) of section three thousand four hundred forty-one of this article.

(2) "Certificate" or "certificate of insurance" means any policy, contract or other evidence of insurance, or rider or endorsement thereto, issued to a group member under a transportation network company group policy.

(3) "Transportation network company group policy" or "group policy" means group policy, including certificate issued to the group members, where the group policyholder is a transportation network company and the policy provides insurance to the transportation network company and to group members:

(A) in accordance with the requirements of subsection (c) of section three thousand four hundred forty-one of this article;

(B) of the type described in paragraphs thirteen, fourteen and/or nineteen of subsection (a) of section one thousand one hundred thirteen of this chapter; and

(C) in satisfaction of the financial responsibility requirements set forth in section three thousand four hundred twenty of this article, subdivision four of section three hundred eleven of the vehicle and traffic law, article fifty-one of this chapter, and regulations promulgated thereunder.

(4) "Group Member" means a "transportation network company driver" as defined in subsection (b) of section three thousand four hundred forty-one of this article.

(5) "Group policyholder" means a transportation network company.

(6) "Personal vehicle" shall have the meaning set forth in subsection (b) of section three thousand four hundred forty-one of this article.

(b) An insurer may issue or issue for delivery in this state a transportation network company group policy to a transportation network company as a group policyholder only in accordance with the provisions of this section.

(c)(1) A transportation network company group policy shall provide coverage for a personal vehicle in accordance with the requirements of subsection (c) of section three thousand four hundred forty-one of this article.

(2) A transportation network company group policy may provide:

(A) coverage for limits higher than the minimum limits required pursuant to subsection (c) of section three thousand four hundred forty-one of this article;

(B) supplementary uninsured/underinsured motorists insurance for bodily injury pursuant to paragraph two of subsection (f) of section three thousand four hundred twenty of this article;

(C) supplemental spousal liability insurance pursuant to subsection (g) of section three thousand four hundred twenty of this chapter; and

(D) motor vehicle physical damage coverage as described in paragraph nineteen of subsection (a) of section one thousand one hundred thirteen of this chapter.

(3) The coverage described in paragraphs one and two of this subsection may be provided in one group policy or in separate group policies.

(4) A transportation network company group policy, including certificates, shall be issued by an insurer authorized or eligible to write

insurance in this state and shall be eligible for placement by an excess line broker licensed pursuant to article twenty-one of this chapter.

(5) A policyholder also may be an insured under a group policy.

(d) The premium for the transportation network company group policy, including certificates may be paid by the group policyholder from the funds contributed:

(1) wholly by the group policyholder;

(2) wholly by the group members; or

(3) jointly by the group policyholder and the group members.

(e) (1) Any policy dividend, retrospective premium credit, or retrospective premium refund in respect of premiums paid by the group policyholder may:

(A) be applied to reduce the premium contribution of the group policyholder, but not in excess of the proportion to its contribution; or

(B) be retained by the group policyholder.

(2) Any policy dividend, retrospective premium credit, or retrospective premium refund not distributed under paragraph one of this subsection shall be:

(A) applied to reduce future premiums and, accordingly, future contributions, of existing or future group members, or both; or

(B) paid or refunded to those group members insured on the date the payment or refund is made to the group policyholder, if distributed by the group policyholder, or on the date of mailing, if distributed directly by the insurer, subject to the following requirements:

(i) The insurer shall be responsible for determining the allocation of the payment of refund to the group members;

(ii) If the group policyholder distributes the payment or refund, the insurer shall be responsible for audit to ascertain that the payment or refund is actually made in accordance with the allocation procedure; and

(iii) If the group policyholder fails to make the payment or refund, the insurer shall make the payment or refund directly or use the method provided in subparagraph (A) of this paragraph.

(3) Notwithstanding paragraphs one and two of this subsection, if a dividend accrues upon termination of coverage under a transportation network company group policy, the premium for which was paid out of funds contributed by group members specifically for the coverage, the dividend shall be paid or refunded by the group policyholder to the group members insured on the date the payment or refund is made to the group policyholder, net of reasonable expenses incurred by the group policyholder in paying or refunding the dividend to such group members.

(4) For the purposes of this subsection, "dividend" means a return by the insurer of a transportation network company group policy of excess premiums to the group policyholder in light of favorable loss experience, including retrospective premium credits or retrospective premium refunds. The term "dividend" does not include reimbursements or fees received by a group policyholder in connection with the operation or administration of a transportation network company group policy, including administrative reimbursements, fees for services provided by the group policyholder, or transactional service fees.

(f) The insurer must treat in like manner all eligible group members of the same class and status.

(g) Each policy written pursuant to this section shall provide per occurrence limits of coverage for each group member in an amount not less than that required by of subsection (c) of section three thousand four hundred forty-one of this article, and may provide coverage for limits higher than the minimum limits required under the law.

(h) (1) The insurer or the group policyholder shall be responsible for mailing or delivery of a certificate of insurance to each group member insured under the transportation network company group policy. The insurer or the group policyholder shall also be responsible for the mailing or delivery to each group member of an amended certificate of insurance or endorsement to the certificate, whenever there is a change in limits; change in type of coverage; addition, reduction, or elimination of coverage; or addition of exclusion, under the transportation network company group policy or certificate.

(2) The certificate shall contain in substance all material terms and conditions of coverage afforded to group members, unless the transportation network company group policy is incorporated by reference and a copy of the group policy accompanies the certificate.

(3) If any coverage afforded to the group member is excess of applicable insurance coverage, the certificate shall contain a notice advising the group members that, if the member has other insurance coverage, specified coverages under the transportation network company group policy will be excess over the other insurance.

(i) A group policyholder shall comply with the provisions of section two thousand one hundred twenty-two of this chapter, in the same manner as an agent or broker, in any advertisement, sign, pamphlet, circular, card, or other public announcement referring to coverage under a transportation network company group policy or certificate.

(j) A transportation network company group policy shall not be subject to section three thousand four hundred twenty-five or section three thousand four hundred twenty-six of this article; provided that the following requirements shall apply with regard to termination of coverage:

(1)(A) An insurer may terminate a group policy or certificate only if cancellation is based on one or more of the reasons set forth in subparagraph (A) through (D) or (F) through (H) of paragraph one of subsection (c) of section three thousand four hundred twenty-six of this article; provided, however, that an act or omission by a group member that would constitute the basis for cancellation of an individual certificate shall not constitute the basis for cancellation of the group policy.

(B) Where the premium is derived wholly from funds contributed by the group policyholder, an insurer may cancel an individual certificate only if cancellation is based on one or more of the reasons set forth in subparagraph (B), (C) or (H) of paragraph one of subsection (c) of section three thousand four hundred twenty-six of this article.

(2) (A) An insurer's cancellation of a group policy, including all certificates, shall not become affective until thirty days after the insurer mails or delivers written notice of cancellation to the group policyholder at the mailing address shown in the policy.

(i) Where all or part of the premium is derived from funds contributed by the group member specifically for the coverage, the insurer shall also mail or deliver written notice of cancellation of the group policy to the group member at the group member's mailing address.

(ii) Where none of the premium is derived from funds contributed by a group member specifically for the coverage, the group policy holder shall mail or deliver written notice to the group member advising the group member of the cancellation of the group policy and the effective date of cancellation. The group policy holder shall mail or deliver the written notice within ninety days after receiving notice of cancellation from the insurer.

(B) An insurer's cancellation of an individual certificate shall not become effective until thirty days after the insurer mails or delivers written notice of cancellation to the group member at the group member's mailing address and to the group policyholder at the mailing address shown in the group policy.

(3) (A) A group policyholder may cancel a group policy, including all certificates, or any individual certificate, for a reason upon thirty days written notice to the insurer and each group member; and

(B) The group policyholder shall mail or deliver written notice to each affected group member of the group policyholder's cancellation of the group policy or certificate and the effective date of cancellation. The group policyholder shall mail or deliver the written notice to the group member's mailing address at least thirty days prior to the effective date of cancellation.

(4) (A) Unless a group policy provides for a longer policy period, the policy and all certificates shall be issued or renewed for a one-year policy period.

(B) The group policyholder shall be entitled to renew the group policy and all certificates upon timely payment of the premium billed to the group policyholder for the renewal, unless:

(i) the insurer mails or delivers to the group policyholder and all group members written notice of nonrenewal, or conditional renewal; and

(ii) the insurer mails or delivers the written notice at least thirty, but not more than one hundred twenty days prior to the expiration date specified in the policy or, if no date is specified, the next anniversary date of the policy.

(5) Where the group policyholder nonrenews the group policy, the group policyholder shall mail or deliver written notice to each group member advising the group member of nonrenewal of the group policy and the effective date of nonrenewal. The group policyholder shall mail or deliver written notice at least thirty days prior to the nonrenewal.

(6) Every notice of cancellation, nonrenewal, or conditional renewal shall set forth the specific reason or reasons for cancellation, nonrenewal, or conditional renewal.

(7) (A) An insurer shall not be required under this subsection to give notice to a group member if the insurer has been advised by either the group policyholder or another insurer that substantially similar coverage has been obtained from the other insurer without lapse of coverage.

(B) A group policyholder shall not be required under this subsection to give notice to a group member if substantially similar coverage has been obtained from another insurer without lapse of coverage.

(8) (A) If, prior to the effective date of cancellation, nonrenewal, or conditional renewal of the group policy, or a certificate, whether initiated by the insurer, group policyholder or by the group member in regard to the group member's certificate, coverage attaches pursuant to the terms of a group policy, then the coverage shall be effective until expiration of the applicable period of coverage provided in the group policy notwithstanding the cancellation, nonrenewal or conditional nonrenewal of the group policy.

(B) Notwithstanding subparagraph (A) of this paragraph, an insurer may terminate coverage under an individual certificate on the effective date of cancellation, if the certificate is cancelled in accordance with the provisions of subparagraph (B) of paragraph one of this subsection.

(k) Any mailing or delivery to a group member required or permitted under this section may be made by electronic mail if consent to such method of delivery has been previously received from such group member.

(l) The superintendent shall not approve for delivery any policy under this section for a vehicle which is licensed to operate by a taxi and limousine commission, in any city with a population of one million or more.

§ 3. Subsection (b) of section 5103 of the insurance law is amended by adding a new paragraph 4 to read as follows:

(4) Is injured while operating a personal vehicle as a transportation network company driver or transportation network company rider as such terms are defined in subsection (b) of section three thousand four hundred forty-one of this chapter.

§ 4. The municipal officers and boards in cities, towns, villages and counties of this state may adopt ordinances regulating transportation network companies including but not limited to comprehensive background checks of prospective drivers and on all other matters other than the insurance requirements set forth in section 3441 of the insurance law. Nothing in this section shall authorize any transportation network company or transportation network driver to provide passenger pick-up service in a city with a population of one million or more except as may be authorized by such city.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law.