

STATE OF NEW YORK

3506

2019-2020 Regular Sessions

IN SENATE

February 8, 2019

Introduced by Sens. BRESLIN, SEWARD -- 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 Assem-
bly, 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
24 named insured, but does not include a motor vehicle with fewer than four
25 wheels.

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

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

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

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

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

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

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

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

18 § 3502. Requirements for doing business. (a) No private passenger
19 motor vehicle insured or subject to being insured by its owner pursuant
20 to a policy of insurance subject to section three thousand four hundred
21 twenty-five or article fifty-three of this chapter shall be classified
22 as a commercial vehicle, for-hire vehicle, permissive use vehicle, taxi-
23 cab or livery solely because its owner allows it to be used for personal
24 motor vehicle sharing as long as all of the following circumstances
25 apply:

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

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

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

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

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

1 indemnify any person or organization for liability for any loss that
2 occurs during the rental period; and

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

5 § 3503. Liability provisions. (a) Notwithstanding any other provision
6 of law or any provision in a private passenger motor vehicle owner's
7 automobile insurance policy, in the event of a loss or injury that
8 occurs during the rental period or while the personal motor vehicle is
9 otherwise under the control of a personal motor vehicle sharing program
10 provider, subject to subsection (h) of this section the program provider
11 shall be deemed the owner of the vehicle under section three hundred
12 eighty-eight of the vehicle and traffic law and such other statutes that
13 may impose liability upon an owner of a private passenger motor vehicle
14 solely based on such ownership as if the program provider were the owner
15 of the vehicle. The program provider shall retain such liability irre-
16 spective of a lapse in the insurance policy of the program or whether
17 such liability is covered under the insurance policy of the program.

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

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

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

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

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

47 (2) one of the following occurs:

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

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

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

54 (d) The insurer or insurers providing group liability insurance to the
55 personal motor vehicle sharing program pursuant to subsection (a) of
56 section three thousand five hundred four of this article and group phys-

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

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

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

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

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

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

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

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

53 (3) an insurer may cancel or non-renew a policy that insures a vehicle
54 used in the personal vehicle sharing program if that vehicle is enrolled
55 in such a usage-based insurance program. The insurer must immediately

1 offer the insured a new policy with the same coverages and pre-existing
2 rates, but without enrollment in the usage-based insurance program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 2. In the case of financial security procured by a program provider of
47 a personal motor vehicle sharing program as set forth in section three
48 thousand five hundred four of the insurance law, the program provider
49 shall provide the commissioner with proof of financial security in the
50 form of a group insurance policy covering itself and the owners of all
51 personal passenger motor vehicles registered in this state that partic-
52 ipate in the program as insured group members, covering those vehicles
53 while they are being used in conjunction with that program. Such proof
54 shall not be used in connection with the registration of the vehicles
55 and no such vehicle shall be registered unless the owner of the vehicle
56 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.