

Interest In Ride-Sharing Insurance Is Revving Up

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Transportation networking company insurance coverage issues have attracted significant interest from legislators and regulators due to the increasing popularity of TNCs or “commercial ride-sharing companies,” which use an online application or platform developed and administered by the TNC to match passengers with drivers who use their personal vehicle to transport passengers for a fee.

Concerns have been heightened by high-profile instances of accidents involving TNC drivers, where coverage was unavailable under the TNC driver’s personal auto policy due to personal livery exclusions in the policy. Various states and local jurisdictions have acted to regulate TNCs and impose insurance requirements on their operations. In many cases, these actions have involved legislative battles and have resulted in a patchwork of regulatory requirements in various jurisdictions.



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On March 31, 2015, the National Association of Insurance Commissioners adopted a white paper, “Transportation Network Company Insurance Principles for Legislators and Regulators.” The white paper is formally neutral; it does not support any particular solution or option for addressing the issues identified. Separately, two other groups have been working on proposed “model laws” that are designed to address TNC insurance issues in a uniform fashion:

1. The Property-Casualty Insurance Committee of the National Conference of Insurance Legislators is working on a “Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers.” Discussion of a draft model act began on March 1, 2015, to be continued at NCOIL’s Summer Meeting, July 16 to July 19, 2015, in Indianapolis.
2. A group of insurance companies plus Uber Technologies Inc. and Lyft Inc. — the two largest TNCs — in a stated effort to foster uniformity and avoid state-by-state legislative battles, have developed a “TNC Insurance Compromise Model Bill,” which was presented at the March 28, 2015, meeting of the NAIC Sharing Economy (C) Working Group.

To date, neither the draft NCOIL Model Act nor the Compromise Model Bill has been adopted or endorsed by any legislative body. The following is a comparison of certain key features of the two model laws:

	NCOIL MODEL ACT	COMPROMISE MODEL BILL
Availability of coverage under a PAP	A PAP does not provide coverage during any period of time when TNC services are provided unless the language of the policy (or an amendment or endorsement) expressly provides for coverage during all or a specified portion of the period of time when TNC services are being provided	A PAP (or an amendment or endorsement) may expressly provide coverage during all or a specified portion of the period of time when TNC services are being provided, but there is no presumption of non-coverage if the policy language does not expressly provide for such coverage.
Required TNC insurance coverages	Requires TNC insurance to provide: (i) primary liability coverage; (ii) uninsured and underinsured motorist coverage; (iii) personal injury protection; and (iv) collision physical damage coverage and comprehensive physical damage coverage	Only requires TNC insurance to provide primary liability coverage
Different insurance requirements for Period 1	Imposes the same requirements for all periods of TNC activity, beginning with the time when the TNC app is switched on	Provides different (and lesser) insurance requirements for "Period 1" – the time period when the TNC app is switched on but no match has been made – than for the pre-pickup and post-pickup periods after a match has been made
Disclosures to drivers	TNCs must provide disclosure to drivers regarding the TNC-provided insurance and the possibility that drivers' personal insurance will not cover TNC activities in the TNC's written agreement with drivers, and the disclosure must be acknowledged in writing by the driver.	Has a similar provision, except disclosure requirements are less detailed, and written acknowledgment by driver is not required.
Disclosures to vehicle owners	Requires disclosures to be provided to vehicle owners (not just drivers) regarding TNC insurance and the insurer's obligation to indemnify them for loss and pay for their defense	Has no similar provision
Timing of disclosures	When a TNC provides coverage, it must make disclosures before the first use of the vehicle for TNC services	Has a similar provision
Sources of coverage	TNC insurance requirements can be met by the TNC, the TNC driver or a combination of both	Has a similar provision
Preemption of local laws	Expressly preempts any local laws that impose or otherwise regulate insurance requirements for TNCs and the provision of TNC services	Has no express preemption provision
Obligation to provide TNC driving data	Requires TNCs to provide (on request) information regarding use of vehicle to provide TNC services to the driver's personal auto insurer at any time.	Requires information to be provided only in the context of a claims coverage investigation, but requires such information to include the 12 hour periods immediately prior to and following the accident
Record retention	TNC must retain records for three years	Is silent on record retention
Penalty for noncompliance	Violations are misdemeanors – for both the TNC and the driver	Is silent on enforcement and consequences for noncompliance

Debate is ongoing as to whether it is appropriate — as the current draft of the NCOIL Model Act does — to treat period one the same as the periods after a match has been made and specific services agreed. Some stakeholders have pointed out that there are characteristics of period one that may warrant treating it differently, including:

- A driver may simultaneously be in period one with more than one TNC (i.e., logged into two or more apps).

- Personal auto livery exclusions are less likely to apply during period one than other periods, meaning that PAP coverage is more likely to apply.
- The potential for fraud (e.g., turning on the app for TNC coverage while using the vehicle for personal purposes) is greater during period one.
- Insurance carriers have shown more of an interest in developing driver-focused insurance solutions for period one than other periods.

In addition, it is likely, based on recent legislative debates, such as in Kansas, that TNCs will raise issues with respect to the disclosure and record-keeping requirements found in the NCOIL Model Act, but not in the Compromise Model Bill.

Unlike the NCOIL Model Act, which is slated for further discussion at the next NCOIL meeting from July 16 to July 19, there is no formal venue for discussion or comment on the Compromise Model Bill, but the issues highlighted above will likely be debated by legislators as they consider enacting legislation based on the Compromise Model Bill.

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