

## Insurance Implications of Ride-Sharing Services Offered by Transportation Network Companies

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The development and rapid growth of so-called “ride-sharing” services, in which a driver and a passenger are matched through a smartphone app developed and administered by “transportation network companies,” or TNCs, raises a number of insurance considerations, as has been recognized in public policy debates at the state and local levels.

By offering an innovative and apparently consumer-friendly approach to creating a convenient and purportedly low-cost means of getting from one place to another, TNCs grew rapidly in popularity and as they did they became the subject of criticisms from traditional businesses affected by the new activity in one way or another. There have been instances in which the issue is depicted as a clash between innovation and stagnation.<sup>1</sup> But the insurance coverage implications of TNC activity ultimately involve recognizing exposure to risk and ensuring that the corresponding cost is allocated to the appropriate party so that consumers are protected.

Standard personal auto policies contain provisions that exclude liability coverage when a personal auto is used as a livery or to carry passengers for a fee.<sup>2</sup> Such activity is clearly commercial in nature and the insurance industry has developed specific and separate products other than the personal auto policy to provide coverage for such commercial activity.

The insurance issues arising from ride-sharing include the following:

- Whether any coverage would be provided by a TNC driver’s personal auto policy.
- What limits of commercial coverage should a TNC provide?
- Whether the coverage provided by a TNC should be primary or contingent, such that it becomes operative only after the driver’s personal auto insurer denies a claim or if the driver has no auto insurance coverage.
- When the commercial coverage provided by a TNC would be effective (the major TNCs started by suggesting that such coverage should be effective once a passenger is in the cars while the insurance industry position has generally been that such coverage should apply as soon as the driver has logged in to the app and is therefore available to be matched with a passenger).

### ■ NAMIC’s Position

Recognizing the need to develop guidance on the issue as it developed in policy discussions, NAMIC adopted a public policy position that strikes a balance between the benefits of innovation and the need to ensure that consumers are informed sufficiently to make decisions and ultimately protected by appropriate insurance coverage.

NAMIC’s policy notes support for innovation but states that any ride-sharing public policy measures should recognize the distinction between commercial and personal insurance exposure risk. As such, public policy measures, whether adopted at the state or local level, should recognize that a TNC driver is engaged in commercial activity as soon as he or she has logged in to the TNC system or is available to be matched with a passenger.

NAMIC also recognizes that insurers innovate and compete by developing new products for the market and therefore insurers should not be prevented from developing products aimed at developing technologies and related activities. At the same time coverage should not be mandated but rather provided only on a voluntary basis with underwriting and rating freedom.

## Issue Brief



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NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers. 1,400 member companies serve more than 135 million auto, home and business policyholders, and write more than \$196 billion in annual premiums.

NAMIC's policy position also recognizes the need to promote awareness of coverage gaps among potential drivers and passengers and cites with approval the fact that many state insurance departments have issued consumer advisories intended to alert ride-sharing drivers and passengers about potential coverage gaps and the advisability of drivers to consider purchase of additional coverage.

### ■ Early State Legislative Actions

The potential problems stemming from ride-sharing activities caught the attention of a variety of public-sector entities during 2014, including public utilities commissions that regulate traditional taxi services, municipalities in which TNCs were offering services, insurance departments, and state legislatures.

Colorado, Illinois, and California were the first states to take action in passing legislation to address insurance implications of ride-sharing during 2014. Colorado crossed the line first with the passage of SB 125, a compromise bill that established differing insurance requirements for before and after Jan. 15, 2015. Prior to that date, a TNC or TNC driver is required to maintain a primary liability insurance policy providing \$1 million per occurrence for "prearranged rides," defined as when a passenger is in a TNC vehicle. For the period of time when the driver is logged into the TNC app but does not have a passenger in vehicle, the TNC or driver only has to provide "contingent" rather than primary liability insurance coverage at state-mandated minimum coverage limits. Contingent liability insurance coverage becomes operative after the personal auto insurer denies a claim or if the driver has no auto insurance coverage.

After Jan. 15, 2015, the TNC or driver must maintain a primary auto insurance policy that covers the driver from the time of logging in until the driver logs off. The auto insurance policy must have 50/100/30 coverage limits, and the primary auto insurance coverage must be provided by one of the following: a) a full-time commercial liability policy; b) an endorsement or rider on the driver's personal auto insurance policy covering TNC activities; or c) a corporate liability insurance policy purchased by the TNC providing primary insurance coverage. Proof of insurance must be provided to the Public Utilities Commission by the TNC or driver.

The Colorado law also requires the TNC to coordinate claims investigations with a driver's personal auto insurance carrier and to disclose to TNC drivers that their personal auto insurance policy may not provide coverage during TNC activities. The law also requires the Department of Insurance to study TNC insurance coverage issues and report back to the Legislature by January of 2015.

The Illinois General Assembly was the next state legislature to act with the passage of ride-sharing legislation in the form of two bills, HB 4075 and HB 5331. The bills were vetoed, however, on Aug. 25 by Gov. Pat Quinn, who cited the home rule provisions of the state constitution and said the state legislation would limit the ability of municipalities to adopt alternative approaches.<sup>3</sup> Together, the bills would have specified that a ride-sharing driver's personal auto carrier can exclude coverage "while the vehicle is made available for dispatch or while a commercial ride-sharing arrangement passenger is in the vehicle"; required ride-sharing companies to assume liability for claims that arise when the vehicle is available or a passenger is in it; required ride-sharing company to carry \$350,000 in commercial liability

# Insurance Implications of Ride-Sharing Services Offered by Transportation Network Companies

coverage; and required ride-sharing companies to keep records of vehicle use, claims, and liability payments, and provide such records to the vehicle owner and insurer.

The veto at the state level in Illinois was significant because Chicago had previously enacted a ride-sharing ordinance with lesser insurance requirements. This development highlights the fact that, unlike many insurance issues, ride-sharing can be as much of an issue for municipalities as for states.<sup>4</sup> Other cities that enacted ordinances governing ride-sharing include Minneapolis, Milwaukee, and Seattle, and cities that have considered proposals include Washington, D.C., New Orleans, Cincinnati, and Charlotte, NC. In several states, debate and responsive action took place centered on the state public utilities commission, where other transportation industries have traditionally been regulated.

California became the next state to address insurance issues related to ride-sharing activities when Gov. Jerry Brown signed AB 2293 in September 2014. The law establishes insurance coverage requirements for two time periods. During Period 1, defined as the time when the driver is logged in to the app until there is a match with a passenger and also including the time when the ride has been completed until there is either another match or log off, the TNC will be required to provide primary liability coverage of 50/100/30. During Period 2, defined as the time when there is a passenger match through ride completion, the TNC will be required to provide \$1 million in primary liability coverage. The bill also requires TNC to provide \$1 million in uninsured and underinsured motorist coverage and \$200,000 in excess liability coverage. Additionally, it requires written disclosures by TNCs to their participating drivers; authorizes

a personal automobile insurer to offer coverage for private vehicles at its discretion; and requires the California Department of Insurance to study TNC insurance issues.

## Regulatory Reactions

In addition to the legislative reaction, states responded to TNC developments by issuing advisories warning about potential insurance coverage gaps for ride-sharing drivers and their passengers.<sup>5</sup> In general the state regulator advisories recommend that drivers contact their insurance agents for guidance regarding appropriate insurance coverage for engaging in ride-sharing activities. Insurance regulators in 20 states (California, Connecticut, Idaho, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Utah) plus the District of Columbia issued such an advisory in 2014.

In August 2014 the National Association of Insurance Commissioners (NAIC) issued a pair of consumer advisories, one aimed at TNC drivers and the other directed to TNC passengers, warning about potential insurance gaps. The NAIC also created a Sharing Economy Working Group under the auspices of its Property and Casualty Committee to explore the insurance implications of ride- and home-sharing and any other instances of consumers using private property for commercial purposes.<sup>6</sup> The charges of the working group include the development of a model law and the drafting of a white paper.

The National Conference of Insurance Legislators has also taken steps to examine the issue, which could ultimately lead to model legislation.<sup>7</sup>

## Endnotes

<sup>1</sup>See, for example, “Uber innovation: California should encourage ride-sharing ventures,” by Linda Moore, *The Mercury News*, July 10, 2014, at [http://www.mercurynews.com/opinion/ci\\_26110332/uber-innovation-california-should-encourage-ride-sharing-ventures](http://www.mercurynews.com/opinion/ci_26110332/uber-innovation-california-should-encourage-ride-sharing-ventures). The article quotes California Lt. Gov. Gavin Newsom as saying, “We must resist the urge to go backwards by creating laws that further entrench the status quo and stifle innovation and consumer choice.”

<sup>2</sup>Ride-Sharing: New Technology Creates Insurance Challenges, Center for Insurance Policy and Research newsletter, at [http://www.naic.org/cipr\\_newsletter\\_archive/vol12\\_ride\\_share\\_challenges.pdf](http://www.naic.org/cipr_newsletter_archive/vol12_ride_share_challenges.pdf).

<sup>3</sup>Additional legislation with weaker insurance protections was passed in December, but it was expected that the issue would be subject to further legislative action prior to the new bill’s effective date.

<sup>4</sup>For a summary of actions taken through October 2014, see “Blurred Lines: Insurance Challenges in the Ride-Sharing Market,” an R Street Policy Statement by R.J. Lehmann, at <http://www.rstreet.org/wp-content/uploads/2014/09/RSTREET28.pdf>.

<sup>5</sup>See [http://www.naic.org/documents/committees\\_c\\_sharing\\_econ\\_wg\\_related\\_links\\_to\\_state\\_releases\\_regarding.pdf](http://www.naic.org/documents/committees_c_sharing_econ_wg_related_links_to_state_releases_regarding.pdf) for collection of insurance department advisories on the topic.

<sup>6</sup>See [http://www.naic.org/committees\\_c\\_sharing\\_econ\\_wg.htm](http://www.naic.org/committees_c_sharing_econ_wg.htm).

<sup>7</sup>See [http://www.ncoil.org/news/2014\\_newsletters/Vol082014.pdf](http://www.ncoil.org/news/2014_newsletters/Vol082014.pdf).