

TO: The Honorable Scott Schwab, Chair
House Insurance Committee

FROM: William W. Sneed, Legislative Counsel
The State Farm Insurance Companies

SUBJECT: H.B. 2249

DATE: February 11, 2015

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies ("State Farm"). State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. Please accept this memorandum as our support of H.B. 2249.

I. INTRODUCTION

Traditional ride-sharing, also known as car-pooling, is covered by most personal auto policies ("PAPs"). But transporting passengers for a fee that exceeds the simple sharing of expenses is excluded in most PAPs. Driving personal vehicles for a profit is the impetus for Transportation Network Companies.

A Transportation Network Company (TNC) is an organization that arranges transportation for a fee using a technology platform such as mobile application (App) or website. TNCs create online Apps that connect riders and drivers. Drivers use the online Apps to sign up to provide rides for a fee. The TNC takes a portion of each fee. In order to open a TNC account, potential passengers first download the App and must provide credit card information for billing purposes and agree to the terms and conditions for use. The TNC terms and conditions generally indicate that the TNC is not the transportation provider and disclaims the safety of the driver among other disclaimers and notices. TNCs typically have driver requirements such as minimum age limits, valid driver's license, current vehicle registration and insurance, at a minimum. Once the account is created, a potential rider simply logs onto the mobile App, enters his/her location and is matched with a driver in the vicinity.

Regulation of TNCs is in its infancy. The first government agency to impose standards for a TNC was the California Public Utilities Commission ("CPUC"). It was there that the term Transportation Network Company was coined. Currently, many questions exist regarding proper regulation of this new service as well as how to fill any insurance coverage gaps. Regulation of the traditional taxi or limousine service is much more developed. Historically, taxis and limousines are licensed by the state or municipal transportation authority. Taxis and limousines

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are required to be inspected and drivers must be properly licensed typically through a commercial driver's license. In addition, taxi operators are required to have commercial insurance in effect 24/7/365 that protects passengers and third parties (i.e., pedestrians or other drivers) in the event of an accident. Taxi drivers and their trade associations argue that TNCs are in the same business as taxis because they transport passengers for a fee and should be subject to the same insurance and licensing requirements.

The insurance issues associated with TNC activities arise because TNC drivers use their personal cars for that commercial activity but do not have commercial auto insurance. Drivers who are often new to the transportation business are transporting people they do not personally know. This activity has traditionally been the realm of commercial taxis. PAPs generally exclude this exposure by what is commonly called a "livery exclusion." Livery exclusions were written because transporting passengers for a fee adds exposure and creates more risk than was contemplated by existing personal auto insurance rates or coverages. Personal auto insurers are concerned that they are experiencing losses from these additional exposures because their policyholders do not inform them that they drive for TNCs. From the personal auto insurer's perspective, this activity translates into increased risk of loss due to: 1) additional miles driven; 2) heightened geographic hazard caused because TNC drivers typically find matches in urban, high traffic locations; 3) more people in the car that can be injured; and 4) the additional risk caused as drivers rush to accept matches and pick-up and deliver passengers in a timely manner.

II. COVERAGE ISSUES

Major coverage gaps will exist unless the TNC provides full commercial coverage, the driver buys a commercial auto policy, or the livery exclusion is amended.

Even when TNCs provide commercial coverage, the TNCs may not provide uninsured/underinsured motorist ("UM/UIM") coverage, medical payments coverage, comprehensive coverage or collision coverage that the drivers had purchased in their personal auto policies. Drivers are often unaware of the extent of the livery exclusions and therefore do not seek additional endorsements or commercial auto coverage to pay for losses caused while the vehicle is being used for livery. The resulting gaps in coverage could impact not only the driver and their personal vehicle but also any person suffering damages.

Coverage gaps for TNC drivers exist because TNCs drivers are not required to maintain commercial coverage. Instead, TNC drivers are normally covered by a combination of the driver's personal auto insurance and the TNC's commercial insurance to cover the TNC activities. This creates issues because the typical PAP excludes coverage for public or livery conveyance. As a result, most TNC drivers' PAPs do not provide coverage when the driver is using their vehicle to transport passengers for a fee. The livery exclusion in PAPS applies to liability insurance, medical payments, personal injury protection in no-fault states, comprehensive (otherwise known as other than collision), collision coverage and UM/UIM coverage.

Liability insurance provides coverage for bodily injury or property damage caused by an auto accident for which the insured is legally responsible. In addition to payment for bodily injury

and property damage, Personal Auto Policies typically provide defense costs such as legal fees. Most Personal Auto Policies are written on a split-limits basis. Policies written on a split-limits basis are stated with three types of limits: bodily injury per person, bodily injury per accident and property damage per accident. For example, if the policy limits are stated as 100/300/50, the limit of liability for bodily injury per person is \$100,000 with a cap of \$300,000 for bodily injury due to the accident and a maximum payment for property damages of \$50,000. The alternative is to write policies on a combined single limit basis.

Medical payment coverage applies regardless of fault and covers bodily injury to the named insured as well as family members and any passengers in the auto at the time of the accident.

Personal injury protection provides coverage for basic expenses such as medical costs an insured and his or her family may incur in a no-fault state. Roughly one-fourth of states in the U.S. have a form of no-fault automobile laws meaning they allow auto accident victims to collect benefits from their own insurers regardless of who was negligent.

Collision coverage pays for damages to an insured's owned vehicle resulting in an accident with another vehicle or an inanimate object. Comprehensive coverage, also known as other than collision coverage, protects against all property damage except that covered by collision insurance or excluded in the policy. Uninsured motorist coverage provides compensation to the insured and their family members when a driver causes losses and does not have insurance coverage. Underinsured motorist coverage pays the insured or their family members after a driver causes losses that exceed the negligent driver's policy limits.

The largest TNCs partially resolved the issue regarding the livery exclusions in Personal Auto Policies by providing liability, UM/UIM and comprehensive/collision coverages while the vehicle is being used to transport passengers for a fee. However, an issue remains regarding the point at which the vehicle is being used for a livery service. The issue is compounded by the fact that livery exclusions vary between policies making it impossible to conclusively state when personal driving stops and commercial driving begins for each driver. The question that each TNC driver must answer, based on his or her own personal auto policy language, is when does his or her personal auto coverage stop and the TNC's commercial policy begin?

There are four exposure periods in the TNC business model. Period 1 is characterized as the point when the application is off and the driver is unavailable for hire. Period 2 is characterized as the point when the driver logs into the TNC application but is not matched with a passenger. Period 3 is when a match is made and accepted but the passenger has not yet entered the vehicle. Period 4 is when the passenger has been picked up and is in the TNC driver's vehicle. Ambiguous language in the policy exclusion can cause confusion regarding which policy, commercial or personal, covers each period and may lead to coverage disputes over claim payments.

III. INDUSTRY RESPONSE

It is important to note that my client is not trying to kill innovation, but as an insurer of thousands of Kansans we need to make sure that there is clarity around what happens if

something goes wrong, AND that both the driver and the passenger is fully aware of the associated risks and responsibilities. We contend that HB2249, a result of a collaboration with multiple insurance companies, accomplishes this goal. This bill specifically outlines the respective duties for coverage's and at the same time still allows for these new services to flourish. Others supporting the bill will be providing detail analysis on the components of the bill and as such we will not repeat that in our testimony. We do however concur with their testimony. The bottom line is that the committee must do what it can to assure that the public is protected.

Thus, on behalf of my client, the State Farm Insurance companies, we stand ready to provide any technical assistance to the committee as it evaluates HB 2249. We respectfully request that you act favorably on HB 2249

Thank you, and I will be happy to answer any questions you may have at your convenience.

Respectfully submitted,



William W. Sneed

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