

TO: The Honorable Scott Schwab, Chair
House Insurance Committee

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

SUBJECT: H.B. 2286

DATE: March 20, 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. We appear today in opposition to H.B. 2286. Although my client is neutral on the bulk of the bill, we oppose the language found in Sections 9 and 10.

Sections 9 and 10 relate to the priority of insurance coverage for the Uber car. We believe the language is confusing and does not adequately resolve the issues surrounding the appropriation delineation of what policy is in effect during the entire commercial transaction.

Our industry has proposed language used in the Arizona bill. This provides a straightforward resolution to this issue.

Thus, if the Committee does decide to work H.B. 2286, we respectfully request that Sections 9 and 10 be removed, and the attached balloon be inserted their place.

Thank you.

Respectfully submitted,



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HOUSE BILL No. 2249

By Committee on Insurance

2-5

Proposed amendment to HB 2249
3/13/2015
Prepared by David Wiese, Office of Revisor of
Statutes

1 AN ACT concerning insurance; relating to transportation network
2 company insurance; enacting the transportation network company
3 driver and passenger protection act; providing definitions,
4 requirements, limitations and policy amounts.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) The provisions of sections 1 through ~~8~~, and
8 amendments thereto, shall be known and may be cited as the transportation
9 network company driver and passenger protection act. Notwithstanding
10 any other provision of chapter 40 and chapter 66 of the Kansas Statutes
11 Annotated, and amendments thereto, this act shall apply to transportation
12 network companies.

13 (b) As used in the transportation network company driver and
14 passenger protection act:

15 (1) "Participating driver" or "driver" means any person who uses a
16 vehicle in connection with a transportation network company's online
17 enabled application or platform to connect with passengers;

18 (2) "transportation network company" means an organization,
19 including, but not limited to, a corporation, limited liability company,
20 partnership, sole proprietor or any other entity, operating in this state that
21 provides prearranged transportation services for compensation using an
22 online-enabled application or platform to connect passengers with drivers
23 using a personal vehicle; and

24 (3) "transportation network company insurance" means an insurance
25 policy that specifically covers a driver's use of a vehicle in connection with
26 a transportation network company's online-enabled application or
27 platform.

28 Sec. 2. A transportation network company shall disclose in writing to
29 participating drivers, as part of its agreement with such drivers, the
30 insurance coverage and limits of liability that the transportation network
31 company provides while the driver uses a vehicle in connection with a
32 transportation network company's online-enabled application or platform,
33 and shall advise a participating driver in writing that the driver's personal
34 automobile insurance policy may not provide any required or optional
35 coverage because the driver uses a vehicle in connection with a
36 transportation network company's online-enabled application or platform.

1 Sec. 3. (a) A transportation network company and any participating
2 driver shall maintain transportation network company insurance as
3 provided in this section.

4 (b) The following requirements shall apply to transportation network
5 company insurance from the moment a participating driver accepts a ride
6 request on the transportation network company's online-enabled
7 application or platform until the driver completes the transaction on the
8 online-enabled application or platform or until the ride is complete,
9 whichever is later:

10 (1) Transportation network company insurance shall provide primary
11 liability coverage in the amount of not less than \$1,000,000 for death,
12 bodily injury and property damage.

13 (2) Transportation network company insurance coverage provided
14 under this subsection shall also provide:

15 (A) Uninsured motorist and underinsured motorist coverage in an
16 amount not less than \$1,000,000;

17 (B) personal injury protection under the Kansas automobile injury
18 reparations act; and

19 (C) collision physical damage coverage and comprehensive physical
20 damage coverage if the participating driver carries those coverages on
21 such driver's personal auto policy unless that insurer is providing
22 transportation network company insurance to the driver.

23 (3) The requirements for the coverage required by this subsection
24 may be satisfied by any of the following:

25 (A) Transportation network company insurance maintained by a
26 participating driver;

27 (B) transportation network company insurance maintained by a
28 transportation network company; or

29 (C) any combination of subparagraphs (A) and (B);

30 (D) A transportation network company may meet its obligation under
31 this subsection through a policy obtained by a participating driver pursuant
32 to subparagraphs (A) or (C) only if the transportation network company
33 verifies that the policy is maintained by the driver and is specifically
34 written to cover the driver's use of a vehicle in connection with a
35 transportation network company's online-enabled application or platform.

36 (4) The insurer providing transportation network company insurance
37 under this subsection shall have the duty to defend and indemnify the
38 insured.

39 (e) The following requirements shall apply to transportation network
40 company insurance from the moment a participating driver logs on to the
41 transportation network company's online-enabled application or platform
42 until the driver accepts a request to transport a passenger, and from the
43 moment the driver completes the transaction on the online-enabled

1 application or platform or the ride is complete, whichever is later, until the
2 driver either accepts another ride request on the online-enabled application
3 or platform or logs off the online-enabled application or platform:

4 (1) Transportation network company insurance shall provide primary
5 liability coverage in the amount of at least \$100,000 for death and bodily
6 injury per person, \$300,000 for death and bodily injury per incident and
7 \$50,000 for property damage; and

8 (2) transportation network company insurance coverage provided
9 under this subsection shall also provide:

10 (A) Uninsured motorist coverage and underinsured motorist coverage
11 in the amount of at least \$25,000 per person and \$50,000 per incident;

12 (B) personal injury protection under the Kansas automobile injury-
13 reparations act; and

14 (C) collision physical damage coverage and comprehensive physical
15 damage coverage if the participating driver carries such coverages on the
16 driver's personal auto policy unless that insurer is providing transportation
17 network company insurance to the driver.

18 (3) The requirements for the coverage required by this subsection
19 may be satisfied by any of the following:

20 (A) Transportation network company insurance maintained by a
21 participating driver;

22 (B) transportation network company insurance maintained by a
23 transportation network company that provides coverage in the event a
24 participating driver's insurance policy under subparagraph (A) has ceased
25 to exist or has been canceled, or the participating driver does not otherwise
26 maintain transportation network company insurance pursuant to this
27 subsection; or

28 (C) any combination of subparagraphs (A) and (B);

29 (4) The insurer providing transportation network company insurance
30 under this subsection shall have the duty to defend and indemnify the
31 insured.

32 (d) Coverage under a transportation network company insurance
33 policy shall not be dependent on a personal automobile insurance policy
34 first denying a claim nor shall a personal automobile insurance policy be
35 required to first deny a claim.

36 (e) In every instance where a transportation network company
37 insurance maintained by a participating driver to fulfill the insurance
38 obligations of this section has lapsed or ceased to exist, the transportation
39 network company shall provide the coverage required by this section
40 beginning with the first dollar of a claim.

41 Sec. 4. (a) Nothing in this section shall be construed to require a
42 private passenger automobile insurance policy to provide primary or
43 excess coverage during the period of time from the moment a participating

1 driver in a transportation network company logs on to the transportation
2 network company's online-enabled application or platform until the driver
3 logs off the online-enabled application or platform or the passenger exits
4 the vehicle, whichever is later.

5 (b) During the period of time from the moment a participating driver
6 in a transportation network company logs on to the transportation network
7 company's online-enabled application or platform until the driver logs off
8 the online-enabled application or platform or until the ride is complete,
9 whichever is later, all of the following shall apply:

10 (1) The participating driver's or the vehicle owner's personal
11 automobile insurance policy shall not provide any coverage to the
12 participating driver, vehicle owner or any third party, unless the policy
13 expressly provides for that coverage during the period of time to which
14 this subsection is applicable, with or without a separate charge, or the
15 policy contains an amendment or endorsement to provide such coverage,
16 for which a separately stated premium is charged; and

17 (2) the participating driver's or the vehicle owner's personal
18 automobile insurance policy shall not have the duty to defend or indemnify
19 for the driver's activities in connection with the transportation network
20 company, unless the policy expressly provides otherwise for the period of
21 time to which this subsection is applicable, with or without a separate
22 charge, or the policy contains an amendment or endorsement to provide
23 such coverage, for which a separately stated premium is charged.

24 (c) Notwithstanding any other law, a personal automobile insurer
25 may, at its discretion, offer an automobile liability insurance policy, or an
26 amendment or endorsement to an existing policy that covers a private
27 passenger vehicle, station wagon type vehicle, sport utility vehicle or
28 similar type of vehicle with a passenger capacity of eight persons or less,
29 including the driver, while used in connection with a transportation
30 network company's online-enabled application or platform only if the
31 policy expressly provides for the coverage during the time period specified
32 in subsection (b), with or without a separate charge, or the policy contains
33 an amendment or an endorsement to provide such coverage, for which a
34 separately stated premium may be charged.

35 Sec. 5. (a) In a claims coverage investigation, a transportation
36 network company or its insurer shall cooperate with insurers that are
37 involved in the claims coverage investigation to facilitate the exchange of
38 information, including the provision of dates and times at which an
39 accident occurred that involved a participating driver and the precise times
40 that the participating driver logged on and off the transportation network
41 company's online-enabled application or platform.

42 (b) A transportation network company or its insurer shall provide,
43 upon written request of the driver's personal vehicle insurer for a claims

1 coverage investigation, all data and records associated with such personal
2 vehicle while providing transportation network company services within
3 15 calendar days of such insurer's written request.

4 (c) All records, including electronic records, showing the time when a
5 driver has logged in as active or logged out as inactive on the
6 transportation network company's online-enabled application or platform,
7 and any data or reports with information about the motor vehicle's
8 involvement in a motor vehicle accident, that are maintained by the
9 transportation network company shall be maintained for a minimum of
10 five years after the date the loss is reported to the transportation network
11 company.

12 Sec. 6. A participating driver of a transportation network company
13 shall carry proof of transportation network company insurance coverage
14 with such driver at all times during such driver's use of a vehicle in
15 connection with a transportation network company's online-enabled
16 application or platform. In the event of an accident, a participating driver
17 shall provide such insurance coverage information to any other party
18 involved in the accident, and to a police officer, upon request.

19 Sec. 7. Notwithstanding any other law affecting whether one or more
20 policies of insurance that may apply with respect to an occurrence is
21 primary or excess, this act determines the obligations under insurance
22 policies issued to transportation network companies and, if applicable,
23 drivers using a vehicle in connection with a transportation network
24 company's online-enabled application or platform.

25 Sec. 8. A transportation network company shall assume liability,
26 including the costs of defense and indemnification, for a claim in which a
27 dispute exists as to whether the loss or injury giving rise to the claim
28 occurred while an insured vehicle is available to provide transportation
29 network services. The transportation network company shall notify the
30 registered owner and the registered owner's insurer of any such dispute
31 within 25 business days of receiving notice of the accident that gives rise
32 to such claim.

33 Sec. 9. This act shall take effect and be in force from and after its
34 publication in the statute book.

Attachment #1 to HB 2249

“Transportation network company” means an entity operating in Kansas that uses a digital network or software application service to connect passengers to transportation network services provided by transportation network company drivers on a per-use basis which is intended to make a profit through the collection of a fare as a result of the transportation. A transportation network company is not deemed to own, control, operate or manage the vehicles used by transportation network company drivers. A transportation network company does not include the following:

- (A) This state or a county, city, town, political subdivision of this state and any related entity, a nonprofit agency or any other public body that coordinates, operates, promotes or sponsors public transportation, carpool or vanpool services;
- (B) a program that is in place to meet federal air quality standards;
- (C) a taxicab or limousine service; or
- (D) self-supporting commuter carpools privately arranged within corporations or other organizations on behalf of and for the exclusive use of employees, including those which are prearranged using an online-enabled application or platform to connect passengers with drivers using a personal vehicle, as long as there is no compensation made by passengers to the driver other than reimbursement of expenses for fuel and occasional vehicle maintenance;
- (2) "transportation network company vehicle" means a vehicle that:
 - (A) Has a seating capacity not exceeding eight passengers, including the driver;
 - (B) that is authorized by a transportation network company; and
 - (C) is used by a transportation network company driver to provide transportation network services;
- (3) "transportation network driver" means any person who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers; and
- (4) "transportation network services" shall mean transportation of a passenger between points chosen by the passenger and arranged with a transportation network company driver through the use of transportation network company digital network or software application. The transportation network services shall begin when a transportation network company driver accepts a request for transportation network services received through the transportation network services received through the transportation network company's digital network or software application, continue while the transportation network company driver provides transportation network services in a transportation network company vehicle, and end when the passenger exits the transportation network company vehicles;

Sec. 2. (a) During the time that the transportation network driver is logged into the transportation network company's digital network or software application and is available to provide transportation network services, but is not in the act of providing transportation network services, the following coverage must be maintained:

- (1) Prior to January 31, 2016, the transportation network driver shall maintain an automobile liability insurance policy that meets at least the requirements of K.S.A. 40-3107, and amendments thereto. A transportation network company shall provide automobile liability insurance in the amount of \$50,000 because of bodily injury to or death of any one person in any one accident. Subject to the limit for one person, \$100,000 because of bodily injury to or death of two or more persons in any one accident and \$25,000 because of because of injury to or destruction of property of others in any one accident coverage in the event a transportation network company driver's policy excludes coverage according to the policy's terms.
- (2) On and after January 31, 2016, the transportation network driver, the transportation network company, or a combination of both, must provide primary automobile liability insurance coverage that provides automobile liability coverage in the amount of \$50,000 because of bodily injury to or death of any one person in any one accident. Subject to the limit for one person, \$100,000 because of bodily injury to or death of two or more persons in any one accident, and \$25,000 because of injury to or destruction of property of others in any one accident through any of the following:

- (A) A private passenger automobile policy maintained by the transportation network company driver that expressly provides liability coverage while the driver is logged into the transportation company's digital network;
- (B) an automobile liability policy maintained by the transportation network company; or
- (C) a commercial automobile liability policy.
- (b) During the time the transportation network driver is providing transportation network services, the transportation network company driver, the transportation network company, or some combination of both shall maintain the following insurance coverage:
 - (1) Primary automobile liability insurance that covers the driver's provision of transportation network company driver's provision of transportation network services in the minimum amount of \$250,000 per incident; and
 - (2) uninsured and underinsured motorist coverage in the minimum amount of \$250,000 per incident.
- (c) The transportation network company driver's insurance policy and the vehicle owner's personal motor vehicle insurance policy provide no coverage for the motor vehicle, the transportation network company driver, the motor vehicle owner or any third party while a transportation network company driver is logged into a transportation network company's digital network or software application or providing transportation network services, unless the insurance policy contains an amendment or endorsement that expressly provides such coverage.
- (d) Notwithstanding subsection (c), an insurer may, at its discretion, offer, while the driver is logged into a transportation network company's digital or software application or providing transportation network company services, one of the following:
 - (1) A motor vehicle liability insurance policy expressly providing such coverage; or
 - (2) An amendment or endorsement to an existing motor vehicle liability insurance policy expressly providing such coverage;
- (e) An insurance policy required by this section will be deemed to satisfy the financial responsibility requirement for a motor vehicle insurance policy under K.S.A. 40-3107, and amendments thereto.
- (f) If an accident occurs involving a transportation network company vehicle, the transportation network company driver shall provide proof of insurance information to the parties involved in the accident regarding liability insurance coverage for the transportation network company vehicle at the time of the accident. The transportation network company driver shall also notify the transportation network company of the accident.
- (g) In a claims coverage investigation, transportation network companies and any insurer providing coverage under this section shall fully cooperate in the exchange of information, including the precise times that a transportation network company driver logged on and off the transportation network company's digital network or software application in the 24-hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.
- (h) An insurance policy required by this section may be placed with a licensed insurer pursuant to K.S.A. 40-3103, and amendments thereto, or with an eligible surplus lines insurer pursuant to K.S.A. 40-246b, and amendments thereto.

Sec. 3. A transportation network company shall disclose in writing, or in electronic format, to its transportation network company drivers the following before they are allowed to accept a request for transportation network services on the transportation network company's digital network or software application:

- (a) The insurance coverage and limits of liability that the transportation network company provides while the transportation network company driver uses a transportation network company vehicle in connection with the transportation network company's digital network or software application;
- (b) that the transportation network company driver's own insurance policy might not provide coverage while the transportation network company driver uses a transportation network company vehicle in connection with a transportation network company's digital network or software application, depending on its terms; and
- (c) that if the vehicle the transportation network company driver plans to use to provide transportation network services for the transportation network company has a lien against it, using the vehicle to provide transportation network services might violate the terms of the transportation network company driver's contract with the transportation network company driver's lienholder.

The disclosures set forth in this section must be placed in the prospective transportation network company driver's written terms of service.

Sec. 4. If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the transportation network company shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.