

February 22, 2015

Members of the Oklahoma House Business, Labor and Retirement Laws Committee

via email

RE: Opposition to HB 1614

Members of Committee on Transportation and Public Works:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to share with you the reasons we oppose HB 1614. We are 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.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. In Oklahoma, we have 141 members doing business in the state, representing 39 percent of the marketplace.

NAMIC's members appreciate the importance of business innovation and we support the development and growth of transportation network companies (TNCs) and other "sharing-economy" business endeavors. In this letter, we will provide suggestions on how to improve the bill in order to resolve the potential for complex legal issues surrounding the insurance aspects of TNCs.

NAMIC's Position on TNCs and sharing economy activities

NAMIC believes that TNCs, like all other business operations, need to take full responsibility for the legal liability exposure and public safety risks posed by their business activities. Since the TNCs are engaged in a new form of commercial transportation, it is reasonable and appropriate for them to be required by state law to be responsible for all the commercial transportation liability issues created by their business activities.

The TNC commercial transportation model requires TNC drivers to transport TNC passengers for hire in the TNC driver's private vehicle. Since the TNC driver's activities are clearly commercial in nature, the TNC driver's private passenger automobile insurance policy is most likely not going to provide a duty to defend or any insurance coverage for the commercial transportation use of the TNC driver's personal automobile. Consequently, the TNC commercial transportation model creates an "insurance coverage gap" which poses a legal liability exposure problem and public safety risk for the TNC service driver, TNC passengers, and the general public.

State Legislatures throughout the nation have been working on passing pro-consumer protection legislation to address this "insurance coverage gap", in a way that is pro-business innovation, pro-consumer-protection, and pro-business responsibility. In the two states that have enacted laws to date (California and Colorado) and in all the states evaluating proposed legislation, elected officials have focused their attention upon making sure that there is a clear demarcation between commercial auto activities and private passenger auto activities, so that TNC activities don't become an unnecessary insurance rate cost-driver for private passenger auto insurance consumers.

From a public policy standpoint, NAMIC believes that TNC legislation should set forth clear and specific insurance coverage requirements for TNC commercial activities, expressly acknowledge the legal and practical distinction between private passenger use of a motor vehicle and commercial transportation use, and protect private passenger auto insurance consumers from having to subsidize the standard business operational costs of TNC commercial activities. Additionally, state regulation of TNC activities is also administratively practical, because state regulation of the TNC industry will facilitate statewide uniformity in consumer protection.

NAMIC is encouraging State Legislatures across the country to pass legislation that thoroughly addresses the following TNC insurance coverage public policy elements:

- 1) "Sharing economy" business innovation, like the TNC industry, should be encouraged, but it must be thoughtfully regulated to address liability exposure created by these evolving business models. Clear guidelines for TNC insurance requirements are necessary to protect consumers and facilitate the growth of a healthy and sustainable "sharing-economy" business sector.
- 2) Legislation should safeguard private passenger automobile insurance products and consumers from legal uncertainty created by the TNC business model, by expressly protecting the enforceability of private passenger automobile policy language that excludes insurance coverage and the duty to defend for "livery" or "for hire" operations of a motor vehicle, and which preserves the ability of auto insurers to engage in appropriate risk-based insurance rating and underwriting practices.

- 3) Legislation should clearly define the TNC activity and TNC insurance requirements, so that there is no legal ambiguity that could lead to costly litigation for private passenger automobile insurers and their consumers. TNC activity, like other commercial transportation endeavors, have a higher risk of loss exposure so there should be a “bright-line” standard that defines the scope and duration of TNC activities. Both the California and Colorado laws, and the clearly emerging national trend defines the TNC activity as being tied to the TNC driver logging on/off the TNC app. NAMIC suggests that the TNC activity definition should be “the period of time when a driver is logged onto the TNC’s app to the time the driver logs off the app or the ride is completed and the passenger has exited the vehicle, whichever is later.” This “bright-line” approach provides reasonable clarity for all interested parties, and a practical and discernable legal standard to resolve disputes over whether the driver was engaged in a TNC activity at the time of the accident/incident.

As for the specific TNC insurance requirement, in an effort to reduce the potential for protracted and costly insurance coverage litigation, NAMIC recommends that TNCs and/or TNC drivers be expressly required to have in effect primary insurance coverage that specifically covers the TNC activity as defined in the legislation, including the sole duty to defend the TNC driver for accidents/incidents arising out of or relating to the TNC activity. The TNC insurance coverage and/or TNC driver’s insurance coverage should be primary without requiring any denial of coverage from the TNC driver’s private passenger automobile insurer.

In regard to specific coverage limits, NAMIC believes that coverage limits should be left to the sound discretion of the Legislature, but we suggest that they should be at least equivalent to and similar to other livery requirements, and at a minimum comparable to private passenger automobile financial responsibility coverage limits.

- 4) TNCs should be required to disclose to TNC drivers that the TNC driver’s private passenger automobile insurance may not provide any insurance coverage or a duty to defend for TNC activities, and disclose to consumers information about TNC and/or TNC driver’s insurance coverage and coverage limits. TNCs should be required to provide proof to consumers and regulators that the TNC and/or the TNC drivers are in compliance with the required TNC activity insurance coverages. NAMIC believes that TNCs should be required to maintain commercial coverage in case the TNC driver’s insurance coverage for TNC activities fails to comply with state law, or is cancelled, non-renewed or lapses.
- 5) The legislation should require TNCs to promptly cooperate with the TNC driver’s private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities, if there is an incident/accident arising out of or relating to the TNC activity, and that TNCs should be required to retain all TNC activity records and digital logs for the length of the state civil statute of limitations, plus two

years for evidentiary purposes in automobile accident civil lawsuits. TNCs should also be required to provide timely copies of information and documentation relating to the TNC driver's TNC activities and any accidents/incidents during the TNC activities to the driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities.

NAMIC's Position and Suggestions Regarding House Bill 1614

With regards to House Bill 1614, we have identified a number of ways to improve the legislation. These include:

- The definition of “transportation network company” fails to accurately reflect the true nature of the TNC arrangement. We believe language to the effect that a TNC “provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle” would be more accurate.
- The insurance provisions of the bill lack necessary protections for consumers. We believe the bill should create a definition for “transportation network company insurance” to mean “an insurance policy that specifically covers a driver’s use of a vehicle in connection with a transportation network company’s online-enabled application or platform.”
- Section 9 of the bill should include additional provisions to improve the clarity of the responsibilities of the respective automobile insurance companies potentially providing coverage to TNC operations outside of transportation networking company services. These include:
 - A provision in subsection (B) similar to that in subsection (C)(2) which describes how the requirements for coverage may be satisfied by the parties.
 - A provision requiring the insurer providing transportation network company insurance to have the duty to defend and indemnify the insured for all times referenced in Section 9.
 - A modification to Section 9(D) which expands the reasons for excluded coverage to include situation where the personal automobile policy has been cancelled.
 - A provision in Section 9 that states “Coverage under a transportation network company insurance policy shall not be dependent on a personal automobile insurance policy first denying a claim nor shall a personal automobile

insurance policy be required to first deny a claim.”

- A revision to subsection 9(D) that incorporates a reference to “transportation network company insurance” as defined above.
 - A provision in subsection 9 requiring that transportation network company insurance include coverage for uninsured/underinsured motorist coverage matching the limits set forth with the Mandatory Financial Responsibility Act, as well as collision physical damage coverage and comprehensive physical damage coverage if the participating driver carries those coverages on their personal auto policy unless that insurer is providing transportation network company insurance to the driver.
 - A provision in subsection (9)(B) mirroring the language of subsection (9)(C)(2).
 - A provision in subsection (9) which states “A transportation network company may meet its obligations under this subdivision through a policy obtained by a participating driver pursuant to subsection (9) only if the transportation network company verifies that the policy is maintained by the driver and is specifically written to cover the driver’s use of a vehicle in connection with a transportation network company’s online-enabled application or platform.”
- There is room for improvement to protect the current policy provisions in personal automobile liability policies. Suggested bill language to address these issues include:
 - “Nothing in the Transportation Network Company Services Act shall be construed to require a private passenger automobile insurance policy to provide primary or excess coverage during the period of time from the moment a participating driver in a transportation network company logs on to the transportation network company’s online-enabled application or platform until the driver logs off the online-enabled application or platform or the passenger exits the vehicle, whichever is later.”
 - “During the period of time from the moment a participating driver in a transportation network company logs on to the transportation network company’s online-enabled application or platform until the driver logs off the online-enabled application or platform or until the ride is complete, whichever is later, all of the following shall apply:
 - (1) The participating driver’s or the vehicle owner’s personal automobile insurance policy shall not provide any coverage to the participating driver, vehicle owner, or any third party, unless the policy expressly provides for that

coverage during the period of time to which this subdivision is applicable, with or without a separate charge, or the policy contains an amendment or endorsement to provide that coverage, for which a separately stated premium is charged.

(2) “The participating driver’s or the vehicle owner’s personal automobile insurance policy shall not have the duty to defend or indemnify for the driver’s activities in connection with the transportation network company, unless the policy expressly provides otherwise for the period of time to which this subdivision is applicable, with or without a separate charge, or the policy contains an amendment or endorsement to provide that coverage, for which a separately stated premium is charged.”

- “Notwithstanding any other law, a personal automobile insurer may, at its discretion, offer an automobile liability insurance policy, or an amendment or endorsement to an existing policy that covers a private passenger vehicle, station wagon type vehicle, sport utility vehicle, or similar type of vehicle with a passenger capacity of eight persons or less, including the driver, while used in connection with a transportation network company’s online-enabled application or platform only if the policy expressly provides for the coverage during the time period specified in subsection (9), with or without a separate charge, or the policy contains an amendment or an endorsement to provide that coverage, for which a separately stated premium may be charged.”
- “In a claims coverage investigation, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred that involved a participating driver and the precise times that the participating driver logged on and off the transportation network company’s online-enabled application or platform.”
- “A participating driver of a transportation network company shall carry proof of transportation network company insurance coverage with him or her at all times during his or her use of a vehicle in connection with a transportation network company’s online-enabled application or platform. In the event of an accident, a participating driver shall provide this insurance coverage information to any other party involved in the accident, and to a police officer, upon request.”
- “Notwithstanding any other section of the Insurance Code, or any other law affecting whether one or more policies of insurance that may apply with respect to an occurrence is primary or excess, this article determines the obligations under insurance policies issued to transportation network

companies and, if applicable, drivers using a vehicle in connection with a transportation network company's online-enabled application or platform.”

We began this letter by sharing our overall philosophy on the issue of TNCs and sharing economies. Currently, NAMIC is actively supporting legislation in other states which address the concerns raised above. We support SB 436 in Oklahoma which specifically addresses the insurance issues raised by TNC activities. We realize the economy is changing and that with change comes certain insurance issues that must be addressed in order for new products and services to be successful in the marketplace.

We welcome the opportunity to discuss these suggestions in more detail. Please do not hesitate to contact me if you'd like to discuss them.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Martin". The signature is written in a cursive style with a large initial "P" and "M".

Paul Martin
Director – State Affairs
Southwest Region

CC: Rep. Katie Henke