2015 Spring National Meeting
Phoenix, Arizona

Property and Casualty
Insurance (C) Committee

March 30, 2015
Consider Adoption of its Nov. 18, 2014 Minutes
Attachment One
The Property and Casualty Insurance (C) Committee met in Washington, DC, Nov. 18, 2014. The following Committee members participated: Mike Chaney, Chair (MS); Merle D. Scheiber, Vice Chair (SD); Lori K. Wing-Heier (AK); Jim L. Ridling (AL); Jay Bradford (AR); Kevin M. McCarty (FL); Andrew Boron represented by James Stephens (IL); Joseph G. Murphy (MA); John G. Franchini (NM); John D. Doak (OK); Joseph Torti III represented by Paula Pallozzi (RI); Mike Kreidler (WA); and Tom C. Hirsig (WY). Also participating was: David Browning (LA).

1. **Adopted its Oct. 22 Minutes**

Commissioner Murphy made a motion, seconded by Commissioner McCarty, to adopt the Committee’s Oct. 22 minutes (Attachment One). The motion passed.

2. **Adopted its Task Force and Working Group Reports**

Director Scheiber made a motion, seconded by Commissioner Ridling, to adopt the reports of the Committee’s task forces and working groups: the Casualty Actuarial and Statistical (C) Task Force; the Surplus Lines (C) Task Force; the Title Insurance (C) Task Force; the Workers’ Compensation (C) Task Force; the Advisory Organization Examination Oversight (C) Working Group; the Affordable Care Act Medical Professional Liability (C) Working Group (Attachment Two); the Auto Insurance (C/D) Study Group (Attachment Three); the Catastrophe Insurance (C) Working Group (Attachment Four); the Catastrophe Response (C) Working Group (Attachment Five); the Climate Change and Global Warming (C) Working Group (Attachment Six); the Crop Insurance (C) Working Group (Attachment Seven); the Earthquake (C) Study Group; the Sharing Economy (C) Working Group (Attachment Eight); the Risk Retention (C) Working Group; the Terrorism Insurance Implementation (C) Working Group (Attachment Nine); and the Transparency and Readability of Consumer Information (C) Working Group (Attachment Ten). The motion passed.

The Advisory Organization Examination Oversight (C) Working Group met Nov. 16 and Oct. 20 in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings.

3. **Adopted the Compendium of Reports on the Pricing of Personal Automobile Insurance**

Commissioner Murphy explained the Auto Insurance (C/D) Study Group added a section on consumer opinions and a link within the document to a list of studies and reports to the Compendium of Reports on the Pricing of Personal Automobile Insurance (Compendium). Commissioner Murphy made a motion, seconded by Commissioner Hirsig, to adopt the Compendium. The motion passed.

4. **Heard a Presentation on the Use of Databases and Data Mining Tools by Insurers**

Birny Birnbaum (Center for Economic Justice—CEJ) presented on the use of databases and data mining tools by insurers (Attachment Eleven). He said credit scoring was the first time where insurance companies were using data mining tools. Risk segmentation became very granular. The new school is where use of big data has exploded, with little or no transparency or oversight. He said there is no accountability for accuracy or completeness of the models. E-scores are developed from consumers’ use of social media, shopping habits, government records and more. Some companies are aggregating credit information just enough so they are not covered by the federal Fair Credit Reporting Act (FCRA). He said regulators do not know everything about what insurers are using. This is also not transparent to consumers.

Mr. Birnbaum said a Web aggregator can steer a customer toward a product where the store will make the most money or which the customer is most likely to purchase. It is possible for this to be done with the online purchase of insurance.

Commissioner McCarty asked where to best focus committee attention. Mr. Birnbaum said regulators should create routine data collection from individual policies and claims and perform data mining on that. He said regulators need to develop a new regulatory review methodology. He said this would help to focus regulatory resources on problem companies.
5. **Heard a Presentation on the National Oceanic and Atmospheric Administration**

Marguerite Tortorello (Property Casualty Insurers Association of America—PCI) presented the National Oceanic and Atmospheric Administration’s (NOAA) new weather-related product (Attachment Twelve). She discussed trends in social media, including the increased use of social media during catastrophes. She suggested using social media to educate consumers both pre- and post-catastrophe. She said the NOAA is developing new decision support services, improving technology to track and forecast storms, and expanding its dissemination efforts to achieve far-reaching national preparedness for weather events. She recommended a partnership between state insurance departments and the NOAA to increase education. Commissioner Doak recommended other states partner with the NOAA as Oklahoma did.

6. **Heard a Presentation on Emerging Technologies and Their Potential Impact to the Insurance Industry**

Michael Fitzgerald (Celent) presented on how emerging technologies might affect the P/C insurance industry (Attachment Thirteen). Consumers now expect purchases to be just in time and not too early, and with little effort. Insurers have been investing in technology funds. It is expected that there will be new players in the technology arena who are not familiar with insurance regulation. He recommended early involvement by the regulatory community by engaging with researchers. Big data is using data matching to identify where claims might be occurring. The insurer can then make the claims process shorter by calling potentially affected policyholders and providing loss mitigation advice, thereby ultimately saving claim costs. Mr. Fitzgerald also discussed 3-D printing, citing that 3-D printing can be used in health care. He offered to share his research and asked for opinions about where regulators see technology helping or hurting the insurance industry.

7. **Discussed Cyber Insurance**

Director Scheiber said the Executive (EX) Committee appointed a new Cybersecurity (EX) Task Force. He expects that the Committee will be asked by this new Task Force to frame the data collections issue, including studying the possibility of creating a new exhibit within the blank to collect data related to cyber coverage. Ms. Pallozzi asked whether SBS and SERFF could be leveraged to flag attacks or cyber filings. She also said a new type of insurance might need to be created for filing purposes.

8. **Discussed Lender-Placed Insurance Data Collection**

Mr. Browning said the Mississippi Insurance Department has received a majority of the data from all three lender-placed insurance companies involved in the data call, resulting in more than 15 million records. He said as of Nov. 14, Mississippi has uploaded the data files of two of the three companies in the format requested by the Federal Housing Finance Agency (FHFA) to a secure file transfer site. He said the remaining data files will be sent to the FHFA in the next week once the final files are provided to Mississippi. He said the FHFA has expressed its appreciation for the NAIC in coordinating the data call and collecting the data on the FHFA’s behalf.

9. **Heard an Update on the Assigned FIO Recommendations**

Eric Nordman (NAIC) provided an update on the Federal Insurance Office’s (FIO) recommendations assigned to the Committee (Attachment Fourteen.)

10. **Heard an Update on Yellow Corrugated Stainless Steel Tubing**

Director Scheiber asked the industry and the National Association of State Fire Marshals (NASFM) to prepare an update on the use of yellow corrugated stainless steel tubing (CSST) in homes and businesses.

Having no further business, the Property and Casualty Insurance (C) Committee adjourned.
Consider Adoption of its Task Force and Working Group Reports
• Casualty Actuarial and Statistical (C) Task Force—Commissioner James J. Donelon (LA)
• Surplus Lines (C) Task Force—Commissioner James J. Donelon (LA)
• Title Insurance (C) Task Force—Director Bruce R. Ramge (NE)
• Workers’ Compensation (C) Task Force—Superintendent Eric A. Cioppa (ME)
• Advisory Organization Examination Oversight (C) Working Group
  —Superintendent Eric A. Cioppa (ME)
• Affordable Care Act Medical Professional Liability (C) Working Group
  —Superintendent John G. Franchini (NM)
• Auto Insurance (C/D) Study Group—Acting Commissioner Gary Anderson (MA)
• Catastrophe Insurance (C) Working Group—Commissioner Kevin M. McCarty (FL)
• Catastrophe Response (C) Working Group—Commissioner John D. Doak (OK)
• Climate Change and Global Warming (C) Working Group
  —Commissioner Mike Kreidler (WA)
• Crop Insurance (C) Working Group—Director Larry Deiter (SD)
• Earthquake (C) Study Group—Commissioner Dave Jones (CA)
• Risk Retention (C) Working Group—David Provost (VT)
• Sharing Economy (C) Working Group—Commissioner Dave Jones (CA)
• Terrorism Insurance Implementation (C) Working Group
  —Superintendent Benjamin M. Lawsky (NY)
• Transparency and Readability of Consumer Information (C) Working Group
  —Angela Nelson (MO)
TO: ALL PROPERTY AND CASUALTY INSURERS WRITING COMMERCIAL LINES INSURANCE PRODUCTS
ALL INSURERS ON THE NAIC QUARTERLY LISTING OF ALIEN INSURERS

RE: FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2015

FROM: [Insert name and title]

DRAFTING NOTE: This bulletin was drafted to expedite the delivery of a common message to insurers related to implementation issues that have developed as a result of the extension of the Terrorism Risk Insurance Act. The basic bulletin recognizes that most jurisdictions have allowed some coverage limitations related to non-certified acts of terrorism that are affected by the reauthorization of the Act. A few jurisdictions have not generally allowed coverage limitations related to other acts of terrorism. Each state needs to review the provisions of the bulletin as they relate to the Act and to existing state regulatory requirements and determine which of its provisions relate to their specific situation. Please note that states might wish to distinguish between filing requirements that apply to admitted insurers and those applicable to surplus lines insurers.

The purpose of this bulletin is to advise you of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 amending and extending the Terrorism Risk Insurance Act of 2002 (the Act) by reauthorization, which may require insurers to submit a filing in this state of disclosure notices, policy language, and applicable rates as a result of the Act. For further details related to the Act, please consult the Act itself.

Background

Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial loss of lives and property experienced on September 11, 2001. Soon after these tragic events, many reinsurers announced that they would no longer provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a federal backstop to facilitate the ability of the insurance industry to continue to provide coverage for these unpredictable and potentially catastrophic events. As a result, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002. This federal law provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007, and for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007. The Act has now been extended again with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

The reauthorized Act, as amended and extended, included several changes including:

- Extending the program through December 31, 2020.
- Fixing the Insurer Deductible at 20% of an insurer’s direct earned premium of the preceding calendar year and the federal share of compensation at 85% of insured losses that exceed insurer deductibles until January 1, 2016, at which time the federal share shall decrease by 1 percentage point per calendar year until equal to 80%.
- Requiring the Secretary of the Treasury certify acts of terrorism in consultation with the Secretary of Homeland Security.
- Amending the program trigger to apply to certified acts with insured losses exceeding $100 million for calendar year 2015, $120 million for calendar year 2016, $140 million for calendar year 2017, $160 million for calendar year 2018, $180 million for calendar year 2019, and $200 million for calendar year 2020 and any calendar year thereafter.
- The mandatory recoupment of the federal share through policyholder surcharges increasing to 140 percent (from 133 percent).
- The insurance marketplace aggregate retention amount being the lesser of $27.5 billion, increasing annually by $2 billion until it equals $37.5 billion, and the aggregate amount of insured losses for the calendar year for all insurers. In the calendar year following the calendar year in which the marketplace retention amount equals $37.5 billion, and beginning
in calendar year 2020 it is revised to be the lesser of the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior three calendar years as such sum is determined by the Secretary of the Treasury by regulation.

- Requiring the Secretary of the Treasury, not later than nine months after the date of enactment of the Act, to conduct and complete a study on the certification process, including the establishment of a reasonable timetable by which the Secretary must make an accurate determination on whether to certify an act as an act of terrorism.
- Requiring insurers participating in the Program to submit to the Secretary of the Treasury for a Congressional report to be submitted on June 30, 2016 and every June 30 thereafter, information regarding insurance coverage for terrorism losses in order to evaluate the effectiveness of the Program. The information to be provided includes: lines of insurance with exposure to terrorism losses, premiums earned on coverage, geographical location of exposures, pricing of coverage, the take-up rate for coverage, the amount of private reinsurance for acts of terrorism purchased and such other matters as the Secretary considers appropriate. This information may be collected by a statistical aggregator and in coordination with State insurance regulatory authorities.
- Requiring the Comptroller General of the United States to complete a study on the viability and effects of the Federal Government assessing and collecting upfront premiums and creating a capital reserve fund.
- Requiring the Secretary of the Treasury to conduct a study not later than June 30, 2017 and every June 30 thereafter to identify competitive challenges small insurers face in the terrorism risk insurance marketplace.
- Requiring the Secretary of the Treasury to appoint an Advisory Committee on Risk-Sharing Mechanisms to provide advice, recommendations and encouragement with respect to the creation and development of nongovernmental risk-sharing mechanisms. The Advisory Committee will be composed of nine members who are directors, officers, or other employees of insurers, reinsurers or capital market participants.
- Changing the terms “program year” and “transition period” to “calendar year” throughout.

### Definition of Act of Terrorism

Section 102(1) defines an act of terrorism for purposes of the Act. Please note that the unmodified reference to “the Secretary” refers to the Secretary of the Treasury. The revised Section 102(1)(A) states, “The term 'act of terrorism' means any act that is certified by the Secretary, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—(i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to—(I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of—(I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.” Section 102(1)(B) states, “No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.” Section 102(1)(C) and (E) specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

### Submission of Rates, Policy Form Language and Disclosure Notices

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for certified losses. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover certified losses. This state will accept filings that contain a specified percentage of premium to provide for coverage for certified losses. Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks, and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the reviewer to determine whether the rates are excessive, inadequate or unfairly discriminatory. For the convenience of insurers, this state will waive its requirements for supporting documentation for rates for certified losses for filings that apply an increased premium charge of between 0% and [insert percentage of premium]% and do not vary by application of other rating factors.

*DRAFTING NOTE: Your state may find that it is in its best interest to waive supporting documentation requirements for filings within a specified range. If not, the last sentence should be eliminated.*
This state will not allow exclusions of coverage for acts of terrorism that fail to be certified losses solely because they fall below the $5,000,000 threshold in Section 102(1)(B) on any policy that provides coverage for acts of terrorism that fail to be certified. Insurers required to file policy forms may submit language containing coverage limitations for certified losses that exceed $100 billion in the aggregate.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state. The policy should define acts of terrorism in ways that are consistent with the Act, as amended, state law and the guidance provided in this bulletin. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy. Insurers may conclude that current filings are in compliance with the Act, as amended, state law and the requirements of this bulletin.

DRAFTING NOTE: In past bulletins, some states included language similar to what is in the following paragraph concerning non-certified acts. Your state may wish to evaluate whether such language is needed.

A change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers since 2007 have had to provide clear and conspicuous disclosure to the policyholder of the existence of the $100 billion cap under Section 103(e)(2), at the time of offer, purchase, and renewal of the policy.

The [insert applicable term—commissioner, director, superintendent, insurance administrator] requests that the disclosure notices be filed for informational purposes, along with the policy forms, rates and rating systems as they are an integral part of the process for notification of policyholders in this state and should be clear and not misleading to business owners in this state. The disclosures should comply with the requirements of the Act, as amended, and should be consistent with the policy language and rates filed by the insurer.

DRAFTING NOTE: Your state may require disclosure notices be filed as a policy form, and not for informational purposes. If so, the second to the last sentence should be modified to eliminate the reference to informational purposes.

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA, this state will permit insurers and advisory organizations to place new rates, policy forms and disclosure notices into immediate use without receiving prior approval from the [insert applicable term—commissioner, director, superintendent, insurance administrator] [NOTE: if state law requires a waiting period for filings, that can also be waived by using the following phrase: “…into immediate use without waiting for the tolling of the statutory waiting period.”]

DRAFTING NOTE: Waiving this requirement will enhance the revised products’ speed to market and minimize insurers’ operational costs and delays.

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the attached Expedited SERFF Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing, and certify on the form that it is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2015 and the laws of this state. Completion of the Expedited SERFF Filing Transmittal will also relieve an insurer from having to complete any other filing form or supplementary exhibit that is normally required to accompany filings.

DRAFTING NOTE: Some states may not require the Expedited SERFF Filing Transmittal Document and some states may require additional information.

[If needed, state-specific requirements should be inserted here.]

DRAFTING NOTE: A state should choose one of the following paragraphs depending on whether or not the state mandates the use of SERFF.

For states mandating SERFF:
Filers should use the SERFF system for submitting such filings. Filers should use the term “TRIA2015” in the product name field in SERFF to indicate a filing related to terrorism made in connection with the Terrorism Risk Insurance Program.
Reauthorization Act of 2015. The SERFF system alleviates the need to provide additional information in support of a request for expedited review, although some states may have additional requirements.

For other states:
We encourage filers to take advantage of the SERFF system for submitting such filings. Filers should use the term “TRIA2015” in the product name field in SERFF to indicate a filing related to terrorism made in connection with the Terrorism Risk Insurance Program Reauthorization Act of 2015. The SERFF system alleviates the need to provide additional information in support of a request for expedited review, although some states may have additional requirements.

Optional Provision for Standard Fire Policy States

DRAFTING NOTE: This is an optional section for those states that have a statutory Standard Fire Policy that does not permit terrorism exclusions. States should also consider whether their Standard Fire Policy includes or excludes commercial inland marine coverages and inform insurers concerning this subject.

In this state, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage.

Provision for Workers’ Compensation Policies

Workers’ compensation insurance coverage is statutorily mandated for nearly all U.S. employers and exemptions are barred in all states. Thus, a business cannot voluntarily waive workers’ compensation insurance (or terrorism coverage provided by a workers’ compensation insurance policy), nor can an insurer exempt terrorism risk from a workers’ compensation policy.

Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2020, unless Congress extends the duration of the Act.
You are hereby notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. As defined in Section 102(1) of the Act: The term “act of terrorism” means any act or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 and 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A $100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS’ LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS $100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED $100 BILLION, YOUR COVERAGE MAY BE REDUCED.

Acceptance or Rejection of Terrorism Insurance Coverage

| I hereby elect to purchase terrorism coverage for a prospective premium of $___________. |
| I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism. |

Policyholder/Applicant’s Signature ___________________________ Insurance Company ___________________________

Print Name ___________________________ Policy Number ___________________________

Date ___________________________
Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term “act of terrorism” means any act or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers’ liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds $100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is _________, and does not include any charges for the portion of losses covered by the United States government under the Act.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT AND MAY BE SUBJECT TO A $100 BILLION CAP THAT MAY REDUCE MY COVERAGE, AND I HAVE BEEN NOTIFIED OF THE PORTION OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

_________________________
Policyholder/Applicant’s Signature

_________________________
Print Name

_________________________
Date

Name of Insurer: ______________________
Policy Number: ______________________

DRAFTING NOTE: An insurer may choose not to use the acknowledgement section for workers’ compensation.
EXPEDITED SERFF FILING TRANSMITTAL DOCUMENT
FOR TERRORISM RISK INSURANCE FORMS AND PRICING

Indicate Type of Filing
☐ Filing Related to Certified Losses
☐ Filing Related to Non-Certified Losses
☐ Filing Applicable to Both Certified and Non-Certified Losses

This abbreviated filing transmittal document should be used in conjunction with a SERFF filing only.

To be complete, a filing must include the following:
• A completed Expedited SERFF Filing Transmittal Document.
• One copy of each endorsement, disclosure form and/or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
• A copy of the rates, rating systems and supporting documentation, if applicable.
• The appropriate filing fees, if applicable

The insurer(s) submitting this filing certifies that it:
☐ Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and/or the laws of this state; and
☐ Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Electronic Signature: [This would be replaced with a prompt for an Adobe electronic signature.]
EXPEDITED SERFF FILING TRANSMITTAL DOCUMENT  
FOR TERRORISM RISK INSURANCE FORMS AND PRICING

This abbreviated filing transmittal document should be used in conjunction with a SERFF filing only.

To be complete, a filing must include the following:
- A completed Expedited SERFF Filing Transmittal Document.
- One copy of each endorsement, disclosure form and/or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
- A copy of the rates, rating systems and supporting documentation, if applicable.
- The appropriate filing fees, if applicable

The insurer(s) submitting this filing certifies that it:
- ☑ Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and/or the laws of this state; and
- ☑ Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Electronic Signature: [This would be replaced with an actual Adobe electronic signature.]
Consider Adoption of a Blanks Proposal Related to the Collection of Cyber Insurance Data
### CYBERSECURITY INSURANCE COVERAGE SUPPLEMENT

For The Year Ended December 31, 20__
(To Be Filed by April 1)

NAIC Group Code___________________    NAIC Company Code___________________

Company Name ______________________________________________________________________________

If the reporting entity writes any cybersecurity coverage, please provide the following:

#### 1. Standalone Policies

<table>
<thead>
<tr>
<th>Direct Premiums</th>
<th>Direct Losses</th>
<th>Direct Defense and Cost Containment</th>
<th>Number of Policies in Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Written</td>
<td>2 Earned</td>
<td>3 Paid</td>
<td>4 Incurred</td>
</tr>
<tr>
<td>5 Paid</td>
<td>6 Incurred</td>
<td>7 Claims Made</td>
<td>8 Occurrence</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

1.1 What is the range of the limits offered for the standalone policy? $________ to $________

#### 2. Commercial Multiple Peril Package Policies:

2.1 Does the reporting entity provide cybersecurity coverage as part of a package policy? Yes[ ] No[ ]

2.2 If the answer to 2.1 is yes, please provide the following:

<table>
<thead>
<tr>
<th>Direct Losses</th>
<th>Direct Defense and Cost Containment</th>
<th>Number of Policies with cybersecurity coverage in Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Paid</td>
<td>2 Paid + Change in Case Reserves</td>
<td>3 Paid + Change in Case Reserves</td>
</tr>
<tr>
<td>4 Paid</td>
<td>5 Claims Made</td>
<td>6 Occurrence</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

2.3 Can the direct premium earned for the cybersecurity coverage provided as part of a package policy be quantified or estimated? Yes[ ] No[ ]

2.4 If the answer to question 2.3 is yes, provide the quantified or estimated direct premium earned amount for cybersecurity coverage included in package policies

2.41 Amount quantified: $________

2.42 Amount estimated using reasonable assumptions: $________

2.5 What is the range of limits offered for the cybersecurity policies? $________ to $________

#### 3. If the cybersecurity policy is a Claims Made policy, is tail coverage offered? Yes[ ] No[ ]

3.1 If tail coverage is offered, what is the range of the limits offered? $________ to $________
CYBERSECURITY INSURANCE COVERAGE SUPPLEMENT

This supplement should be completed by those reporting entities that provide cybersecurity coverage in a standalone policy or as part of a commercial multiple peril package policy. The supplement should be reported on a direct basis (before assumed and ceded reinsurance).

Cybersecurity

Coverage for damages arising out of unauthorized use of, or unauthorized access to, electronic data or software within your network or business.

Line 1 Direct premiums, losses and defense and cost containment expenses for standalone policies are to be reported before reinsurance for columns 1 through 6.

For columns 7 and 8, provide the number of in force standalone policies that are claims made vs. occurrence.

Line 1.1 Provide the range of the limits offered for standalone policies.

Line 2.2 Direct losses and defense and cost containment expenses for commercial multiple peril package policies are to be reported before reinsurance for Columns 1 through 4.

For Columns 5 and 6, provide the number of in force multiple peril policies containing cybersecurity coverage that are claims made vs. occurrence.

Line 2.4 If the answer to 2.3 is “yes,” provide the amount of direct premium earned (qualified or estimated) for cybersecurity coverage included in package policies before reinsurance.

Line 2.5 Provide the range of limits offered for the commercial multiple peril package cybersecurity policies

Line 3.1 If the answer to 3 is yes, provide the range of limits offered for tail coverage.
Consider Adoption of White Paper Related to Transportation Network Companies (TNCs)
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.

The three most widely used TNCs are UberX (available in 53 countries and more than 140 U.S. cities), Lyft (available in at least 60 locations) and Sidecar (available in Boston, Charlotte, Chicago, Long Beach, Los Angeles, Oakland, Marin and other San Francisco Bay Area cities, San Diego, Seattle and Washington, D.C.).

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 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.

TNCs have gained in popularity in dozens of U.S. cities over the past few years. However, new business ventures often come with new risks.

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 #898022v1

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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 three exposure periods in the TNC business model. Period 1 is characterized as the point when the driver logs into the TNC application but is not matched with a passenger. Period 2 is when a match is made and accepted but the passenger has not yet entered the vehicle. Period 3 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.

<table>
<thead>
<tr>
<th>TNC Coverage Periods</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period 1</td>
<td>Pre-Match</td>
</tr>
<tr>
<td>Period 2</td>
<td>Match accepted - passenger pick up</td>
</tr>
<tr>
<td>Period 3</td>
<td>Passenger in the vehicle</td>
</tr>
</tbody>
</table>
The California Department of Insurance held an investigatory hearing on March 21, 2014 relating to insurance issues and Transportation Network Companies (TNCs). As a result of the hearing, Insurance Commissioner Dave Jones made the following recommendations:

- Require TNCs to provide $1 million commercial liability insurance that begins the moment a driver switches on the app
- Requiring TNCs to provide $1 million uninsured/underinsured coverage to protect the driver and passenger
- Requiring TNCs to provide insurance policy information to TNC drivers to carry in their cars
- Requiring TNCs to disclose to drivers that their personal auto insurance coverages may not apply while they drive for the TNC
- Requiring TNCs to provide comprehensive and collision coverage for the driver's auto if the driver has those coverages on the driver's own policy

Several TNCs have attempted to resolve the issue by purchasing primary liability and UM/UIM coverage for exposure Periods 2 and 3. According to its website, UberX maintains a “commercial insurance policy for ridesharing with $1 million of coverage per incident.” The website also states that the, “policy covers drivers’ liability from the time a driver accepts your trip request through the app until the completion of your trip. This policy is expressly primary to the driver’s personal auto policy. An additional insurance policy covers drivers when they are logged into the Uber app but have not yet accepted a trip request.” UberX also maintains “uninsured/underinsured motorist coverage (UM/UIM) of $1 million per incident for bodily injury, in case another motorist causes an accident and doesn’t carry adequate insurance.”

UberX maintains contingent comprehensive and collision coverage with limits that mirror the drivers’ PAP in Periods 2 and 3. Lyft carries contingent comprehensive and collision coverage with a $2,500 deductible and a $50,000 maximum for physical damage to your vehicle.” UberX also maintains excess policies for Period 1 but include much lower limits. The chart below shows the insurance coverage provided by UberX, Lyft and Sidecar as described on their websites. Currently the coverage provided by the largest TNCs during Period 1 is secondary or excess meaning that it only pays claims if and when they are denied by the personal auto carrier. There has been debate about the exposure in Period 1 and its similarity to exposure in a typical PAP. TNCs argue that Period 1 does not include any increased exposure caused by TNC activities. The reasoning behind this argument is that the driver does not yet have a passenger in the vehicle and is driving a known, rated vehicle. The contrary argument is that Period 1 presents an increased exposure because drivers are distracted while looking at the TNC App on their cellphone to find a passenger and may be rushing to locations that show passengers ready for pick-up. It is undisputed that Periods 2 and 3 include increased exposure due to having passengers in the car, loading and unloading passengers, and finding safe areas for pick-up and drop-off and perhaps driving unfamiliar routes. Others may argue that the exposure is increased in all three time periods because drivers-for-hire are more frequently in urban, often highly congested areas. Urban, highly congested areas are known for higher frequency of accidents and therefore are associated with higher insurance rates. Several states have identified the insurance coverage concerns and enacted legislation to fill some, but not all, of the coverage gaps.

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<table>
<thead>
<tr>
<th>TNC</th>
<th>Insurer</th>
<th>Period 1</th>
<th>Periods 2 &amp; 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raiser LLC/UberX¹</td>
<td>James River</td>
<td>Contingent Liability ($50,000 per person/$100,000 per accident/$25,000 property damage)</td>
<td>• Commercial Auto Liability &amp; Uninsured Motorist/Underinsured Motorist Coverage up to $1 million per occurrence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Contingent Collision &amp; Comprehensive equal to the amount maintained by the driver in their personal auto policy ($1,000 deductible)</td>
</tr>
<tr>
<td>LYFT² (valid in all states except New York)</td>
<td>James River</td>
<td>Contingent Liability ($50,000 per person/$100,000 per accident/$25,000 property damage)</td>
<td>• Commercial Auto Liability &amp; Uninsured Motorist/Underinsured Motorist Coverage up to $1 million per occurrence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Contingent Collision &amp; Comprehensive up to $50,000 per accident ($2,500 deductible)</td>
</tr>
<tr>
<td>SIDECAR³ (liability limits differ for the state of Washington and Chicago, IL)</td>
<td>Nautilus Insurance Company</td>
<td></td>
<td>• Commercial Auto Liability &amp; Uninsured Motorist/Underinsured Motorist Coverage up to $1 million per occurrence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Liability Limits ($50,000 per person/$100,000 per accident/$30,000 property damage)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Contingent Collision $50,000 per accident ($500 deductible)</td>
</tr>
</tbody>
</table>

### III. INSURANCE COVERAGE ISSUES

A. Insurance Company Perspective

ISO’s PAP excludes liability coverage, “… bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle while it is being used as a public or livery

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³ Sidecar Legal Terms and Conditions as well as Insurance Coverage Amounts. Retrieved from https://www.side.cr/policies/insurance/#898022v1

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conveyance.” There are a few exceptions such as, operating an auto as a volunteer service for a nonprofit charitable organization or a governmental agency, transporting physically or mentally handicapped persons or persons 60 years of age or older or a shared-expense car pool.

Other common livery exclusions exclude “damages arising out of the ownership, maintenance, or use of a vehicle while it is being used:”

- to carry persons for a charge,”
- “for commercial purposes,”
- “for compensation,”
- “for a fee,”
- “for hire”

Other policies exclude “any auto you are driving while available for hire by the public.” Livery exclusions commonly apply to: medical payments, personal injury protection, collision and comprehensive (other than collision), as well as UM and UIM coverage. The subtle nuances of the various livery exclusions are called into question as regulators, insurers and consumers attempt to identify coverage gaps between the personal auto policies owned by TNC drivers and the commercial policies owned by TNCs.

Generally, exclusions are used by insurers because the exposures are thought to be above and beyond those found in a typical policy for the type of property or activity being insured. Another reason for the exclusion may be that the coverage is associated with a rating plan for coverage of an alternate insurance product. Driving for a TNC fits both of those descriptions as it blurs the lines between personal and commercial risks and is considered extraordinary to the typical personal auto policy. In order to include the risk in a personal auto policy, insurers would need to adjust their rating for the commercial exposure. This would increase the cost of personal auto policies for all insureds regardless of their involvement in TNC activities. It would be unfair to ask all insureds to subsidize those additional risks while only a small percentage of insureds are actually exposed to them.

The general factors used to determine auto insurance rates are listed in the chart below. It should be noted that not all insurers use every factor and that some state laws prohibit or limit the use of some of the risk classification factors. TNC drivers typically go to urban, congested areas in order to find matches. Urban areas are typically associated with a higher frequency of accidents and therefore command higher insurance rates. Normal use such as driving to work or school typically means fewer miles driven and results in lower rates whereas commercial use such as TNC driving could mean more miles driven and higher frequency of loss. Additionally, TNC

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4 The Insurance Services Office Inc. (2014, December) “Ride-Sharing Arrangements through Transportation Network Companies.”

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drivers may be distracted as they are checking one or more applications on their mobile device for matches or using the GPS tracking to determine delivery routes.

<table>
<thead>
<tr>
<th>Factors That Affect Auto Insurance Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Territory</td>
</tr>
<tr>
<td>Normal use of auto (to work or school)</td>
</tr>
<tr>
<td>Age</td>
</tr>
<tr>
<td>Gender</td>
</tr>
<tr>
<td>Marital status</td>
</tr>
<tr>
<td>Driving record</td>
</tr>
<tr>
<td>Driver education</td>
</tr>
<tr>
<td>If student - grade point average</td>
</tr>
</tbody>
</table>

A Casualty Actuarial Society study on ride-sharing found that “rideshare drivers who put in about 1,000 miles a year could expect to pay $10 to $200 a year to obtain coverage for period one. Full-time drivers in Colorado would pay $1,000 to about $1,500 and full-time drivers in San Francisco would pay an additional $3,000.” Milliman also studied the impact of ride-sharing drivers in Period 1 and determined that, “the net result on the personal auto insurance market to all policies was $0.70/policy.” Proponents of commercial ride-sharing believe it will increase road safety due to fewer intoxicated drivers on the roadways and fewer personal vehicles due to the additional options for public transportation.

Personal auto carriers are beginning to voice their concerns over ride-sharing services. Many believe that engaging in livery service is a material change to the insurance contract and therefore the insurer may legally cancel the policy. Even if the insurer does not to cancel the policy initially, it may choose not to renew the policy at the end of the contract term. Insurers are concerned about the increased risks not considered under a typical personal auto policy but should be considered if the vehicle is used to transport passengers for hire. Insurers are also concerned that TNC drivers will not disclose the fact that they drive for a TNC. The variances in language used for livery exclusions and the determination of which exposure period the accident took place create additional costs for the insurer that are ultimately passed on to all policyholders.

TNC-related claims impact the duty to defend as well as the duty to indemnify. Under all standard personal auto policies, insurers have a duty to indemnify the insured for covered damages and also have a broader duty to defend. Because the duty to defend is broader than the duty to indemnify, an insurer may have to pay defense costs even if it can ultimately prove that the accident occurred during an excluded time period, such as Period 3.

The driver’s involvement in TNC activities may lead to:

- confusion regarding which insurer has a duty to defend.
- delays in the litigation process
- increased legal and administrative costs.

While the duty to indemnify is more straightforward it is also impacted by TNC activities. Claims involving TNC drivers require more analysis to determine which insurer, personal auto or commercial, must indemnify the TNC driver. Insurers must determine the time period during which the accident occurred and in some cases analyze the livery exclusions to determine which insurer has the duty to indemnify.

Currently, the largest TNCs have obtained coverage through surplus lines producers. Surplus lines insurers are non-admitted companies not regulated to the extent of most personal auto insurers. Surplus lines carriers are not subject to state regulatory approval of their rates and forms nor are they covered by state guarantee funds. Non-admitted companies often lack the same level of transparency regarding business practices and financial solvency as do admitted insurers. Surplus lines insurers frequently take on new types of risks or high risk activities because they are experienced with using flexible rating plans involving large amounts of judgment in setting their pricing and in adapting policy language to more specifically contain the coverage they are willing to provide. Unlike personal auto carriers, surplus lines companies do not typically work directly with consumers or the public so TNCs need to establish procedures for claims. The claim process needs to be clearly described to their drivers and passengers including the process to submit claims, investigation procedures and how payment will be distributed.

Personal auto insurers should consider customer outreach to inform policyholders of their stance regarding ride-sharing and any available coverage options. Policyholder education campaigns should identify exposures created by ride-sharing not generally contemplated in standard personal auto policies. Companies should be able to answer policyholder questions regarding policy exclusions, exposure periods created by ride-sharing arrangements, coverage gaps and options for additional coverage. Companies should inform producers about their policies regarding ride-sharing and give them the tools they need to answer policyholder questions.

Disclosures to insurers regarding ride-sharing could include:

- Definitions of terminology such as ride-sharing, transportation network company, and coverage periods.
• Court interpretations of common livery exclusions.
• Identification of any legal barriers to canceling policies due to the driver’s involvement in ride-sharing.
• Disclosure of state mandated coverage for TNCs including when the coverage begins and ends.
• Listing of the options for insurers to determine if consumers are participating in ride-sharing and whether or not the response qualifies as a warranty or a misrepresentation affecting possible rescission of the policy.
  o Potential options include listing a question on:
    ▪ Initial application,
    ▪ Survey or questionnaire and
    ▪ Renewal form.

B. Driver Perspective

TNCs have provided drivers with a way to earn extra income in their spare time at the push of a button but drivers seldom ask questions about potential liability or hidden risk exposures. TNCs attempt to limit their liability through disclaimers. One disclaimer on a TNC’s website states: “You agree that the entire risk arising out of your use of the services, and any third party good or services obtained in connection therewith, remains solely with you, to the maximum extent permitted by applicable law.” The disclaimer goes on to state, “This disclaimer does not alter your rights as a consumer to the extent not permitted under the law in the jurisdiction of your place of residence.”

The above disclosure reiterates the importance for regulators and legislators at the state and/or municipal level to put measures in place before accidents occur and consumers are left without coverage or recourse for losses.

Roughly 25 state insurance departments have issued bulletins cautioning consumers of the potential limitations of insurance coverage. Additionally, three states have passed legislation setting coverage requirements for TNCs to protect consumers. Several additional states are debating legislation setting clearer insurance coverage rules and standards. The NAIC has published two consumer alerts to explain coverage issues and identify what consumers can do to protect themselves. The NAIC is also in the process of updating its NAIC Consumer Shopping Tool for Auto Insurance as well as A Consumer’s Guide to Auto Insurance to include information regarding the use of TNC services.

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Driver awareness communications could include the following information:

- Standard personal auto policies often include exclusions for transporting passengers for a fee.
  
  o Drivers should read their personal auto policy to determine if exclusions exist and if so, at what period the exclusion goes into effect.
  
  o Drivers should contact their insurer or agent to inform them of their decision to participate in commercial ride-sharing arrangements as a driver and discuss the details of their policy to determine coverage options. Some insurers may cancel or non-renew insureds that drive for TNCs. If this happens the driver will need to find an alternate insurer. It is illegal in all states to drive without insurance. In some states this may result in fines, suspension of driving privileges or repossession of the vehicle.

- The availability of coverage through the TNC with which they intend to do business.
  
  o Drivers should read the TNC’s insurance policy to determine what period their commercial auto policy begins and ends in the livery process.
  
  o Drivers should also determine what coverage is available through the TNC.
    
    - Drivers should ask about the liability limits, coverage for medical payments, personal injury protection in no-fault states, comprehensive (otherwise known as other than collision), collision coverage and UN/UIM coverage.
    
    - Drivers should determine if defense costs are included in the TNC’s commercial auto policy or who would cover the cost of legal fees if they were to be sued.

- If coverage gaps exist between when the personal auto policy ends and the commercial auto policy begins, drivers should consider purchasing additional coverage. Additional coverage may be available through the personal auto insurance carriers as an endorsement to their policy or as a separate commercial policy.

It is important to note that in some instances a TNC driver may not be the named insured on the personal auto policy. Standard personal auto policies are designed to provide coverage for the insured and their family members. Family member is a person related to the named insured by blood, marriage, or adoption and who resides in the named insured’s household. A child who lives away for college may also be covered under the standard policy. If the TNC driver is someone other than the named insured, the driver needs to make sure that they are covered under the personal auto policy.
C. Passenger/Third Party Perspective

Passengers see TNCs as a tool for increased mobility, a cutting edge service that provides a popular alternative to taxi services. Passengers and third parties not involved in TNC transactions can be completely unaware of the hidden dangers but are not immune to damages caused by the increasing use of TNC applications. Passengers who are injured in a TNC accident should be covered through liability coverage. Third parties who are using the roadways as drivers or even pedestrians should be covered through liability coverage for losses caused by the TNC driver. In order to make this a reality, state legislation and local ordinance must close the coverage gaps by defining the periods to be covered by personal or commercial auto policies, determine who must maintain coverage during each period, and set the required minimum liability limits as well as additional coverages such as medical payment coverage, collision, other than collision, and UM/UIM coverages.

TNCs should make information available about their insurance coverage in each state or city readily available. They should define the exposure periods on their website and identify which periods are covered and to what extent by their commercial auto policy. They should include whether the policy is primary or secondary and if it includes medical payments, collision, other than collision coverages for the driver, and uninsured and underinsured coverage.

Additionally, TNCs should provide easy to read disclosures. The disclosures should inform passengers regarding insurance matters including who would pay for losses in case of an accident during each period of the TNC service.

IV. POTENTIAL SOLUTIONS TO COVERAGE ISSUES

A. Review Established Insurance Options

The first step in regulating TNCs is to determine what state or local entity has authority over TNCs. Regulatory authority varies from state to state.

In California, TNCs are regulated on a statewide level by the Public Utilities Commission (“CPUC”) while taxis are regulated by the municipalities.

While TNC activities create many coverage issues, there are also a variety of solutions possible. The ideal insurance solution is for TNC drivers to have full coverage on a full time basis. To achieve that, the least complex approaches are that either the driver would purchase commercial coverage or the TNC would provide full coverage for all three TNC activity periods.

Commercial auto coverage purchased by the TNC driver does not appear to be a realistic option at this time. Commercial auto insurance for livery exposures typically costs between $5,000 and $7,000 per year, which some argue is too expensive for TNC drivers. To date, there has been no evident movement toward creating a commercial policy tailored to the TNC paradigm of part livery risk part personal auto risk. If such a product were to be made available it would require
that the TNC driver be committed enough to the livery trade to buy commercial coverage. Also, it would need to be available at a price that is within reason compared to personal auto coverage.

Nor have TNCs filled the void. So far, in unregulated environments TNCs have been successful in explicitly or implicitly transferring some or all of the responsibility for buying insurance onto the driver. Thus, the personal auto insurer is engaged in sorting out which claims are covered and in creating a coverage response of its own.

To put the burden back on the TNC and assure there is full coverage in place, the regulator must mandate full coverage at limits and deductibles that are responsive to the exposures. Recent legislation in California and Colorado imposed important coverage mandates but still allow for coverage gaps at least for UM/UIM and physical damage coverages. Unless the personal auto insurer acts to amend its coverages, coverage gaps will remain despite the new statutory requirements.

Unless TNCs change their business model and agree to provide full commercial coverage for TNC drivers, a more complex hybrid of coverage between the TNC and the personal auto policy will need to be created.

B. Potential for new products/coverage options

Policy endorsements are being developed for PAPs to fill coverage gaps. These endorsements will be a valuable tool to close gaps for TNC drivers willing to purchase them.

In fact, these hybrid insurance products, adding some level of coverage for TNC activities onto PAPs, are being developed as this paper is being written. They are being introduced by innovative insurers willing to take on the calculated risk and be the first to gain market share in an evolving and growing space.

Because the products are not being standardized, but are being developed by different insurers, they will likely establish coverage via different methods for different time periods. The new products present many concerns for insurance regulators, including but not limited to, the cost for the new hybrid coverage.

In California, only one company made a filing for hybrid TNC/PAP insurance as of January 1, 2015. That filing, made by National General Insurance Company, offers an endorsement to a PAP deleting the livery exclusion but only during Period 1. With regard to cost, National General is implementing a vehicle use factor for TNC use.

Outside of California, Erie Insurance Company offers an endorsement that makes the TNC driver’s PAP excess for TNC activity for any insured with a business classification on their personal auto. It covers all three time periods. As of January 1, 2015 it is available only in
Illinois and Indiana, but the company expects to eventually offer it in all 12 states in which it sells insurance. 8

According to the Insurance Journal, USAA plans to offer auto insurance coverage in Colorado that will protect TNC drivers from the moment their mobile apps are turned on until they are matched with a passenger. “The pilot program, which will begin in February, extends a member’s existing auto policy coverages and deductibles, and costs about $6-$8 more per month, or roughly $40-$50 more for a six-month insurance policy, according to the carrier.”9

In developing these new hybrid insurance products, TNCs may need to share with participating insurers any statistical information they track regarding driver and passenger characteristics, delivery patterns, hours of operation and any other factors relevant for determining insurance rates. One way to accumulate information on TNC driver behavior may be the use of telematics installed in driver vehicles.

The ISO is considering modifications to its Personal Auto Program by refining the livery exclusion and defining the coverage periods excluded in most PAPs. The ISO is also considering a new coverage option to encompass TNC activities under the Personal Auto Program.

C. Spreading the insurance burden between TNCs and TNC drivers

Assuming hybrid policies become readily available; regulators that chose to do so may be able to require TNCs and TNC drivers to share the burden of providing insurance for TNC activities. This can be accomplished in a number of ways. Regulators can require:

- TNC drivers to maintain coverage in Period 1 and TNCs to maintain coverage in Periods 2 and 3.
- TNC drivers to maintain primary coverage up to a certain limit (for example $100,000) while requiring TNCs to maintain excess coverage that pays for accidents resulting in damages above the primary limit.
- TNC drivers to maintain primary coverage in Period 1 up to a certain limit (for example $100,000) while requiring TNCs to maintain excess coverage in Period 1 and primary coverage in Period 2 and 3.
- Various combinations of the above.

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D. Coverage amounts and types

Regulators must also decide what amounts and types of insurance to require.

1. Coverage Amounts

It is crucial to determine coverage amounts high enough to protect persons and property injured or damaged in a TNC accident. Regulators can look to other states for guidance on the amounts of coverage to require. California requires $1 million in TNC insurance while a passenger is in a TNC vehicle. (2014 Cal. Legis. Serv. Ch. 389, A.B. 2293) Regulators may also look at the amounts required for other transportation providers such as taxis and limousines for guidance. If those amounts were set in the distant past, they may need to be adjusted for inflation.

Regulators may also consider establishing coverage amounts by the defined TNC time period. Some regulators require lower coverage amounts during Period 1, because there is no passenger in the vehicle at that time. However, this practice results in less coverage for a third party hit during Period 1. The San Francisco accident that killed 5 year-old Sofia Liu and injured her mother and brother occurred during Period 1. Consumer groups argue that injury or death should not be worth less merely because it occurred in one period instead of another.

2. Coverage Types

- Liability. Liability coverage must be required to protect passengers and third parties injured by TNC drivers.

- UM/UIM. In order to adequately protect consumers, regulators should consider requiring UM/UIM in the same amount as liability coverage. While TNCs argue that some taxicabs are not required to provide UM/UIM, the better practice is to require TNCs to maintain this coverage. Otherwise, a passenger injured in an accident caused by an uninsured or underinsured motorist may be left without recourse.

- Comprehensive and collision. This coverage is necessary to protect the TNC driver’s car. While liability insurance provides coverage for an injured passenger, it does not provide coverage for damage to the driver’s car. Because the livery exclusion applies to comprehensive and collision coverages, drivers currently have no way to obtain comprehensive and collision coverage for TNC activities unless they separately purchase a commercial policy, which is currently cost prohibitive.

- Medical payments. This provides coverage for medical expenses not covered by liability insurance.
V. PUBLIC COMMUNICATION, EDUCATION AND OUTREACH

Legislators and regulators should communicate with TNC drivers and passengers about the insurance issues.

Many regulators have found that media (TV, radio, newspaper, and blogs) are very interested in the ride-sharing issue and a good avenue for presenting accurate, unbiased information to the public.

Because this is a new and rapidly changing industry, public education and outreach is critical to ensure that TNC drivers and passengers are aware of potential coverage gaps and limitations.

Public service announcements (PSAs) or consumer alerts can be a great tool in relaying information to both drivers and passengers. Unlike a news story, regulators/legislators can control the message, and provide detailed information.

TNC drivers and passengers, by definition, use smart phones. Information should be easily available, in a mobile-enabled format, on insurance department web sites.

State insurance departments should post alerts on their websites informing consumers of potential coverage gaps and how to remedy them. This should include information about any newly available hybrid Personal Auto Policies that expressly provide coverage for TNC drivers.

Regulators should require:

- TNCs to prominently post their insurance policies on their websites along with disclaimers about any potential coverage gaps.
- TNCs to disclose to drivers whether damage to the drivers’ cars will be covered by the TNC’s policy in the event of an accident.
- TNCs to provide their drivers with insurance information including the claims handling process.
- TNCs to revise their mobile applications to provide a link to insurance information, including claims handling information for all passengers.
- TNCs to electronically notify its mobile application users whenever it changes any coverage types or amounts on its insurance policy.
VI. CONCLUSION

TNCs create a new option for public transportation and recognize the increase in consumer to consumer communication. New technologies and business ventures often present risks not previously contemplated by state and local laws. Regulators and legislators can resolve risk exposure concerns by putting laws in place that eliminate coverage gaps. If not clearly defined, shifting coverage between personal auto and commercial coverage could be costly and inefficient as well as leave gaps in coverage. TNC laws should clearly define the terminology and identify the insurance coverage and limits required during each period. The chart in Appendix A contains a list of local ordinances and state legislation currently in place regarding transportation network companies.
APPENDIX A - OVERVIEW OF CURRENT LEGISLATION

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<th>City</th>
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| Austin, TX | 9-14        | Austin City Council     | • TNC will provide commercial automobile liability insurance with a minimum combined single limit of $1 million for each occurrence of bodily injury and property damage for accidents involving TNC vehicles in transit, beginning with the time that the TNC driver accepts a trip request on the TNC’s digital network, or during the accepted trip, and ending when the rider departs the vehicle, naming the City of Austin as an additional insured.  
  • The policy shall be accompanied by a commitment from the insurer that such policy will not be cancelled or coverage reduced without at least 30 days’ notice.  
| Baton Rouge, LA | 6-14     |                         | • Transportation network application company shall mean a company operating in the City of Baton Rouge and Parish of East Baton Rouge that uses a digital network or software application to connect a passenger to transportation network services provided by a transportation network operator.  
  • Maintain a commercial liability insurance policy that:  
    o Provides coverage of at least one million dollars ($1,000,000.00) per incident for accidents involving a transportation network operator from the time the operator accepts a trip request until the completion of a trip, regardless of whether the operator maintains personal insurance adequate to cover any portion of a claim;  
    o Provides uninsured/underinsured motorist bodily injury coverage of at least one million dollars ($1,000,000.00) per incident;  
    o During the time that a transportation network operator is available for service but not providing service, provides additional bodily injury coverage of at least fifty thousand dollars ($50,000.00) per person and at least one hundred thousand dollars ($100,000.00) per accident, and coverage of at least twenty-five thousand dollars ($25,000.00) for property damage per accident, in the event that the operator's personal insurance policy does not pay; and  
    o Provides that written notice shall be given the taxicab control board upon any cancellation or termination of the policy.  
  [https://www.municode.com/library/#!/la/baton_rouge., east_baton_rouge_parish/codes/](https://www.municode.com/library/#!/la/baton_rouge., east_baton_rouge_parish/codes/) |
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<tr>
<td>Birmingham, AL</td>
<td>7-14</td>
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<td>• TNC must maintain $1,000,000 for personal injury, property damage or advertising liability during all coverage periods. Ordinance not available online at this time.</td>
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| Chicago, IL      | 5-14        | Chicago City Council    | • At least the following minimum coverage:  
  1. (1) commercial general liability insurance with limits of not less than $1,000,000 per occurrence, for bodily injury, personal injury, and property damage;
  2. (i) commercial automobile liability insurance with a combined single limit for bodily injury and property damage of $1,000,000 per occurrence, covering liability resulting from any occurrence arising out of or caused by the operation of a transportation network vehicle (including owned, hired, and non-owned vehicles) while the applicant's transportation network driver has accepted a ride until the completion of the ride; and (ii) automobile liability insurance with limits for bodily injury and property damage not less than the minimum amount required under Section 7-601 of the Illinois Vehicle Code, codified at 625 ILCS 5/7-601(20k/40k/15k), per occurrence, covering liability resulting from any occurrence arising out of or caused by the operation of a transportation network vehicle (including owned, hired, and non-owned vehicles) while the applicant's transportation network driver is logged onto the transportation network provider's Internet-enabled application or digital platform showing that the driver is available to pick up passengers until such driver accepts a ride.
| Cincinnati, OH   | 11-14       | City of Cincinnati      | • TNC required to carry at least $1,000,000 in combined single limit liability third party coverage per occurrence for death, bodily injury and property during Periods 2 & 3.  
  • The policy shall provide uninsured and underinsured motorist coverage per occurrence for death or bodily injury in an amount at least equal to requirements for other public vehicles as required in Sec. 407-30 of the Municipal Code;  
  • The policy shall act as primary coverage for the driver, driver's vehicle and the passengers of the driver's vehicle during Periods 2 & 3.  
  • A Transportation Network's Driver's personal insurance may satisfy the requirements |
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| Columbus, OH | 7-14        | Columbus City Council | - TNCs are required to provide at least $1 million of commercial liability coverage as well as uninsured and underinsured motorist coverage.  
- TNCs must also match the driver’s personal auto coverage for collision and comprehensive (other than collision).  
- No vehicle for hire owner's license shall be issued or renewed by the Director without evidence of liability protection. It shall be unlawful to operate or permit the operation of any vehicle for hire until the owner of the vehicle has deposited and maintained on deposit with the Director, evidence of liability protection. The liability protection limit shall not be less than the amount listed below for the specific vehicle for hire to be licensed for liability imposed by law for damages on account of bodily injuries, death or property damages (other than injuries, death or property damages of the owner or vehicle for hire driver) in any one (1) accident resulting from the ownership, maintenance or use of each such vehicle for hire:  
  - Three hundred thousand dollars ($300,000.00) for taxicabs;  
  - Three hundred thousand dollars ($300,000.00) for pedicabs;  
  - Five hundred thousand dollars ($500,000.00) for livery vehicles; and  
  - Three hundred thousand dollars ($300,000.00) for horse carriages. |

Dallas, TX | 12-14       | Dallas City Council | - From the time a driver indicates that the vehicle is available to accept a ride request, but before the driver has accepted a ride request, the vehicle and driver must be |
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<tr>
<td>Dayton, OH</td>
<td>12-14</td>
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<td>• Ordinance does not address insurance requirements for TNCs. Taxicab operators must carry $1,000,000 for bodily injury and property damage. Ordinance not available online at this time.</td>
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| Houston, TX       |             |                             | • $1M required commercial automobile liability insurance with a combined single limit for bodily injury and property damage during periods 2 & 3.  
• Commercial automobile liability insurance coverage no less than the minimum coverage amounts specified in the Texas Motor Vehicle Safety Responsibility Act ($30k/$60k/$25k) during period 1.  
• Insurance policy required must be available to cover claims regardless of whether a driver maintains insurance adequate to cover any portion of the claim; disclosed on the permittee’s Internet-enabled application and website, and maintained in force all times that the TNC offers or provides TNC service. |
| Little Rock, AR   |             |                             | ** Contacted City for a copy of ordinance.                                                                 |
| Milwaukee, WI     | 7-14        | Milwaukee Common Council    | • Minimum required policy limits are $50k/$100k/$10k during all periods.  
• Uninsured motorist coverage with limits comparable to the respective liability limits for the vehicle are also required during all periods. |
| Minneapolis, MN   | 7-14        | Minneapolis                 | • TNCs are required to maintain at least $1 million of commercial liability coverage per                                                                                                                                 |

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<td>City Council</td>
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<td>• TNC or driver maintains minimum liability limits $50k/$100k/$30k while the driver is logged into a TNCs digital network but not engaged in a prearranged ride. <a href="https://www.municode.com/library/#!/mn/minneapolis/codes/">https://www.municode.com/library/#!/mn/minneapolis/codes/</a></td>
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| Oklahoma City, OK    | 10-14       | Oklahoma City Council| • Single limit coverage required for each accident or occurrence during period 2 & 3:  
  o $100,000 involving six or fewer seating capacity  
  o $750,000 involving seven to nine seating capacity  
  o $1,000,000 for seating capacity for ten  
  • During periods 2 & 3 the TNC is required to provide coverage with minimum limits of ($50k/$100k/$25k). [https://www.municode.com/library/#!/ok/oklahoma_city/codes/](https://www.municode.com/library/#!/ok/oklahoma_city/codes/). Amended by Ordinance 25,002. |
| San Antonio, TX      | 12-14       | San Antonio City Council| • TNC is required to carry minimum liability limits during Period 1 of $50k/$100k/$25k and excess coverage of $200k. Liability coverage must be primary.  
| Salt Lake City, UT   | 7-14        | Salt Lake City Council| • TNCs are required to carry the same liability insurance limits as other ground transportation companies (taxis and limousines). There is some debate remaining about when this coverage should begin and end.  
  • Insurance coverage levels set by determining the highest limits set by the Federal Motor Carrier Safety Administration, Utah Department of Transportation or U.S. Department of Transportation.  
  • The required limits at the time ordinance was passed, was $1.5 million per occurrence. [http://slcdocs.com/council/agendas/2014agendas/November/Nov25/112514A7D3.pdf](http://slcdocs.com/council/agendas/2014agendas/November/Nov25/112514A7D3.pdf) |
<p>| Seattle, WA          | 7-14        | Seattle City Council| • TNCs are required to maintain no less than $100,000 per person and $300,000 per accident of liability coverage as well as uninsured motorist coverage with the same minimums. Coverages are required when the for-hire vehicle is ‘operating’ which includes when: there is a passenger in the vehicle, the office dispatch records show that the vehicle had been dispatched, the for-hire driver has offered transportation services to a passenger. <a href="http://clerk.seattle.gov/~archives/Ordinances/Ord_124524.pdf">http://clerk.seattle.gov/~archives/Ordinances/Ord_124524.pdf</a> |</p>
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<tr>
<td>Tulsa, OK</td>
<td>8-14</td>
<td>Tulsa City Council</td>
<td>- The driver of the TNV must maintain minimum liability limits of $25k/$50k/$25k.</td>
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<td>- TNC must have a $1 million per incident excess policy as well as step in to pay losses</td>
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<td>not covered by the driver’s personal auto coverage.</td>
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<th>Office</th>
<th>Insurance Requirements</th>
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<tr>
<td>California</td>
<td>9-14</td>
<td>California Public Utilities Commission</td>
<td>- All TNC coverage amounts must be primary and the TNC insurer maintains the duty to</td>
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<td>defend and indemnify in periods 2 and 3.</td>
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<td>- TNC insurance shall maintain coverage in the amount of $1 million for death,</td>
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<td>personal injury, and property damage.</td>
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<td>- TNC must also maintain $1 million uninsured/underinsured motorist coverage from the</td>
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<td>moment the passenger enters the vehicle until they exit.</td>
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<td>- TNC shall maintain primary liability coverage of at least $50,000 per person/$100,000</td>
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<td>- TNC shall maintain excess coverage for TNC and driver of at least $200,000 during</td>
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<td>periods 2 and 3.</td>
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<td>- Coverage may be maintained by driver or TNC or any combination of the two.</td>
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<td>- The driver’s personal auto insurer is not required to defend or indemnify the insured</td>
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<td>while the driver is logged on to the TNCs online-enabled application unless coverage is</td>
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<td>provided through an amendment or endorsement to their policy providing for such coverage.</td>
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<p>| Colorado        | 6-14         | Colorado Public Utilities Commission | - The TNC or the driver must maintain primary liability insurance coverage for the       |
|                 |              |                                 | driver for incidents involving the driver during a prearranged ride in the amount of at |
|                 |              |                                 | least $1 million per occurrence.                                                      |
|                 |              |                                 | - While driver is logged into a TNCs digital network but is not engaged in a            |</p>
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<th>State/Territory</th>
<th>Enacted Date</th>
<th>Office</th>
<th>Insurance Requirements</th>
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</table>
| **District of Columbia** | 12-14 | | • TNC must maintain a commercial liability policy with at least $1 million per incident coverage from the time the operator (driver) accepts a trip request until completion of the trip.  
• TNC must provide at least $1 million per incident of uninsured/underinsured motorist coverage.  
• TNC must provide contingent comprehensive and collision coverage of at least $50,000.  
• The driver or TNC must provide primary liability coverage of at least $50,000 per person/$100,000 per accident/$25,000 property damage while operator (driver) is available for service but not providing service in the event that the operator’s personal auto insurance policy does not pay. |

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ADDITIONAL REFERENCES:


ADDITIONAL REFERENCES:


Consider Adoption of Title Insurance Guaranty Fund Guideline
Dec. 1, 2014, Version

GUARANTY ASSOCIATION FOR TITLE INSURANCE

Title Insurance Guaranty Association–Title Insurance Consumer Protection Fund Guideline

Table of Contents
Section 1. Title
Section 2. Purpose
Section 3. Scope
Section 4. Definitions
Section 5. Organization of Association
Section 6. Board of Directors
Section 7. Powers and Duties of the Association
Section 8. Plan of Operation
Section 9. Duties and Powers of Commissioner
Section 10. Coordination Among Guaranty Associations
Section 11. Effect of Paid Claims
Section 12. Non-Duplication of Recovery
Section 13. Examination of Association; Financial Reports
Section 14. Recognition of Assessment in Rates
Section 15. Immunity and Confidentiality
Section 16. Stay of Proceedings
Section 17. Termination; Distribution of Funds

Section 1. Title
This Act may be cited as the "[State] Title Insurance Guaranty Association–Title Insurance Consumer Protection Fund."

Section 2. Purpose
The purpose of this Act is to provide a mechanism for continuation of coverage, for payment of covered claims under certain insurance policies, to avoid excessive delay in payment and to avoid financial loss to policyholders because of insolvency of a title insurer, as well as to provide an association to assess the cost of such protection.

Section 3. Scope
This Act applies to all title insurers authorized to transact insurance in this state.

Section 4. Definitions
A. "Association" means the title insurance guaranty association.
B. "Authorized to transact insurance" means a title insurer as defined in [insert appropriate citation to the insurance code].
C. "Commissioner" means the chief regulatory insurance official of this state, whether referred to as Director, Superintendent, Commissioner or other similar title.
D. "Covered claim" means an unpaid claim of an insured covered under and not in excess of the applicable limits of a title insurance policy insuring land located in this state issued by an insolvent insurer. Subject to applicable policy limits, the
association's liability for covered claims shall not exceed $300,000 per claim. The total amount that may be recovered from the association by a claimant for all covered claims shall not exceed $600,000. "Covered claim" does not include supplementary payment obligations, including, but not limited to, adjustment fees and expenses, escrow or other closing protection claims nor does it include punitive, exemplary, extra-contractual or bad-faith damages awarded by a court judgment against an insurer. “Covered claim” does not include any first- or third-party claim by or against an insured whose net worth on Dec. 31 of the year preceding the date the insurer becomes insolvent exceeds $25,000,000, provided the insured’s net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its affiliates as calculated on a consolidated basis, and the insured has not: 1) applied for or consented to appointment of a receiver, trustee or liquidator for all or substantially all of its assets; or 2) filed a voluntary bankruptcy petition or a proceeding under state law to reorganize or receive protection under any insolvency law. The amount of a covered claim shall be reduced by the amount or other benefit that an insured recovers from any person, including an agent, regardless of whether an assignment is taken.

Drafting Note: States that desire to include additional claims in the fund may omit one or more of the exclusions from this definition.

F. "Insolvent insurer" means:
   (1) An insurer authorized to transact business in this state at the time the policy was issued or an insurer that subsequently assumes such policy under an assumption agreement.
   (2) Against which an Order of liquidation with a finding of insolvency has been entered after the effective date of this Act by a court or administrative agency of competent jurisdiction in the insurer's state of domicile, or of this state under [insert state liquidation law citation].
   (3) Which Order of liquidation has not been stayed or been the subject of a writ of supersedes or other comparable Order.

G. “Insured” means a person entitled to payment for insured loss under a policy issued by the insolvent title insurance company on title to real property located in this state.

H. "Member insurer" means any person who is authorized to transact title insurance in this state.

Drafting Note: Some states may authorize property and casualty insurers to transact title insurance. Other states may limit the transaction of title insurance to monoline title insurers.

I. “Net direct title premium” means direct gross premiums written in this State on insurance policies to which this Act applies.

J. "Person" means any individual, corporation, partnership, association, trust or voluntary organization.

K. “Policy” means a title insurance policy or assumption certificate whose subject of coverage or protection is title to real property located in this state. “Title Policy” means any written instrument or contract by means of which title insurance liability is assumed by a title insurer.
L. “Receiver” means receiver, liquidator, rehabilitator or conservator as the context may require.

M. “Servicing facility” means a person or persons delegated by the board of directors to settle or compromise claims and to expend association assets to pay claims.

Section 5. Organization of Association

There is hereby created a nonprofit legal entity to be known as the [State] Title Insurance Guaranty Association. All member insurers shall maintain membership in the association as a condition of their authority to transact title insurance in this state. The association may take any appropriate form of legal entity available under the laws of this state, including, but not limited to, a corporation or receivership association as approved by the commissioner.

Section 6. Board of Directors

A. The board of directors of the association shall consist of not less than five nor more than 11 persons serving terms as established in the plan of operation. In addition to the voting members of the board, the commissioner or his or her designated representative shall be an ex-officio non-voting member of the board. The members of the board shall be selected by member insurers subject to the approval of the commissioner and shall have as a majority of its members persons who are employed by member insurers. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

B. In approving selections to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

C. Members of the board of directors shall not receive compensation for serving as members of the board or any committees thereof, but they may be reimbursed from the administrative account for actual expenses incurred by them as members of the board of directors.

Section 7. Powers and Duties of the Association

A. The association shall:

(1) Be obligated to the extent of the amount of covered claims not resolved, whether reported or not, prior to the determination of insolvency, except that the association shall not be obligated as to policies that have been replaced by another title insurance policy issued by a solvent authorized title insurer. In no event shall the association be obligated for an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

Drafting note: The phrase “not resolved” includes claims that are unpaid or otherwise unresolved by the member insurer as of the insolvency determination date, including claims that may not have been asserted but exist due to a defect in title or other event covered under the terms of the title policy issued by the insolvent member insurer. If another title insurance company assumes or otherwise issues a replacement policy, there should be no covered claims under the original, now insolvent, title insurance company policy. States may want to cut off claims by requiring the association, or the commissioner as liquidator, to cancel title insurance policies after five
years. Alternatively, as reflected in this guideline, states may not want to have a guaranty fund claim cut off.

(2) Have no liability for the alleged bad faith of the insolvent insurer in the handling of any claim prior to the determination of insolvency or for any exemplary or punitive damages.

(3) Investigate claims made against the policies of an insolvent insurer and adjust, negotiate, resolve, settle and pay covered claims to the extent of the association's obligation and deny all other claims. Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the board of directors, but the designation of such insurer may be declined by the member insurer.

(4) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the covered claims and expenses, including loss adjustment expenses, and receivership expenses for the coming year if, at the end of any calendar year, the board of directors finds that the assets of the association in the fund exceed the liabilities of that account.

B. The association may subject to approval by the board of directors:

(1) Employ or retain persons or companies as servicing facilities necessary to handle claims and perform other duties of the association.

(2) Review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to in order to determine the extent to which such settlements, releases and judgments may be properly contested.

(3) Borrow funds necessary to affect the purposes of this article in accordance with the plan of operation.

(4) Sue or be sued and intervene in any court or arbitration forum having jurisdiction over an insolvent member insurer.

(5) Negotiate and become a party to contracts necessary to carry out the purpose of this Act, including assumption or reinsurance agreements relating to the title policies of an insolvent insurer.

(6) Take actions as provided in subsections A and B of this section prior to an insurer being declared insolvent by a court, where an insurer is potentially unable to fulfill its contractual obligations or is determined to be impaired.

(7) Perform other acts necessary or proper to effectuate the purpose of this Act.

C. If the association fails to act within a reasonable time, the commissioner shall assume the powers and duties of the board of the association and cause it to act as appropriate.

Section 8. Plan of Operation

A. The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the approval in writing by the commissioner. If, at any time, the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt rules necessary
or advisable to effectuate the provisions of this Act. The rules shall continue in force until modified by the commissioner or superseded by a plan or amendments submitted by the association and approved by the commissioner.

B. All member insurers shall comply with the plan of operation, subject to the provisions of this Act.

C. The plan of operation, among other things, shall establish procedures for conducting the business of the association, for handling its assets, for keeping records, and for the conduct of other activities necessary for execution of the powers and duties of the association.

D. The plan of operation may provide that any and all powers and duties of the association, except those under Section 6 and Section 7 of this Act that are to be performed by the board of directors, be delegated to a corporation, association or other organization that performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid by the association for its costs incurred in performance of such functions.

Section 9. Duties and Powers of Commissioner

A. The commissioner shall:

   (1) Serve on the association a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer domiciled in this state at the same time that such complaint is filed with a court of competent jurisdiction.

   (2) Notify the association of the existence of an insolvent insurer not later than three days after receipt of notice of the determination of the insolvency, and upon request of the board of directors, provide the association with a statement of the reported direct premiums written for the [insert time period] of each member insurer.

B. The commissioner may:

   (1) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a civil penalty on any member insurer that fails to pay an assessment when due. The civil penalty shall not exceed 5% of the unpaid assessment per month, except that no civil penalty shall be less than $100 a month.

   (2) Revoke the designation of any servicing facility if the commissioner finds claims are being handled unsatisfactorily.

Section 10. Coordination Among Guaranty Associations

A. The association may join one or more organizations of other state title guaranty associations of similar purposes to further the purposes and administer the powers and duties of the association. The association may designate one or more of these organizations to act as a liaison for the association and, to the extent that the association authorizes, to bind the association in agreements or settlements with the receiver of the insolvent insurer or his or her designated representative.
B. The association, in cooperation with other obligated or potentially obligated guaranty associations, or their designated representatives, shall make all reasonable efforts to coordinate and cooperate with the receiver, or his or her designated representative, in the most efficient and uniform manner.

Section 11. Effect of Paid Claims
A. Any person recovering under this Act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured seeking the protection of this Act shall cooperate with the association to the same extent as he would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against an insured for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association do not operate to reduce the liability of the insured to the receiver, liquidator or statutory successor for unpaid assessments.
B. The court having jurisdiction shall grant such claims assigned pursuant to Subsection A of this section and the expenses of the association or similar organization in another state the same priority as the claims and expenses of policyholders. The association may make application to the receivership court for reimbursement of such reasonable claims and expenses, and upon proper showing to the court for reimbursement of such amounts, the court shall order appropriate reimbursement of reasonable claims and expenses to be made.
C. The receiver for the insolvent insurer shall, each time a request for funds is submitted to the association but not less than once every six months within the time set by the receivership court, file with the commissioner or liquidator court of the insolvent insurer a statement of the: 1) covered claims paid; 2) reserves for unpaid claims; 3) claims expense incurred; and 4) the balance of funds then in the possession of the receiver.

Section 12. Non-Duplication of Recovery
Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer that is also a covered claim shall be required to first exhaust his or her rights under such policy. Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery or value thereof received under such insurance policy.

Section 13. Examination of Association; Financial Reports
The association is subject to examination and shall complete audited financial statements. The board of directors shall submit to the commissioner and its member insurers, not later than June 30 each year, a financial report for the preceding year in a form approved by the commissioner.

Section 14. Assessment Authority of Commissioner and Association
A. Making of Assessment
(1) If the commissioner determines that a title insurance company has become insolvent, the association shall promptly estimate the amount of additional money needed to supplement the assets of the impaired title insurance company to pay all covered claims and administrative expenses.
(2) The association shall assess title insurance companies in writing an amount as determined under Part 2 of this subsection. A member insurer does not incur real or contingent liability under this Act until the association provides the member insurer with a written assessment.

B. Amount of Assessment: Proration of Payment
(1) The association shall assess member insurers the amount necessary to pay: 1) the association's obligations under this Act and the expenses of handling covered claims subsequent to an insolvency; and 2) other expenses authorized by this Act.
(2) The assessment of each member insurer must be in the proportion that the net direct written title premiums of that company for the calendar year preceding the assessment bear to the net direct written title premiums of all member insurers for that year.
(3) The total assessment of a member insurer in a year may not exceed an amount equal to two percent of the member's net direct title premium earned for the calendar year preceding the assessment. If the maximum assessment and the association's other assets are insufficient in any one year to make all necessary payments, the money available shall be prorated, and the unpaid portion shall be paid in subsequent years.

C. Notice and Payment
(1) Not later than the 45th day before the date an assessment is due, the association shall notify member insurers.
(2) Not later than the 45th day after the date an assessment is made, the member insurer shall pay the association the amount of the assessment.

D. Exemption for Impaired Title Insurance Company
(1) A member insurer is exempt from assessment during the period beginning on the date the commissioner designates the company as an impaired member insurer and ending on the date the commissioner determines that the company is no longer an impaired member insurer.
Drafting Note: Some states may substitute hazardous financial condition or inability to meet obligations for impaired.

E. Deferment
(1) At the discretion of the commissioner, the association may defer in whole or in part an assessment of a member insurer that would cause the member's financial statement to show amounts of capital or surplus less than the minimum amount required for a certificate of authority in any jurisdiction in which the company is authorized to engage in the business of insurance.
(2) The member insurer shall pay the deferred assessment when payment will not reduce capital or surplus below required minimums. The payment shall be refunded to or credited against future assessments of any member insurer receiving a larger assessment because of the deferment, as elected by that member.
(3) During a period of deferment, the member insurer may not pay a dividend to shareholders or policyholders.

F. Accounting; Reports – Refund
(1) The association shall adopt accounting procedures to show how money received from assessments or partial assessments is used.

(2) The association shall make interim accounting reports as the commissioner requires.

(3) The association shall make a final report to the commissioner showing how money received from assessments or partial assessments has been used, including a statement of any final balance of that money.

G. Use of Assessments

(1) The association may use money from assessments to negotiate and consummate contracts of reinsurance, assumption of liabilities or replacement policies from authorized title insurers to provide for outstanding liabilities of covered claims. Assessments shall be used to pay the associations general expenses and statutory obligations.

H. Failure to Pay

(1) The association shall promptly report to the commissioner a failure of a member insurer to pay an assessment when due.

(2) On failure of a member insurer to pay an assessment when due, the commissioner may take any action as provided in section 9 B of this Act.

(3) A member insurer whose certificate of authority is canceled or surrendered is liable for any unpaid assessments made before the date of the cancellation or surrender.

I. Recovery of Assessment in Rates; Tax Credit

(1) The surcharge on title insurance policies shall be based on historical need and include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurers, less any amounts returned to the member insurers by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurers.

(2) Unless the commissioner determines that all amounts paid as assessments by each member insurer have been recovered under Subsection (a), for any amount not recovered the member insurer is entitled to a credit against its premium tax [include reference to state law providing for premium taxes]. The credit may be taken at a rate of 20% each year for five successive years following the date of assessment and, if the member insurer elects, may be taken over an additional number of years.

Drafting note: State law may not permit this tax offset, as premium taxes are for general fund purposes, and assessments as provided in this Act are for a specific purpose.

(3) An amount of a tax credit allowed by this section that is unclaimed may be shown in the member insurer’s books and records as an admitted asset for all purposes, including an annual statement under [include reference to state law].

Drafting note: State law may not permit this tax offset; therefore, subsections (b) and (c) may be omitted.

Section 15. Immunity and Confidentiality
A. There shall be no liability on the part of, and cause of action of any nature shall arise against, any member insurer, the association or its officers, agents or employees, the board of directors, any individual director, or the commissioner or his or her representative for any action taken by them in the performance of their powers and duties under this Act or for failure to prevent any insolvency.

B. The meetings, activities, recommendations and decisions of the board of directors of the association as required or permitted in this article shall not be open to public inspection, nor considered public documents pursuant to [insert relevant state law]. No representative of a member insurer shall be excluded from any meeting of the board of directors, with the exception of a representative of an insolvent insurer.

Section 16. Stay of Proceedings
A. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to waiver of the association for specific cases involving covered claims, be stayed for six months and such additional time as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action.

B. The liquidator, receiver or statutory successor of an insolvent insurer covered by this Act shall permit access by the board of directors or its authorized representative to such of the insolvent insurer’s records which are necessary for the board in carrying out its functions under this Act with regard to covered claims. In addition, the liquidator, receiver or statutory successor shall provide the board or its representative with copies of those records upon the request by the board and at the expense of the board.

Section 17. Termination; Distribution of Funds
A. The commissioner shall by Order terminate the operation of the association if he or she finds, after hearing, that there is in effect a statutory or voluntary plan that:
   (1) Is a permanent plan that is adequately funded or for which an adequate means of funding is provided.
   (2) Extends, or will extend, to the policyholders of this state protection and benefits with respect to insolvent member insurers not substantially less favorable and effective to the policyholders than the protection provided under this Act.

B. If operation of the association is terminated or if the association has no further known obligations, the association, as soon as possible thereafter, shall distribute the balance of money and assets remaining, after discharge of the functions of the association, with respect to prior insurer insolvencies not covered by another plan, together with expenses, to the member insurers or former member insurers, pro rata upon the basis of the aggregate of such payments made by the respective insurers during the period of five (5) years next.