

Assembly Bill No. 1871

Passed the Assembly August 26, 2010

Chief Clerk of the Assembly

Passed the Senate August 25, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 11580.24 to the Insurance Code, relating to motor vehicle insurance coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1871, Jones. Private passenger motor vehicle insurance coverage: personal vehicle sharing.

Existing law prohibits an insured motor vehicle from being classified as a common carrier, livery, or for-hire vehicle solely for the reason that the named insured is performing volunteer services for a nonprofit charitable organization or governmental agency consisting of providing social service transportation, as defined.

This bill would prohibit a private passenger motor vehicle, as defined, from being classified for insurance purposes as a commercial, for-hire, or permissive use vehicle, or livery solely on the basis of it being used for personal vehicle sharing, as defined, if the annual revenue received by the vehicle's owner that is generated by personal vehicle sharing does not exceed the annual expenses of owning and operating the vehicle, including, but not limited to, depreciation, interest, lease payments, automobile loan payments, insurance, maintenance, parking, and fuel, and the personal vehicle sharing is conducted pursuant to a personal vehicle sharing program.

The bill would define a personal vehicle sharing program as a legal entity qualified to do business in the state that facilitates personal vehicle sharing, as specified. The bill would require a personal vehicle sharing program, among other things, during all times that the vehicle is engaged in personal vehicle sharing, to provide insurance coverage, as specified, and collect, maintain, and make available to the vehicle owner and the vehicle owner's primary automobile liability insurer verifiable electronic records identifying the date, time, initial and final locations of the vehicle, and miles driven when it is being used as part of the personal vehicle sharing program.

The bill would limit the circumstances under which the vehicle owner's automobile liability insurance can be subject to liability,

and require that automobile insurance policies not be canceled, voided, terminated, rescinded, or nonrenewed solely on the basis that the private passenger motor vehicle has been made available for personal vehicle sharing. The bill would authorize the insurer of the vehicle to exclude any and all coverage afforded under the vehicle owner's automobile insurance policy while the vehicle is used by a person other than the owner as part of a personal vehicle sharing program, and would provide the primary and excess insurers of owners, operators, and maintainers of the vehicle with the right to inform the insured that it has no duty to defend or indemnify any person or organization for liability for any loss that occurs during use of the vehicle in a personal vehicle sharing program.

The people of the State of California do enact as follows:

SECTION 1. Section 11580.24 is added to the Insurance Code, to read:

11580.24. (a) No private passenger motor vehicle insured by its owner pursuant to a policy of insurance subject to Section 11580.1 or 11580.2 shall be classified as a commercial vehicle, for-hire vehicle, permissive use vehicle, or livery solely because its owner allows it to be used for personal vehicle sharing as long as all of the following circumstances apply:

(1) The personal vehicle sharing is conducted pursuant to a personal vehicle sharing program.

(2) The annual revenue received by the vehicle's owner which was generated by the personal vehicle sharing of the vehicle does not exceed the annual expenses of owning and operating the vehicle, including depreciation, interest, lease payments, auto loan payments, insurance, maintenance, parking, fuel, cleaning, automobile repair, and costs associated with personal vehicle sharing, including, but not limited to, the installation, operation, and maintenance of computer hardware and software, signage identifying the vehicle as a personal sharing vehicle, and any fees charged by a personal vehicle sharing program.

(3) The owner of the private passenger motor vehicle does not knowingly place the vehicle into commercial use, as defined by Section 675.5, by a personal vehicle sharing user while engaged in personal vehicle sharing.

(b) For purposes of this section the following definitions apply:

(1) “Personal vehicle sharing” means the use of private passenger motor vehicles by persons other than the vehicle’s owner, in connection with a personal vehicle sharing program.

(2) “Personal vehicle sharing program” means a legal entity qualified to do business in the State of California engaged in the business of facilitating the sharing of private passenger vehicles for noncommercial use by individuals within the state.

(3) “Private passenger motor vehicle” means a vehicle that is insured, or is subject to being insured, under a personal automobile liability insurance policy insuring a single individual or individuals residing in the same household, as the named insured, or meets the requirements of Section 16058 of the Vehicle Code, but does not include a vehicle with fewer than four wheels.

(c) A personal vehicle sharing program shall, for each vehicle that it facilitates the use of, do all of the following:

(1) During all times that the vehicle is engaged in personal vehicle sharing, provide insurance coverages for the vehicle and operator of the vehicle that are equal to or greater than the insurance coverages maintained by the vehicle owner and reported to the personal vehicle sharing program. However, the personal vehicle sharing program shall not provide liability coverage less than three times the minimum insurance requirements for private passenger vehicles. Compliance with the terms and conditions of this paragraph shall be deemed to avoid the application of the limitation on damage recoveries set forth in Section 3333.4 of the Civil Code.

(2) Provide the registered owner of the vehicle with a Department of Motor Vehicles Form REG 5085 or other suitable proof of compliance with the insurance requirements of this section and the requirements of the California Financial Responsibility Law in Section 1656.2 of the Vehicle Code, a copy of which shall be maintained in the vehicle by the vehicle’s registered owner during any time when the vehicle is operated by any person other than the vehicle’s owner pursuant to a personal vehicle sharing program.

(3) Collect, maintain, and make available to the vehicle’s owner, the vehicle owner’s primary automobile liability insurer on file with the Department of Motor Vehicles, and to any other government agency as required by law, at the cost of the personal

vehicle sharing program, verifiable electronic records that identify the date, time, initial and final locations of the vehicle, and miles driven when the vehicle is under the control of a person other than the vehicle's owner pursuant to a personal vehicle sharing program.

(4) Provide the vehicle's owner and any person that operates the vehicle pursuant to a personal vehicle sharing program with a disclosure that contains information explaining the terms and conditions contained in this section.

(5) Not knowingly permit the vehicle to be operated for commercial use by a personal vehicle sharing user while engaged in personal vehicle sharing.

(6) Use only private passenger vehicles.

(7) Facilitate the installation, operation, and maintenance of computer hardware and software and signage, necessary for a vehicle to be used in a personal vehicle sharing program, including payment of the cost of damage or theft of that equipment and any damage caused to the vehicle by the installation, operation, and maintenance of that equipment.

(d) Notwithstanding any other provision of law or any provision in a private passenger motor vehicle owner's automobile insurance policy, in the event of a loss or injury that occurs during any time period when the vehicle is under the operation and control of a person, other than the vehicle owner, pursuant to a personal vehicle sharing program, or otherwise under the control of a personal vehicle sharing program, the personal vehicle sharing program shall assume all liability of the owner and shall be considered the owner of the vehicle for all purposes. Nothing in this section limits the liability of the personal vehicle sharing program for its acts or omissions that result in injury to any persons as a result of the use or operation of a personal vehicle sharing program.

(e) A personal vehicle sharing program shall continue to be liable pursuant to subdivision (d) until both of the following occur:

(1) The private passenger motor vehicle is returned to a location designated by the personal vehicle sharing program.

(2) The earliest of one of the following occurs:

(A) The expiration of the time period established for the particular use of the vehicle.

(B) The intent to terminate the personal vehicle sharing use is verifiably communicated to the personal vehicle sharing program.

(C) The vehicle's owner takes possession and control of the vehicle.

(f) The personal vehicle sharing program shall assume liability for a claim in which a dispute exists as to who was in control of the vehicle when the loss occurred giving rise to the claim, and the vehicle's private passenger motor vehicle insurer shall indemnify the personal vehicle sharing program to the extent of its obligation under the applicable insurance policy, if it is determined that the vehicle's owner was in control of the vehicle at the time of the loss.

(g) In the event that the owner of the vehicle is named as a defendant in a civil action, for a loss or injury that occurs during any time period when the vehicle is under the operation and control of a person, other than the vehicle's owner, pursuant to a personal vehicle sharing program, or otherwise under the control of a personal vehicle sharing program, the personal vehicle sharing program shall have the duty to defend and indemnify the vehicle's owner, subject to the provisions of subdivisions (d) and (f).

(h) Notwithstanding any other provision of law or any provision in a vehicle owner's automobile liability insurance policy, while a private passenger motor vehicle is used by a person other than its owner pursuant to personal vehicle sharing facilitated through a personal vehicle sharing program, all of the following shall apply:

(1) The insurer of that vehicle on file with the Department of Motor Vehicles may exclude any and all coverage afforded pursuant to its policy.

(2) The primary and excess insurer or insurers of the owners, operators, and maintainers of the private passenger motor vehicle used in a personal vehicle sharing program shall have the right to notify an insured that it has no duty to defend or indemnify any person or organization for liability for any loss that occurs during use of the vehicle in a personal vehicle sharing program.

(i) No policy of insurance that is subject to Section 11580.1 or 11580.2 shall be canceled, voided, terminated, rescinded, or nonrenewed solely on the basis that the private passenger motor vehicle has been made available for personal vehicle sharing pursuant to a personal vehicle sharing program that is in compliance with the provisions of this section.

Approved _____, 2010

Governor