

# Independent Insurance Agents and Brokers of Arizona, Inc.

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## 2015 BULLETINS

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## Bulletin # 11

DATE: April 2015

TO: IIB of Arizona Members  
IIB of Arizona Associate Members

FROM: Lanny L. Hair, CIC, RPLU, ARM, AAI  
Executive Vice President

RE: Legislative Briefing on House Bill 2135 Transportation Network Companies



The Arizona State Legislature adjourned Sine Die on April 3, 2015 after only 81 days of action, bringing an end to the shortest legislative session in nearly 50 years. While brief, members of the 52<sup>nd</sup> Legislature had plenty of work to keep them busy including several bills that impacted the insurance industry.

The IIBAZ will release a detailed 2015 Legislative Wrap-Up this summer. However, we wanted to apprise our members of one bill in particular that is garnering a great deal of attention within our industry:

### **H2135: Transportation Network Companies**

Transportation Network Companies ("TNCs") such as Uber, Lyft, and several other ridesharing platforms all refer to a system similar to that of a taxi service. However, it is a system that the TNCs argue is NOT a taxi company; rather, it is a software system that connects individuals who want to utilize their personal vehicle to provide rides to private individuals. Most TNCs just provide the software system to connect the drivers and riders - there is not just one "standard" model.

Unlike a taxi, TNCs do not provide drivers with a vehicle to be used for commercial purposes; the contract is instead between the driver and the passenger, where the driver provides for all costs associated with the vehicle.

There are several TNCs available to passengers, but the most dominant one is Uber. In less than five years' time, Uber has grown from an unknown entity to a multibillion dollar company, which has enabled them to invest an enormous amount of time and money for the retention of the lobbying services needed to obtain favorable TNC regulations.

Across the board, taxis argue that many of the new TNC laws have resulted in an unbalanced and anti-competitive driver-for-hire market. Unlike TNCs, taxis have a litany of rules and regulations to comply with, ranging from mandated insurance coverages to vehicle inspections and background checks. It is important to note, however, that while TNCs do indeed lack any regulatory framework in most jurisdictions, they are pursuing similar regulations for themselves nationwide. With regard to the insurance requirements on TNCs in Arizona, the Legislature has opted to

adopt the model legislation that we are seeing implemented in several other states. It is important to note, however, that while the model TNC language is being advanced in multiple states there are MANY differing ways TNCs are actually being legislated in other states and cities. Thanks to lengthy and oftentimes contentious debate, each state has amended the model legislation to reflect their stakeholder agreements, which has resulted in a “patchwork” of laws state-by-state.

In Arizona, the specific issue that perpetuated the debate between insurance and TNCs throughout the Session was “which insurance company is going to provide coverage in the event of an accident?”

The debate focused primarily on both the Legislature’s definition of a “transportation network trip” and which coverage applies during the time that a TNC driver is logged onto the TNC application but has not yet accepted a ride.

Under HB 2135, the Legislature, TNCs, regulators, insurance companies, and the taxi/livery industry consider the following coverage periods while TNC drivers are engaged in a TNC trip:

- Period Zero (logged off): Driver is not logged onto the TNC application.
- Period One: Driver is logged onto the TNC application, but has not accepted a trip.
- Period Two: Driver has accepted a trip and is in route to pick up the TNC passenger.
- Period Three: TNC passenger is in vehicle and is being transported to their destination. Period three ends when the TNC driver ends the trip by indicating through the TNC platform that the passenger has been dropped off.

Please note that there is a single-page coverage explanation attached to this bulletin that explains which coverages apply during each of the aforementioned periods. This document also explains how the Legislature determined when the TNC’s insurance policy should provide coverage versus when the driver’s personal auto policy should provide coverage.

As many private passenger auto policies exclude coverage when vehicles are used for “livery service,” it is necessary for the TNCs to provide coverage while there are passengers in the vehicle. Even in the event of an accident where there are no passengers in the TNC vehicle, if the vehicle was being used for “livery services” the personal auto policy typically does not provide coverage.

The number of insurance companies willing to issue a “rideshare” endorsement has been increasing monthly. Many insurance companies have already indicated their willingness to issue an optional endorsement to the personal auto policy to modify the livery exclusion to provide coverage while a vehicle is being utilized for TNC services but NOT while the vehicle is occupied by a passenger (Period One).

In some instances the TNCs are negotiating commercial taxi policies that will provide coverage for their drivers’ vehicles in their “master umbrella policy,” but most negotiations end with the TNC only willing to provide coverage when the driver of the vehicle is “logged on.” TNC insurance companies have primary coverage during Periods Two and Three, or when there is a passenger in the vehicle, or once the driver has accepted a trip and is in route to pick up the passenger.

Keep in mind, no two TNCs operate under the same contract, so it is up to the vehicle driver to understand when the TNC master umbrella policy does and does not cover their TNC activity. (EXAMPLE – Does the TNC policy cover liability only or does it also include physical damage?) Under HB 2135, the TNC must provide this specific coverage information to all drivers before

allowing them to operate as a TNC driver.

Also included with this briefing is the Arizona Department of Insurance Regulatory Bulletin (**2015-04 "INSURING TRANSPORTATION NETWORK COMPANY DRIVERS"**), which explains the regulatory changes that are now needed in the personal auto non-cancellation and non-renewal rules. The change is a procedural step that must occur in order to move forward on offering coverage plans that seek to combine a commercial risk policy (taxi-type service) with a personal auto policy.

This statutory change was necessary because some stakeholders contended that the mere usage of a vehicle for TNC services could be used as adequate cause for the insurer to cancel the driver's personal auto policy. For this reason, one of the provisions within HB 2135 clarifies that an insurer cannot cancel a personal auto policy if the vehicle is utilized as a TNC vehicle and coverage for such activity is provided by another policy.

Prior to this legislation, the required limits of liability for taxis and other livery vehicles were the same if the vehicle did or did not house a passenger. The legislation lowers those limits for all driver-for-hire services when there are no passengers in the vehicle and raises limits when the TNC is in route or when there is a passenger in the vehicle. (PLEASE SEE THE ONE PAGE COVERAGE EXPLANATION FOR REQUIRED LIMITS.)

Once an agreement was reached by all stakeholders on the bill, the technical aspect of the language became a time-consuming difficulty that resulted in daily changes all the way up until the last day of Session.

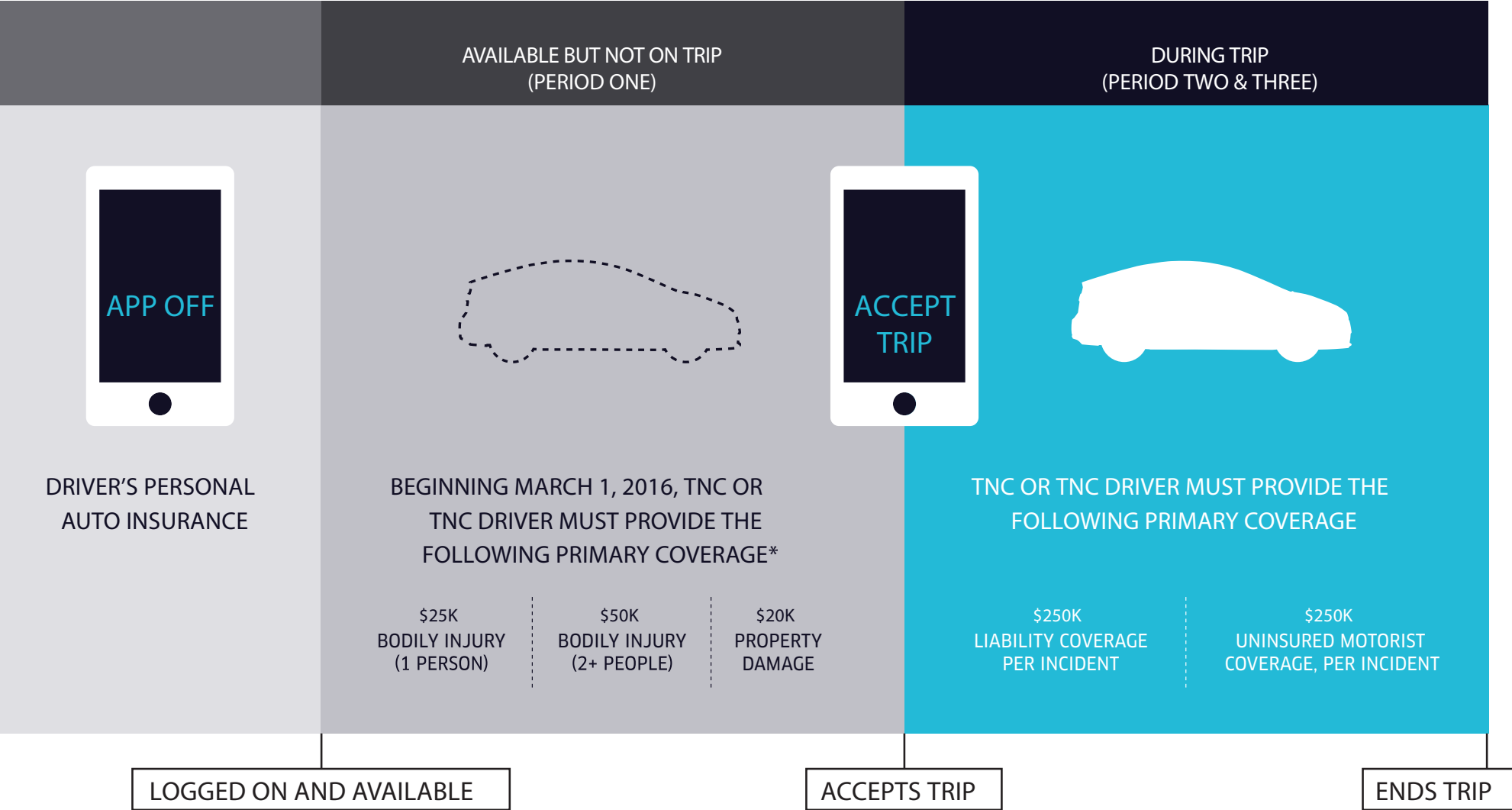
As passed by the legislature on Sine Die, the majority of HB 2135 becomes effective on July 3, 2015, with the new insurance provisions going into effect on March 1, 2016. From July 3, 2015 to February 29, 2016, an insurer may not cancel or non-renew a personal auto policy that has been in effect for 60 days or more solely because the named insured uses a vehicle for TNC purposes. Effective March 1, 2016, a personal auto policy that has been in effect for 60 days or more may be subject to cancellation or non-renewal if the named insured does not maintain coverage for TNC use.

The IIABAZ will be issuing another Bulletin in the near future to help members explain to their current and new TNC driver clients their options under this new legislation.

Enclosed you will find:

- [1] One-page explanation of when coverages are provided by the personal auto policy and when coverages are provided by the TNC Ride Share Master Policy. This coverage explanation was provided by Veridus, LLC.
- [2] Arizona Department of Insurance Regulatory Bulletin 2015-4 – "INSURING TRANSPORTATION NETWORK COMPANY DRIVERS"

# TNC Insurance Coverage Explained



\*BEFORE MARCH 1, 2016, TNC IS REQUIRED TO PROVIDE COVERAGE ON THE ABOVE AMOUNTS IN PERIOD ONE AS A CONTINGENT LIABILITY POLICY TO THE TNC DRIVER'S PRIMARY PERSONAL INSURANCE POLICY.



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**Douglas A. Ducey, Governor**  
**Germaine L. Marks, Director**

REGULATORY BULLETIN 2015-04<sup>1</sup>

**To:** Insurance Rating Organizations Insurance Industry Representatives; Insurance Trade Associations; Property & Casualty Insurers; and, Other Interested Parties.

**From:** Germaine L. Marks *GLM*  
Director

**Date:** April 27, 2015

**Re:** **Insuring Transportation Network Company Drivers**

The Arizona Legislature passed HB 2135 (Laws 2015, Chapter 235) that establishes insurance and regulatory requirements for transportation network companies and their drivers. **The legislation is effective from and after July 3, 2015.** The purpose of this Regulatory Bulletin is to provide guidance to insurers that wish to file products with the Arizona Department of Insurance (“ADOI”) to provide coverage for individuals operating a transportation network company vehicle.

**Background**

A “Transportation Network Company” (“TNC”) is a technology-based business that utilizes a digital platform (like a mobile phone application) to match TNC drivers to potential passengers. For a fee paid by a passenger through the application, the transportation network driver transports the connected passenger with either the driver’s personal automobile or a TNC-owned vehicle. Pursuant to ARS § 20-1631, a driver under a personal motor vehicle insurance policy may be subject to cancellation of the policy if the covered vehicle is used for commercial purposes. A TNC driver operating a vehicle insured by a personal motor vehicle policy for TNC purposes (commercial) might be in breach of the terms of the insured’s personal motor vehicle policy if the driver does not carry coverage for the commercial purpose (TNC).

Current law does not permit the ADOI to approve a motor vehicle policy or any motor vehicle policy endorsement, amendment, or rider that has noncompliant or conflicting coverages. For example, ADOI could not approve a personal motor vehicle insurance policy filing that also offers coverage for commercial risks. Therefore, if an insurer filed a personal motor vehicle insurance

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<sup>1</sup> This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the Statement.

policy or endorsement, amendment, or rider to the policy that covers TNC use the ADOI could not approve it.

### **HB 2135's changes to Arizona insurance law**

Among its numerous provisions, HB 2135 amends ARS § 20-1631 to permit insurers to offer coverage for TNC services under a personal motor vehicle insurance policy. Specifically, the legislation creates a commercial use exemption for TNC purposes under ARS § 20-1631(D)(6). The exemption states that an insurer may not cancel or nonrenew a personal motor vehicle insurance policy that has been in effect for 60 or more days if the named insured has either:

1. Procured a TNC endorsement to a private passenger policy; or
2. TNC coverage is expressly provided for by a motor vehicle liability insurance policy issued by another insurer.

**From and after July 3, 2015 and on or before February 29, 2016**, an insurer may not cancel or nonrenew a personal motor vehicle insurance policy that has been in effect for 60 or more days, solely because the named insured uses the vehicle for TNC purposes. **On and after March 1, 2016**, a personal motor vehicle insurance policy that has been in effect for 60 or more days may be subject to cancellation or nonrenewal if the named insured does not maintain coverage for TNC use.

Further, HB 2135 adds ARS § 20-1631(N) to permit an insurer to issue an endorsement to a private passenger policy that expressly provides coverage for TNC services. The bill specifies that the coverage by endorsement may not be treated as “basic coverage” [defined by ARS § 20-1631(K)] and termination of the endorsement is not considered a modification of the basic coverage. An insurer that terminates a TNC endorsement issued to an insured must provide notice to the named insured at least 45 days prior to the termination and include an explanation that continued TNC services without appropriate coverage may subject the insured to cancellation or nonrenewal of the insured’s private passenger motor vehicle insurance policy.

Finally, the legislation includes language [ARS § 20-1631(O)] that an insurer is not obligated to offer, provide or issue coverage for “any liability incurred while a TNC driver is logged in to a TNC’s digital network or software application to be a driver or is providing TNC services.”

### **Insurer Guidelines for Filing TNC Products**

ADOI anticipates that private passenger auto insurers, and Insurance Services Office (“ISO”), will file amendments to Arizona motor vehicle insurance policies or the Arizona Amendatory Endorsement to address the cancellation law changes. Insurers may also file an endorsement to an Arizona motor vehicle insurance policy that expressly provides coverage for TNC services. In order to expedite the review of TNC-related filings, insurers are urged to:

- Carefully review and follow the new Submission Requirements for Private Passenger Auto (Sub-TOI 19.0001) Form filings in SERFF.
- Include in the filing **only** those forms that are being amended to address changes related to TNC exposures and those which HB 2135 necessitates.
- Make as few TNC-related filings as possible by including as many forms in a single filing as possible. These filings include, but are not limited to, the Arizona Amendatory Endorsement or Policy Application, Declaration Page, and, if applicable, the TNC Endorsement.

- Ensure that the TNC endorsement or policy form filings include an effective date that is either on July 3, 2015, or a specified date after July 3, 2015.
- Ensure that the changes to cancellation provisions in forms include an effective date of March 1, 2016.
- Ensure that filings comply with all applicable Arizona insurance laws and regulations and HB 2135 (Laws 2015, Chapter 235).

Please direct any questions regarding form and rate filings to Rosemary Cutter, Senior Insurance Analyst (P/C Section, Rate & Form Division), [rcutter@azinsurance.gov](mailto:rcutter@azinsurance.gov) or (602) 364-3453 x3459.