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SENATE BILL 132

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

John M. Sapien

AN ACT

ENACTING THE PRIVATE VEHICLE RENTAL ACT; PROVIDING REQUIREMENTS FOR FACILITATING THE RENTAL OF PRIVATELY OWNED MOTOR VEHICLES AND FOR INSURING THOSE VEHICLES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Private Vehicle Rental Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Private Vehicle Rental Act:

A. "authorized insurer" means an insurer holding a valid and subsisting certificate of authority, issued by the superintendent of insurance, to transact insurance in this state;

B. "eligible surplus lines insurer" means a qualified nonadmitted insurer with which a surplus lines broker

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1 may place surplus lines insurance pursuant to Section 59A-14-4
2 NMSA 1978;

3 C. "insurance" means a contract whereby one
4 undertakes to pay or indemnify another as to loss from certain
5 specified contingencies or perils, or to pay or grant a
6 specified amount or determinable benefit in connection with
7 ascertainable risk contingencies, or to act as surety;

8 D. "insurer" means a person engaged as a principal
9 and as indemnitor, surety or contractor that is in the business
10 of entering into contracts of insurance;

11 E. "motor vehicle" means a self-propelled vehicle
12 subject to registration pursuant to Section 66-3-1 NMSA 1978
13 for use on the public streets and highways that has at least
14 four wheels and a gross vehicle weight of ten thousand pounds
15 or less, but does not include a vehicle used in commerce to
16 transport passengers or property;

17 F. "owner" means the registered owner of a private
18 rental vehicle;

19 G. "person" means an individual, corporation,
20 business enterprise or other legal entity;

21 H. "private rental vehicle" means a motor vehicle
22 that is owned by and registered to an individual and is
23 available for rent through a provider;

24 I. "provider" means a person that facilitates the
25 rental of a private rental vehicle owned by another person

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1 through the ownership and operation of a digital network or
2 other system;

3 J. "rental period" means the time period that
4 begins when an owner transfers control of the owner's private
5 rental vehicle to a provider and ends when the owner regains
6 control of the owner's private rental vehicle; and

7 K. "renter" means a person who obtains the use of a
8 private rental vehicle.

9 SECTION 3. [NEW MATERIAL] FINANCIAL RESPONSIBILITY OF
10 PRIVATE VEHICLE RENTAL PROVIDERS.--

11 A. A provider shall maintain during the rental
12 period for each private rental vehicle for which the provider
13 facilitates a rental:

14 (1) liability insurance coverage at least
15 equal to that required by the Mandatory Financial
16 Responsibility Act;

17 (2) uninsured and underinsured motorist
18 coverage at least equal to that required by Section 66-5-301
19 NMSA 1978; and

20 (3) physical damage coverage, including
21 collision and other than collision protection; provided that a
22 provider may contractually agree to indemnify an owner for
23 damage to the private rental vehicle arising during the rental
24 period.

25 B. A provider licensed as a rental car agent under
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1 the Rental Car Insurance Limited Producer License Act satisfies
2 the requirements of this section if the provider sells rental
3 car insurance on the private rental vehicle that provides
4 coverage equivalent to that required pursuant to Subsection A
5 of this section.

6 C. A provider shall provide proof of compliance
7 with this section, in a form approved by the secretary of
8 taxation and revenue, to the owner prior to the rental period
9 and maintain that proof of compliance in the private rental
10 vehicle throughout the rental period.

11 D. Insurance required by this section shall be
12 obtained from an authorized insurer or eligible surplus lines
13 insurer.

14 E. Insurance satisfying the requirements of this
15 section satisfies the insurance requirements of the Mandatory
16 Financial Responsibility Act during the rental period, except
17 that the insurance shall not be used in connection with the
18 registration of a private rental vehicle.

19 SECTION 4. [NEW MATERIAL] LIABILITY PROVISIONS.--

20 A. In addition to the insurance coverage required
21 pursuant to Section 3 of the Private Vehicle Rental Act, a
22 provider shall maintain insurance that covers liability and
23 physical damage during the rental period, unless the private
24 rental vehicle is covered by rental car insurance.

25 B. A provider is deemed the owner for purposes of

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1 liability or loss arising during the rental period for a
2 private rental vehicle, unless the private rental vehicle is
3 covered by rental car insurance. The provider is liable during
4 the rental period regardless of a lapse in the insurance under
5 which the provider is insured or whether that insurance covers
6 the liability or loss.

7 C. An insurer providing insurance as described in
8 this section is liable for a claim when a dispute exists as to
9 who was in control of the private rental vehicle at the time of
10 the incident giving rise to the claim. The owner's motor
11 vehicle insurer shall indemnify the provider's insurer to the
12 extent of its obligation under the applicable insurance policy
13 if it is determined that the private rental vehicle was under
14 the control of the owner at the time of the incident giving
15 rise to the claim. The provider shall notify the owner's
16 insurer of a dispute within ten business days of becoming aware
17 of the dispute.

18 D. An owner is not liable or subject to civil
19 action, and the provider's insurer shall indemnify and hold the
20 owner and the owner's insurer harmless, for a loss arising
21 during the rental period.

22 SECTION 5. [NEW MATERIAL] INSURANCE COVERAGE

23 DISCLOSURES.--A provider shall disclose in writing to the owner
24 and renter prior to a private vehicle rental that:

25 A. the owner's motor vehicle insurance on the

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1 private rental vehicle is not required to provide coverage, and
2 the owner's insurer is not required to defend or indemnify any
3 person or organization, for liability or loss that arises
4 during the rental period;

5 B. the provider maintains insurance coverage for
6 the rental period, including a list of the types of coverage
7 and the limits for each type of coverage; and

8 C. the provider's insurance policy is not required
9 to provide coverage outside the rental period.

10 SECTION 6. [NEW MATERIAL] SIGNAGE AND EQUIPMENT--
11 RESPONSIBILITY.--

12 A. A provider shall install, operate and maintain
13 at no cost to the owner any signage or computer hardware or
14 software necessary for a private rental vehicle. The provider
15 shall indemnify and hold harmless the owner for damage to or
16 theft of signage or computer hardware or software installed in
17 the private rental vehicle and for damage to the private rental
18 vehicle as a result of installation, operation, maintenance or
19 theft.

20 B. A provider shall, to the extent records are
21 collected, maintain for at least four years following a rental
22 period and make available at no cost to a state agency, the
23 owner, the owner's insurance provider, the renter or the
24 renter's insurance provider:

25 (1) records of each rental period, including:

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1 (a) the time the provider obtained the
2 private rental vehicle from or returned its control to the
3 owner;

4 (b) the initial, final and continuous
5 location of the private rental vehicle; and

6 (c) miles driven; and

7 (2) information relevant to a claim or
8 potential claim regarding damages or injuries arising during
9 the rental period.

10 SECTION 7. [NEW MATERIAL] STANDING TO OBTAIN INSURANCE.--

11 A provider is deemed to have an actual, lawful and substantial
12 economic interest in the safety and preservation of a private
13 rental vehicle available for rent through the provider for the
14 purpose of obtaining insurance.

15 SECTION 8. [NEW MATERIAL] INSURANCE FOR PRIVATE VEHICLE
16 RENTAL PROGRAMS.--

17 A. An insurer or eligible surplus lines insurer may
18 issue an insurance policy that covers the:

19 (1) provider, its agents, employees,
20 directors, officers and assigns; and

21 (2) renter, authorized drivers and occupants
22 of a private rental vehicle.

23 B. A policy issued pursuant to this section shall:

24 (1) provide first party coverage, liability,
25 property, comprehensive, collision and uninsured and

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1 underinsured motorist coverage for the private rental vehicle
2 and the vehicle's owner, renter, authorized operator and
3 occupant for claims arising during the rental period;

4 (2) be primary with respect to other insurance
5 available to the renter, authorized operator or occupant of the
6 private rental vehicle;

7 (3) identify the provider as the named
8 insured;

9 (4) include coverage for the rental period
10 without requiring that the provider give the insurer prior
11 notice of the vehicle identification number or other
12 identifying information for the covered private rental vehicle;

13 (5) provide, at a minimum, the levels of
14 coverage required for a motor vehicle insurance policy issued
15 in compliance with the Mandatory Financial Responsibility Act;
16 and

17 (6) comply with the provisions of the
18 Mandatory Financial Responsibility Act and the Private Vehicle
19 Rental Act.

20 SECTION 9. [NEW MATERIAL] DISCRIMINATION BASED ON USE OF
21 A MOTOR VEHICLE FOR PRIVATE VEHICLE RENTAL.--

22 A. An insurer shall not deny, cancel, fail to renew
23 or raise the rate of a motor vehicle insurance policy solely
24 because a motor vehicle is available for rent under the Private
25 Vehicle Rental Act.

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B. An insurer may deny, cancel or refuse to renew a motor vehicle insurance policy for a motor vehicle available for rent pursuant to the Private Vehicle Rental Act if the cost or provision of the motor vehicle insurance coverage is based on usage information obtained through monitoring acceleration, braking, miles driven or other indicia of driving behavior. If the insurer denies, cancels or refuses to renew the motor vehicle insurance policy, the insurer shall immediately offer the insured or applicant a motor vehicle insurance policy with equivalent coverage that is not based on usage information obtained through monitoring acceleration, braking, miles driven or other indicia of driving behavior.

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.