

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

**SIXTEENTH AMENDMENT TO 11 NYCRR 27  
(INSURANCE REGULATION 41)  
EXCESS LINE PLACEMENTS GOVERNING STANDARDS**

**ELEVENTH AMENDMENT TO 11 NYCRR 60-1  
(INSURANCE REGULATION 35-A)  
MINIMUM PROVISIONS FOR AUTO LIABILITY INSURANCE POLICIES**

**TENTH AMENDMENT TO 11 NYCRR 60-2  
(INSURANCE REGULATION 35-D)  
SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS INSURANCE**

**NEW 11 NYCRR 60-4  
(INSURANCE REGULATION 35-F)  
PEER-TO-PEER CAR SHARING PROGRAMS: MINIMUM PROVISIONS FOR GROUP POLICIES  
AND OTHER REQUIREMENTS**

**FOURTH AMENDMENT TO 11 NYCRR 65-1  
(INSURANCE REGULATION 68-A)  
REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR VEHICLE INSURANCE  
REPARATIONS ACT--PRESCRIBED POLICY ENDORSEMENTS**

**TENTH AMENDMENT TO 11 NYCRR 65-3  
(INSURANCE REGULATION 68-C)  
REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR VEHICLE INSURANCE  
REPARATIONS ACT--CLAIMS FOR PERSONAL INJURY PROTECTION BENEFITS**

**EIGHTH AMENDMENT TO 11 NYCRR 65-4  
(INSURANCE REGULATION 68-D)  
REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR VEHICLE INSURANCE  
REPARATIONS ACT—ARBITRATION**

**SEVENTH AMENDMENT TO 11 NYCRR 169  
(INSURANCE REGULATION 100)  
NONCOMMERCIAL MOTOR VEHICLE INSURANCE MERIT RATING PLANS**

**NINETEENTH AMENDMENT TO 11 NYCRR 216  
(INSURANCE REGULATION 64)  
UNFAIR CLAIMS SETTLEMENT PRACTICES AND CLAIM COST CONTROL MEASURES**

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301, 2105, 2118, 2305, 2307, 2334, 2335, 2601, 3420, 3458, 3459, 3460, 5102, 5103, 5105, and 5106 and Articles 23 and 51 of the Insurance Law, Article 40 of the General Business Law, Chapter 795 of the Laws of 2021, and Chapter 129 of the Laws of 2022, do hereby promulgate the

following amendments to Parts 27, 60-1, 60-2, 65-1, 65-3, 65-4, 169 and 216 of, and the addition of new sub-Part 60-4 to, Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon the publication of the Notice of Adoption in the State Register, to read as follows:

**(Matter in brackets is deleted; new matter is underlined.)**

**A new paragraph (3) is added to section 27.5(d) as follows:**

(3) As set forth in Subpart 60-4 (Insurance Regulation 35-F) of this Title: a consolidated part A and, when required, a consolidated part C of the required affidavit may be completed and executed by the excess line broker or producing broker, on behalf of the shared vehicle owners and shared vehicle drivers of the peer-to-peer car sharing program administrator, when a group policy has been obtained by an administrator as the group policyholder pursuant to section 3458 of the Insurance Law, with respect to coverages provided without option by the group policyholder.

**Section 27.10(a) is amended as follows:**

(a) A policy issued by an unauthorized insurer pursuant to this Part is exempt from the provisions of Part 71 (Regulation 107) and Part 73 (Regulation 121) of this Title, except for a group policy issued pursuant to section 3455 or 3458 of the Insurance Law.

**Section 60-1.2(b) and (i)(3) are amended and a new subdivision (j) is added as follows:**

(b) liability assumed by the insured under any contract or agreement; [and]

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(i) one of the following:

(1) while the motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip;

(2) while the motor vehicle is used by a transportation network company driver while the driver provides a transportation network company prearranged trip; or

(3) while the motor vehicle is used by a transportation network company driver who is logged onto the transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip; and

(j) while the motor vehicle is being used through a peer-to-peer car sharing program during the peer-to-peer car sharing period.

**Section 60-1.5(e)(5) is amended as follows:**

(5) *Rental vehicle* means a vehicle of the type described in section 3440(a) of the Insurance Law as a private passenger motor vehicle, if: (i) not used for transporting persons or property for hire other than when the

vehicle is used as a transportation network company vehicle pursuant to article 44-B of the Vehicle and Traffic Law; and (ii) owned by a person engaged in the business of renting or leasing vehicles rented or leased without a driver to persons other than the owner and is registered in the name of such owner. Rental vehicle shall not include a motor vehicle used through a peer-to-peer car sharing program.

**With respect to Section 60-1.5(h), Rental Vehicle Coverage Endorsement, (c)(2) and (e) of Definitions are amended as follows:**

(c) “Private passenger motor vehicle” means:

(1) a motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by an individual or by [husband and wife] an individual and spouse, and is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or

(2) a motor vehicle with a pick-up body, a delivery sedan, panel truck or van, owned by an individual or by [husband or wife] an individual and spouse who are residents of the same household, or by a family farm co-partnership or a family farm corporation, and not customarily used in the occupation, profession or business of the insured other than farming or ranching, whether or not used in the course of driving to or from work.

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(e) *Rental vehicle* means a vehicle of the type described in subdivision (c) of this section, if: (1) not used for transporting persons or property for hire (except if the insured does so solely as a transportation network company driver pursuant to article 44-B of the Vehicle and Traffic Law); and (2) owned by a person engaged in the business of renting or leasing vehicles rented or leased without a driver to persons other than the owner and is registered in the name of such owner. Rental vehicle shall not include a motor vehicle used through a peer-to-peer car sharing program.

**A new section 60-1.9 is added as follows:**

**§ 60-1.9 Peer-to-peer car sharing vehicle.**

(a) An owner’s policy of liability insurance shall not be required to provide excess coverage over a group policy issued pursuant to article 40 of the General Business Law until February 1, 2024, where the insurer that issued the owner’s policy of liability insurance has filed with the department a coverage exclusion under section 60-1.2(j) of this Subpart.

(b) Every insurer writing an owner’s policy of liability insurance shall provide an annual written notice to the named insured under such a policy advising the named insured whether, or to what extent, it provides coverage under the policy while the vehicle is being used as a shared vehicle pursuant to General Business Law article 40. The notice shall also state whether the insurer makes such coverage available on an optional basis.

**Section 60-2.0(a)(1) is amended as follows:**

(1) Except as provided in paragraph (2) of this subdivision, this Subpart implements:

(i) Insurance Law section 3420(f)(2), which requires a motor vehicle liability insurer to provide, at the option of the insured, supplementary uninsured/underinsured motorists (SUM) insurance coverage to all policyholders in New York State; [and]

(ii) Vehicle and Traffic Law section 1693(3), which requires minimum SUM coverage on all policies satisfying the financial responsibility requirements of that subsection[.]; and

(iii) General Business Law section 901(2)(c), which requires minimum SUM coverage on a group policy satisfying the financial requirements of that subdivision.

**Section 60-2.0(d)(2) and (3) are amended and a new paragraph (4) is added as follows:**

(2) *commercial risk insurance* means insurance against losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, other than a motor vehicle predominantly used for non-business purposes when a natural person is the named insured under the policy, provided, however, that the use or operation of the motor vehicle by a transportation network company driver in accordance with Vehicle and Traffic Law article 44-B or by a shared vehicle driver in accordance with General Business Law article 40 shall not be included in determining whether the motor vehicle is being used predominantly for non-business purposes; [and]

(3) *first named insured* means the individual specified first on the declarations page of a motor vehicle liability insurance policy, or the individual's spouse, if the spouse is a resident of the same household and specified on the declarations page[.]; and

(4) the terms *group policy*, *peer-to-peer car sharing period*, *peer-to-peer car sharing program*, *peer-to-peer car sharing program administrator*, and *shared vehicle driver* shall have the meanings set forth in General Business Law section 900.

**Section 60-2.1(g) is amended as follows:**

(g) Notwithstanding subdivisions (e) and (f) of this section:

(1) an insurer providing coverage in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B:

(i) shall provide SUM coverage, in the amount of \$1,250,000 because of bodily injury to or death of one or more persons in any one accident, while the TNC driver is engaged in a TNC prearranged trip if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(3); and

(ii) if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(2), shall:

(a) offer SUM coverage as provided in subdivision (e) of this section, under an insurance policy other than an insurance policy described in subparagraph (ii) of this paragraph, while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip; or

(b) provide SUM coverage as provided in subdivision (f) of this section, under an insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip; [and]

(2) an insurer providing coverage insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance and use of an altered motor vehicle, commonly referred to as a stretch limousine, having a seating capacity of eight or more passengers used in the business of carrying or transporting passengers for hire, shall provide SUM coverage in the amount of \$1,500,000 because of bodily injury to or death of one or more persons in any one accident for any policy issued, renewed, altered, or modified on or after January 1, 2020. For the purposes of this paragraph, an altered motor vehicle or stretch limousine shall mean a vehicle altered so as to have an extended chassis, lengthened wheel base, or elongated seating area and in the case of a truck, has been modified to transport passengers in addition to having been altered; and

(3) an insurer providing coverage in satisfaction of the financial responsibility requirements of General Business Law article 40 shall provide SUM coverage in the amount of \$1,250,000 because of bodily injury to or death of one or more persons in any one accident, while the motor vehicle is used or operated under a peer-to-peer car sharing program during the peer-to-peer car sharing period.

**A new section 60-2.2(a)(3) is added as follows:**

(3)(i) Every insurer writing a group policy in satisfaction of the financial responsibility requirements of General Business Law article 40 shall, with respect to all new and renewal policies, provide a written notice in concise language that shall include:

(a) a statement that SUM coverage is being provided to the shared vehicle driver during the peer-to-peer car sharing period;

(b) the provisions set forth in section 60-2.1(a), (b) and (c) of this Subpart and an explanation of the difference between UM coverage and SUM coverage; and

(c) the examples about SUM coverage set forth in subdivision (b) of this section.

(ii) If an authorized insurer issues the group policy, the insurer shall provide the notice to the peer-to-peer car sharing program administrator. If the group policy is issued on an excess line basis, the excess line broker shall provide the notice at time of placement to the peer-to-peer car sharing program administrator.

**With respect to Section 60-2.3(f), Insuring Agreements, III. SUM Coverage Period and Territory, provisions of Exclusions are amended, footnotes 2, 7 and 8 are amended, footnotes 4-8 are renumbered as footnotes 5-9, and a new footnote 4 is added as follows:**

## **EXCLUSIONS**

This SUM coverage does not apply:

1. bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, however this provision shall be subject to Condition 9;

2. bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of this policy;

3. non-economic loss resulting from bodily injury to an insured arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law; [or]

4. bodily injury to an insured incurred while the insured motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip pursuant to article 44-B of the Vehicle and Traffic Law;<sup>3</sup> or

5. bodily injury to an insured incurred while the insured motor vehicle is used through a peer-to-peer car sharing program during the peer-to-peer car sharing period pursuant to article 40 of the General Business Law.<sup>4</sup>

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<sup>2</sup> An insurer, with respect to a policy issued in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law or a group policy pursuant to article 40 of the General Business Law, shall substitute one of the following provisions for section III as follows: If the Company provides liability coverage pursuant to section 1693(3) of the Vehicle and Traffic Law: III. SUM Coverage Period and Territory: This SUM coverage applies only to accidents that occur: 1. during the policy period shown in the Declarations while, pursuant to article 44-B of the Vehicle and Traffic Law, a transportation network company driver provides a transportation network company prearranged trip; and 2. in the United States, its territories or possessions, or Canada; or If the Company provides liability coverage pursuant to section 1693(2) of the Vehicle and Traffic Law: III. SUM Coverage Period and Territory: This SUM coverage applies only to accidents that occur: 1. during the policy period shown in the Declarations while, pursuant to article 44-B of the Vehicle and Traffic Law, the motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not providing a transportation network company prearranged trip; and 2. in the United States, its territories or possessions, or Canada; [or] If the Company provides liability coverage pursuant to section 1693(2) and (3) of the Vehicle and Traffic Law: III. SUM Coverage Period and Territory: This SUM coverage applies only to accidents that occur: 1. during the policy period shown in the Declarations while, pursuant to article 44-B of the Vehicle and Traffic Law, the motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not providing a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip; and 2. in the United States, its territories or possessions, or Canada; or If the Company provides liability coverage under a group policy pursuant to article 40 of the General Business Law: III. SUM Coverage Period and Territory: This SUM coverage applies only to accidents that occur: 1. during the policy period shown in the Declarations while, pursuant to article 40 of the General Business Law, the motor vehicle is being used

through a peer-to-peer car sharing program during the peer-to-peer car sharing period; and 2. in the United States, its territories or possessions, or Canada.

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<sup>4</sup>This exclusion may be deleted by the Company, except that a Company that issues a group policy pursuant to article 40 of the General Business Law shall delete this exclusion.

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<sup>[7] 8</sup> If the policy is a group policy issued in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then the Company may substitute the following for paragraph (a): (a) a policy covering a motor vehicle occupied by the injured person at the time of the accident, provided that if other insurance provides for SUM coverage in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then coverage under that policy shall be a higher priority policy over this policy. If the policy is a group policy issued in satisfaction of the financial responsibility requirements of article 40 of the General Business Law, then the Company shall substitute the following for paragraph (a): (a) the group policy covering a shared motor vehicle occupied by the injured person at the time of the accident during the peer-to-peer car sharing period.

<sup>[8] 9</sup> This paragraph shall not be included in any policy issued in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law or a group policy issued pursuant to article 40 of the General Business Law. However, the following sentence shall be included: For purposes of this Condition, the term “insured” includes any person authorized to act on behalf of the insured.

**(All of the following material in Subpart 60-4 is new)**

**A new Subpart 60-4 is added to Part 60 as follows:**

SUBPART 60-4  
(Regulation 35-F)

**PEER-TO-PEER CAR SHARING PROGRAMS: MINIMUM PROVISIONS FOR GROUP POLICIES  
AND OTHER REQUIREMENTS**

|        |                                |
|--------|--------------------------------|
| Sec.   |                                |
| 60-4.0 | Purpose                        |
| 60-4.1 | Definitions                    |
| 60-4.2 | General provisions             |
| 60-4.3 | Mandatory liability provisions |
| 60-4.4 | Exclusions                     |
| 60-4.5 | Discretionary provisions       |
| 60-4.6 | Payments to insured            |
| 60-4.7 | Group policy requirements      |
| 60-4.8 | Excess line policies           |

#### **§ 60-4.0 Purpose.**

The purpose of this Subpart is to establish the minimum policy provisions and other requirements with respect to any group policy issued in satisfaction of the financial responsibility requirements of General Business Law article 40 and Insurance Law section 3458.

#### **§ 60-4.1 Definitions.**

Unless otherwise stated or required in context:

(a) In this Part:

(1) *Group policy* means an insurance policy issued pursuant to Insurance Law section 3458.

(2) *Named insured* means, with respect to a group policy, a peer-to-peer car sharing program administrator or, with respect to a certificate under the group policy, the shared vehicle driver or shared vehicle owner to whom a certificate of insurance is issued under the group policy.

(3) *Owner's policy of liability insurance* means the insurance policy required pursuant to Vehicle and Traffic Law section 311.

(b) In this Title:

(1) Peer-to-peer car sharing period shall have the meaning set forth in General Business Law section 901(10).

(2) Peer-to-peer car sharing program administrator shall have the meaning set forth in General Business Law section 901(3).

(3) Shared vehicle shall have the meaning set forth in General Business Law section 901(5).

(4) Shared vehicle driver shall have the meaning set forth in General Business Law section 901(6).

(5) Shared vehicle owner shall have the meaning set forth in General Business Law section 901(7).

#### **60-4.2 General provisions.**

(a)(1) In addition to the mandatory liability provisions specified in this Subpart, every group policy shall provide coverage, as required by General Business Law article 40, in accordance with the provisions of Insurance Law section 3420, Insurance Law article 51, Subpart 60-2 of this Part (Insurance Regulation 35-D), and Part 65 of this Part (Insurance Regulation 68) and such other requirements as may be applicable.

(2) A group policy shall provide all the coverages as specified in paragraph (1) of this subdivision during the peer-to-peer car sharing period.



(3) A group policy may also provide other coverages, provided that a group policy may only provide the coverages specified in Insurance Law section 3458(c)(2) and shall provide coverage as provided in paragraph (2) of this subdivision.

(b) Except as provided in section 60-4.8 of this Subpart:

(1) no insurer may issue a group policy unless the insurer is authorized to do an insurance business in this State;

(2) all policy forms, rating classifications, and territories shall be approved by the superintendent pursuant to Insurance Law section 2307 and shall not qualify for an exemption from filing under Insurance Law section 6301; and

(3) all rates, rating plans, rating rules, or rating manuals shall be submitted to the superintendent and shall be subject to prior approval pursuant to Insurance Law section 2305.

(c) An insurer shall include on the declarations page of a group policy and the certificates issued to the group members a statement that the policy complies with the financial responsibility requirements of General Business Law section 901(2) and regulations promulgated thereunder.

(d) When facilitating the sharing of information under this subdivision, an insurer shall comply with Insurance Law sections 3420(d) and 3461, Part 420 of this Title (Regulation 169), and all other applicable State and Federal laws and regulations governing privacy and the release of consumer financial and health information.

### **§ 60-4.3 Mandatory liability provisions.**

A group policy shall contain in substance the following minimum provisions that are equally or more favorable to the insured and judgment creditors, so far as such provisions relate to judgment creditors:

(a) insurance against loss from the liability imposed by law for damages, including damages for care and loss of services, because of bodily injury to or death of any person, and injury to or destruction of property arising out of the ownership, maintenance, use, or operation of a specific motor vehicle or vehicles within this State, or elsewhere in the United States in North America or Canada, subject to a limit, exclusive of interest and costs, with respect to each such occurrence, of at least \$1,250,000 because of bodily injury to or death of one or more persons, and injury to or destruction of property;

(b) with respect to such insurance as is afforded, the insurer, subject to the policy terms, shall: defend any suit, with the right to make such investigation, negotiation and settlement as it deems expedient; pay all premiums on attachment bonds and appeal bonds; pay all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest accruing after entry of judgment until the insurer has paid or tendered or deposited in court such part of such judgment as does not exceed the applicable policy limits; pay expenses incurred by the insured for first aid to others at the time of accident; and reimburse the insured for reasonable expenses other than loss of earnings, incurred at the company's request. The amounts so incurred under this subdivision, except settlement of claims and suits, shall be payable by the company in addition to the applicable policy limits;

(c) a provision insuring as insured, during the peer-to-peer car sharing period:

(1) the named insured, the named insured's spouse if a resident of the same household with respect to the motor vehicle or vehicles;

(2) and any other person using the motor vehicle with the permission of the named insured or such spouse provided the person's actual operation or (if the person is not operating) the person's actual use thereof is within the scope of such permission; and

(3) any other person or organization but only with respect to the person or organization's liability because of acts or omissions of an insured within subparagraph (1) or (2) of this subdivision. As respects any person or organization other than the named insured the policy need not apply:

(i) to any person or organization, or to any agent or employee thereof, employed or otherwise engaged in operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith;

(ii) to any employee with respect to injury, sickness, disease or death of a fellow employee injured in the course of the employee's employment in an accident arising out of the maintenance or use of the motor vehicle in the business of their common employer; or

(iii) to any person or organization, or to any agent or employee thereof, with respect to bodily injury, sickness, disease or death, or injury to or destruction of property arising out of the loading or unloading of the motor vehicle. The insurance shall apply separately to each insured against whom claim is made or suit is brought, provided the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability;

(d) a provision that the group policy shall afford bodily injury and property damage liability insurance during the peer-to-peer car sharing period for:

(1) any other vehicle of which the insured acquires ownership, leases, or otherwise is authorized to use provided it replaces the insured's shared vehicle described in the policy;

(2) any motor vehicle, used with the permission of the owner, and not owned by the insured or the insured's spouse or any resident of the same household, which is temporarily substituted for the shared vehicle while withdrawn from service because of breakdown, servicing, repair, loss or destruction; or

(3) the incidental use of a motor vehicle not owned by the named insured or a member of the insured's household, nor furnished or available for their regular use, provided the actual operation or other actual use thereof is with the permission of the owner and is within the scope of such permission;

(e) a provision required by subdivision (d) of this section need not apply to any accident arising out of the maintenance or use of a motor vehicle by a person employed or otherwise engaged in the business of a motor vehicle sales agency, repair shop, service station, storage garage or public parking place;

(f) a provision that when a motor vehicle is used or operated in any other state or Canadian province, a policy currently in effect or hereafter issued shall provide at least the minimum amount and kind of coverage that is required in such cases under the laws of such other jurisdiction. Any policy not containing such provision shall nevertheless be deemed to provide such coverage. This provision is not intended to create a duplication of coverage or benefits to the extent that a New York insured carries additional coverages under any automobile or motor vehicle insurance policy or is covered under an automobile or motor vehicle policy of a resident of the jurisdiction wherein an injury occurs;

(g) a provision that the insurer will not provide coverage for any insured who intentionally causes, or directs another person to cause, bodily injury or property damage;

(h) a provision that the insurance afforded by this policy is primary insurance during the peer-to-peer car sharing period; and

(i) a provision that if the insurer cancels the group policy, then the insurer shall provide written notice in conformance with Insurance Law section 3458.

#### **§ 60-4.4 Exclusions.**

A group policy may contain in substance the following exclusions:

(a) While the shared vehicle is used as a public or livery conveyance or transportation network company vehicle, unless the peer-to-peer car sharing program permits a shared vehicle driver to use the shared vehicle as a public or livery conveyance or transportation network company vehicle during the peer-to-peer car sharing period;

(b) Liability assumed by the insured under any contract or agreement;

(c) Bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of:

(1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workers' compensation law; or

(2) other employment by the insured;

(d) Any obligation for which the insured or the insured's insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or any similar law;

(e) Injury to or destruction of property owned by the insured or property rented to or in charge of the insured or property as to which the insured is for any purpose exercising physical control;

(f) Bodily injury, sickness, disease or death, or injury to or destruction of property due to war, whether or not declared civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing; and

(g) To the extent the Federal Tort Claims Act provides coverage and protection when the insured shared vehicle is being operated in the course of employment by an agent, servant, or employee of the United States government, its territories, possessions, political subdivisions, agencies or other independent governmental corporations.

**§ 60-4.5 Discretionary provisions.**

A group policy may also contain in substance the following provisions:

- (a) that written notice of accident, claim or suit is required;
- (b) that the insurer is subrogated to any rights of recovery of the insured;
- (c) that the terms of the policy may not be waived or changed except as stated in the policy;
- (d) that the insurer's consent is necessary to any assignment of interest under the policy;
- (e) that the insured will cooperate with the insurer;
- (f) that no action shall lie against the insurer unless the insured shall have complied with all the terms of the policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the insurer;
- (g) that the insurer issues the policy upon the reliance of the insured's declarations and that the policy contains all agreements between the insured and the insurer and any of its agents relating to the insurance;
- (h) a provision relating to the insurer's own method of doing business; and
- (i) that notice to the insurer of delivery of a newly acquired additional motor vehicle or an election to insure it under a specific policy is required.

**§ 60-4.6 Payments to insured.**

For the purpose of complying with the provisions of Insurance Law section 3420(f)(1), no group policy subject to this Part shall be issued by any insurer unless it contains coverage providing for payments to the insured, as defined in such coverage, by the New York Motor Vehicle Accident Indemnification Corporation, pursuant to the provisions of Insurance Law article 52 applicable to such payments.

**§ 60-4.7 Additional requirements.**

(a) The insurer shall be responsible for mailing or delivery of a certificate of insurance to each group member in accordance with Insurance Law section 3458(h).

(b) Pursuant to General Business Law section 902(2), a group policy shall provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law article 6 and in accordance with section 60-4.3(h) of this Subpart.

(c) Pursuant to General Business Law section 902(1), if insurance maintained by a peer-to-peer car sharing program administrator pursuant to General Business Law section 901(2) has lapsed, then the peer-to-peer car sharing program administrator shall retain liability during such lapse. If the group policy lapses, then the peer-to-peer car sharing program administrator shall be subject to Subparts 65-3 and 65-4 of this Title.

(d) No group policy or certificate shall contain any deductible or self-insured retention with respect to liability, no-fault or supplementary uninsured/underinsured motorist coverage, provided, however, a group policy may set forth a liability insurance deductible for which the insurer is responsible to pay for damages to third-party claimants and the peer-to-peer car sharing program administrator is solely responsible for reimbursing the insurer up to the amount of the liability insurance deductible. A group member shall not be held responsible for reimbursing the insurer or the peer-to-peer car sharing program administrator for the amount of the deductible.

(e) No group policy or certificate shall be subject to a group or sub-group aggregate liability limit of any kind at any time, and any liability limit applicable to a group member shall:

(1) be separate and apart from any liability limit to which any other group member insured under the group policy may be subject; and

(2) operate unaffected by the experience of any other group member or the overall experience of the group itself.

(f) Group policy forms and rates of an authorized insurer shall comply with Insurance Law article 23 standards, and no such rates shall be excessive, inadequate, unfairly discriminatory, destructive of competition, detrimental to solvency, or otherwise unreasonable, subject to the following factors:

(1) advantages may be considered, based on actual or reasonably anticipated loss and expense experience of the group or its members, where such advantages and experience can be fairly demonstrated; and

(2) rates, rating plans or rating rules recognizing loss differences on a group basis, in comparison to like risks not in the group, shall be deemed rating classifications subject to the superintendent's approval pursuant to Insurance Law section 2307.

(g) Except with respect to requiring a shared vehicle driver or shared vehicle owner to be insured under the group policy required by General Business Law article 40, no insurer shall provide coverage in regard to a group program that:

(1) requires the purchase of insurance as a condition of group membership; or

(2) imposes any penalty upon a group member if insurance is not purchased.

(h) No insurer shall provide coverage in regard to a group if:

(1) the purchase of any good or service from the group or sponsoring entity is a condition of purchasing insurance by a group member; or

(2) the purchase of insurance by a group member is a condition of purchasing any good or service from the group or sponsoring entity.

**§ 60-4.8 Excess line policies.**

(a)(1) In accordance with General Business Law section 901(6)(b), a group policy may be procured by a licensed excess line broker pursuant to Insurance Law section 2118 and regulations promulgated thereunder if the insurance is unavailable from authorized insurers. The excess line broker shall obtain declinations from three authorized insurers as provided in section 27.3 of this Title (Insurance Regulation 41). The excess line broker may not utilize the procedure specified in section 27.3(g) or (h) of this Title.

(2) The declinations obtained pursuant to section 27.3 of this Title shall be valid for one year and apply to all the shared vehicle drivers and shared vehicle owners insured under the group policy with respect to coverages provided without option by the group policyholder. The affidavit by a broker or an excess line broker, evidencing the requisite number of declinations, shall be executed and filed by the licensee on behalf of the group policyholder. The excess line broker shall not renew the group policy with the unauthorized insurer unless the excess line broker obtains three declinations in accordance with the provisions of section 27.3 of this Title.

(3) The excess line broker shall provide a written affirmation to the peer-to-peer car sharing program administrator of the unavailability of coverage from an authorized insurer annually.

(b) Prior to procuring a group policy from an unauthorized insurer, an excess line broker shall obtain a written commitment from the unauthorized insurer that the insurer shall:

(1) cooperate with the superintendent with regard to any inquiry or request for information pertaining to the group policy or any claim submitted thereunder;

(2) comply with the requirements of Part 216 of this Title (Insurance Regulation 64);

(3) use licensed adjusters to investigate or adjust claims submitted under the group policy; and

(4) and maintain records in accordance with Part 243 of this Title (Insurance Regulation 152) and maintain the privacy of consumers and customers in accordance with Part 420 of this Title (Insurance Regulation 169).

**(Matter in brackets is deleted; new matter is underlined.)**

**Section 65-1.1(a) is amended as follows:**

(a) Every owner's policy of liability insurance issued in satisfaction of the minimum requirements of article 6 or 8 of the Vehicle and Traffic Law and article 51 of the Insurance Law and every policy issued in satisfaction of the minimum requirements of article 44-B of the Vehicle and Traffic Law and article 40 of the General Business Law shall contain provisions providing minimum first-party benefits equal to those set out below in the mandatory personal injury protection endorsement (New York), or mandatory personal injury protection endorsement - motorcycles (New York), respectively.

**With respect to Section 65-1.1(d), Mandatory Personal Injury Protection Endorsement, subdivisions (k) and (l) of Exclusions are amended, a new subdivision (m) is added, footnotes 1 and 6 are amended, footnotes 6 through 12 are renumbered as footnotes 7 through 13, and a new footnote 6 is added as follows:**

(k) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect; [or]

(l) any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver[.];<sup>5</sup> or

(m) any person who is injured while the insured motor vehicle is being used or operated by a shared vehicle driver pursuant to article 40 of the General Business Law.<sup>6</sup>

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<sup>1</sup> If the policy is being used to satisfy the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then the Company may substitute the following language: The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle, pursuant to article 44-B of the Vehicle and Traffic Law, by a transportation network company driver during the policy period and within the United States of America, its territories or possessions, or Canada. If the policy is a group policy under article 40 of the General Business Law, then the Company may substitute the following language: The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle through a peer-to-peer car sharing program during the peer-to-peer car sharing period, pursuant to article 40 of the General Business Law, during the policy period and within the United States of America, its territories or possessions, or Canada.

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<sup>6</sup> An insurer may not include this exclusion in a policy used to satisfy the requirements under article 40 of the General Business Law.

<sup>[6]7</sup> Companies may substitute the appropriate term, reference or language for the matter set out in brackets. With respect to a group policy issued pursuant to Insurance Law section 3455, the named insured includes a transportation network company driver to whom a certificate of insurance is issued under the group policy. With respect to a group policy issued pursuant to Insurance Law section 3458, the named insured includes a shared vehicle driver and shared vehicle owner to whom a certificate of insurance is issued under the group policy.

**With respect to Section 65-1.3(c), Additional Personal Injury Protection Endorsement, subdivisions (h) and (i) of Exclusions are amended, a new subdivision (j) is added, footnotes 19 through 23 are renumbered as footnotes 20 through 24, and a new footnote 19 is added as follows:**

(h) any person while:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;<sup>16</sup>

(ii) operating a motor vehicle in a race or speed test;<sup>16</sup>

(iii) operating or occupying a motor vehicle known to [him] that person to be stolen; or<sup>16</sup>

(iv) repairing, servicing, or otherwise maintaining a motor vehicle if such conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises;<sup>16</sup> [or]

(i) any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver[.],<sup>18</sup> or

(j) any person who is injured while the insured motor vehicle is being used or operated by a shared vehicle driver pursuant to article 40 of the General Business Law.<sup>19</sup>

<sup>19</sup> This exclusion may be deleted in the event the Company wishes to provide coverage under the indicated circumstance. An insurer may not include this exclusion in a policy used to satisfy the requirements under article 40 of the General Business Law.

**With respect to Section 65-1.3(c), Additional Personal Injury Protection Endorsement, footnote 15 is amended as follows:**

<sup>15</sup> If the policy is being used to satisfy the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then the Company may substitute the following language: The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle, pursuant to article 44-B of the Vehicle and Traffic Law, by a transportation network company driver during the policy period and within the United States of America, its territories or possessions, or Canada. If the policy is a group policy under article 40 of the General Business Law, then the Company may substitute the following language: The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle through a peer-to-peer car sharing program during the peer-to-peer car sharing period, pursuant to article 40 of the General Business Law, during the policy period and within the United States of America, its territories or possessions, or Canada.

**Section 65-3.12(b)(2)(i) is amended as follows:**

(2)(i) Under section 5106(d)(2) of the Insurance Law, a group policy issued pursuant to section 3455 or 3458 of the Insurance Law shall provide first party benefits when a dispute exists as to whether a driver was using or operating a motor vehicle in connection with a transportation network company or peer-to-peer car sharing program administrator when loss, damage, injury, or death occurs. Section 5106(d)(2) of the Insurance Law requires a transportation network company or peer-to-peer car sharing program administrator to notify the insurer that issued the owner's policy of liability insurance of the dispute within 10 business days of becoming aware that the dispute exists. When there is a dispute, the group insurer liable for the payment of first party benefits under a



group policy shall have the right to recover the amount paid from the driver's insurer or in the case of a peer-to-peer car sharing program, the shared vehicle owner's insurer to the extent that the driver would have been liable to pay damages in an action at law.

**A new Section 65-3.12(b)(4) is added as follows:**

(4) With respect to any accident, insured event, or occurrence, where the shared vehicle driver was using or operating a motor vehicle pursuant to article 40 of the General Business Law when loss, damage, injury, or death occurs:

(i) an insurer that issued a group policy pursuant to section 3458 of the Insurance Law shall not seek to recover any amount that it pays pursuant to article 51 of the Insurance Law from the insurer that issued the owner's policy of liability insurance issued in satisfaction of the minimum requirements of article 6 of the Vehicle and Traffic Law; and

(ii) if an insurer that issued the owner's policy of liability insurance issued in satisfaction of the minimum requirements of article 6 of the Vehicle and Traffic Law receives the claim first, the insurer that issued a group policy pursuant to section 3458 of the Insurance Law shall fully indemnify the insurer that issued the owner's policy of liability insurance for amounts that it pays pursuant to article 51 of the Insurance Law.

**Section 65-4.11(a)(2) is amended as follows:**

(2) Except as provided in section 65-3.12(b)(3) and (4) of this Part, all insurers shall submit controversies arising out of accidents, insured events or occurrences within the jurisdiction of section 5105, 5106(d), or 5221(b) of the Insurance Law to mandatory arbitration, as prescribed in this section. Controversies arising from accidents, insured events or occurrences outside the jurisdiction of section 5105, 5106(d), or 5221(b) of the Insurance Law may be submitted with the consent of the controverting insurers.

**Section 169.1(d)(1) is amended as follows:**

(d) *Other exceptions and restrictions.* (1) No points or surcharge may be imposed for an accident occurring under the following circumstances:

(i) when the motor vehicle was lawfully parked;

(ii) when the motor vehicle of the insured or other operator resident in the same household was struck in the rear by another motor vehicle, and the insured or other resident operator has not been convicted of a moving traffic violation in connection with the accident;

(iii) when the motor vehicle operated by the insured or other operator was struck by a hit-and-run vehicle, if the accident is reported to the proper authority within 24 hours by the insured or resident operator;

(iv) when the insured or other resident in the insured's household operates a vehicle for hire or a motor vehicle other than a noncommercial motor vehicle, and the accident occurred while in the course of employment and said accident did not result in a conviction for a moving traffic violation;

(v) when the insured has had an accident while operating, as an employee, a commercial motor vehicle in the course of employment and in the discharge of the employee's duties at the time of the accident, unless the accident is determined to have been caused by the intentional action or gross negligence of the insured. For purposes of this rule only, the term gross negligence shall not mean the insured's failure to refuse to drive or operate a commercial motor vehicle which has a defective condition that is known to the insured, provided the insured had reported such defective condition to the insured's immediate supervisor or employer; [or]

(vi) when the insured or other resident in the insured's household has had an accident while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured or other resident in the insured's household was logged onto a TNC's digital network but not engaged in a pre-arranged trip or engaged in a TNC prearranged trip, and the accident did not result in a conviction for a moving traffic violation, unless the policy is providing coverage for such operation of the motor vehicle. If the coverage is provided pursuant to an endorsement, then the insurer may impose a surcharge on the separate premium for the endorsement[.]; or

(vii) when the insured or other resident in the insured's household has had an accident while, pursuant to article 40 of the General Business Law, the insured or other resident was operating a shared vehicle through a peer-to-peer car sharing program during the peer-to-peer car sharing period, unless the policy is providing coverage for such operation of the motor vehicle. If the coverage is provided pursuant to an endorsement, then the insurer may impose a surcharge on the separate premium for the endorsement.

**Section 216.2(e) is amended as follows:**

(e) This Part shall also apply to an unauthorized insurer with respect to a group policy issued pursuant to section 3455 or 3458 of the Insurance Law.

KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

## CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the foregoing is the consolidated Sixteenth Amendment to Part 27 (Insurance Regulation 41); Eleventh Amendment to Sub-Part 60-1 (Insurance Regulation 35-A); Tenth Amendment to Sub-Part 60-2 (Insurance Regulation 35-D); new Sub-Part 60-4 (Insurance Regulation 35-F); Fourth Amendment to Sub-Part 65-1 (Insurance Regulation 68-A); Tenth Amendment to Sub-Part 65-3 (Insurance Regulation 68-C); Eighth Amendment to Sub-Part 65-4 (Insurance Regulation 68-D); Seventh Amendment to Part 169 (Insurance Regulation 100); and Nineteenth Amendment to Part 216 (Insurance Regulation 64) of Title 11 of the Official Compilation of the Codes, Rules and Regulations of the State of New York, signed by me on January 18, 2023 pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301, 2105, 2118, 2305, 2307, 2334, 2335, 2601, 3420, 3458, 3459, 3460, 5102, 5103, 5105, and 5106 and Articles 23 and 51 of the Insurance Law, Article 40 of the General Business Law, Chapter 795 of the Laws of 2021, and Chapter 129 of the Laws of 2022, to take effect upon the publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on November 9, 2022. No other publication or prior notice is required by statute.

Signed copy filed with Department of State  
Adrienne A. Harris  
Superintendent of Financial Services

Date: January 18, 2023