SB

311

COMMITTEE REPORT

SENATE

1/14/80

FURTHER: NONE

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 311
relating to ride sharing

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

NO YOUTHFUL OPERATOR

Age and Sex		Pleasure Use	DRIVE TO OR FROM WORK		Business Use	Farm Use
			Less than 15 Miles	15 or More Miles		
Only Operator in Household is a Female Age 30-64	Factor Code	.90 8131— —	1.15 8132— —	1.35 8133— —	1.35 8138— —	.80 8139— —
Principal Operator is Age 65 or Over	Factor Code	.90 8021— —	1.15 8022— —	1.35 8023— —	1.35 8028— —	.80 8029— —
All Other	Factor Code	1.00 8111— —	1.25 8112— —	1.45 8113— —	1.45 8118— —	.90 8119— —

Having determined that no youthful operator is involved and that the primary factor is to be taken from the table above, the remaining considerations are *age and sex of the principal driver* and *use of the car*. As regards age and sex, most non-youthful drivers fall into the "all other" class, of course. In 1970 a lower factor was introduced for principal operators of age 65 or older. With the introduction of the 161 class plan, the factors for this age group now equal the discount factors for a woman age 30 to 64 who is the only operator in her household.

There are four "use" categories *for the non-youthful driver classes* — but the effect is of five since the "drive to work" category is further subdivided on the basis of mileage. The categories are:

Pleasure Use: The automobile is not used in business *or customarily* driven to or from work — *unless the one way road mileage to the job is under three miles.*

There are, however, two exceptions to this rule, the first relating to an automobile owned by a member of the clergy. It is rated as "pleasure use" — or for "farm use" if that is its place of principal garaging — in spite of the fact that the clergyman may use it in "business" or in driving to or from "work." The other exception is for an insured who has reduced his driving or participates in a *car pool* and drives *less than 15 miles to work*. If the vehicle is not used more than two days a week *or* not more than two weeks in each five week period, the insured is eligible for a "pleasure use" classification.

Drive to Work: The car is not used in business, but it is customarily used to drive to or from work and the one way road mileage is *three miles or more*. If less than three miles, the *pleasure* use category, above, applies. Note that *separate factors* apply to cars driven a one way distance of less than 15 miles and those driven 15 miles or more. Drive to work includes *drive to school* and also driving *part way*, as to a bus depot or train station.

A car pool participant or anyone who drives *15 miles or more to work*, but does not drive more than two days a week *or* not more than two weeks in each five week period, is eligible for classification in the "work less than 15 miles" category.

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public for hire. He limited its use to the transportation of workers who were the clients of his agency. Such limited, special use, therefore, did not make his vehicle a "public or livery conveyance."

In a 1972 case decided by the Virginia supreme court, the insurer involved had denied coverage for liability arising out of the use of an insured's car in carrying car pool members to and from their common place of employment. Each car pool member would pay the insured one dollar a day toward operating expenses. The court ruled that the policy exclusion of any vehicle while used as a public or livery conveyance did not apply to this car pooling arrangement because the car was not held out *indiscriminately to the general public* for the carrying of passengers for hire. This case is *Smith vs. Stonewall Casualty Co., 188 S.E. (2nd.) 82.*

In Personal Auto Policy

The Public or Livery exclusion, as traditionally worded, is not included in the latest private passenger Automobile contract, the Personal Auto policy. Instead of excluding coverage for "any automobile while used as a public or livery conveyance," the Personal Auto policy excludes coverage for claims "arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool."*

This exclusion, presumably, has the same purpose as the Public or Livery exclusion — to eliminate coverage for the public automobile hazard, which is not anticipated in the formulation of private passenger rates. However, the distinction made in the Personal Auto policy hinges only on whether or not "a fee" has been charged. Whether or not the auto has been used as a public or livery conveyance — i.e., held indiscriminately for hire to the general public — is no longer at issue.

In the case of *car pools*, the new exclusion will in most instances have the same effect as the old. *Share-the-expense* car pools are specifically exempted from the exclusion, and by their very nature most car pools fit this description.

In situations not involving car pools, however, the new exclusion may have a more stringent effect than the Public or Livery exclusion. It is possible to imagine, for example, a Bodily Injury Liability claim arising out of an insured's use of his pickup to move an acquaintance's furniture. If the insured charges a fee, the exclusion in his Personal Auto policy states that there is no coverage, despite the fact that the insured has not held the pickup for hire to the general public. This result, though supported by a literal reading of the exclusion, is contrary to the historical intent and legal effect of the traditional Public or Livery exclusion.

"PUBLIC OR LIVERY CONVEYANCE"

Exclusion in Private Passenger Auto Policies

Rates for private passenger Automobile insurance do not anticipate the hazards inherent in operating an automobile for hire to the general public, such as a taxicab or a van. For this reason, private passenger Automobile policies have customarily excluded coverage for any automobile "while used as a public or livery conveyance." The exclusion, as expressed in its traditional wording, survives in the Family Automobile policy, the Special Package Automobile policy, and many independently filed Automobile policies.

Despite the relatively simple intent of the exclusion, the legal term "public or livery conveyance" has made interpretation difficult for policyholders and insurance people alike. The question often arises as to whether a car pool, especially one in which participants pay the driver a share of expenses, constitutes use of the insured automobile as a public or livery conveyance. The relevant case law on the subject indicates that as long as a driver does not hold an insured auto for hire to the *general public*, the driver may collect a reasonable amount of money from passengers to pay for the expenses of operating the car pool.

A prominent case in this matter is *Allstate Insurance Co. vs. Roberson, 217 Fed. (2nd.) 10 (1954)*. Roberson, the insured, owned a truck which he equipped with extra seats and used for the purpose of regularly transporting about seven of his fellow employes to and from work with him. Although the insured normally collected a small amount of money from each passenger to cover expenses, the Federal court of appeals (8th Circuit, applying Arkansas law) held that because the insured *did not solicit riders and did not hold the truck out to the public for hire*, the truck had not been used as a "public or livery conveyance."

Another case whose outcome depended on the same test of "public or livery conveyance" as employed in the Roberson case is *American Fidelity Insurance Co. vs. Pardo, 299 N.Y.S. (2nd.) 521 (1969)*. Involved here was an insured who owned an employment agency for domestic workers. Each day, he would transport the workers to and from residences where they worked; for this purpose, the insured used a truck which had been altered to carry 12 passengers. The insured charged a fixed rate for all domestics whether or not they used his transportation services.

While the insured was transporting 12 workers to their places of work, he was involved in an accident with another motorist. When the claim was submitted to his insurer, it was denied because of the exclusion in question. The supreme court of New York, in reversing a lower court's decision in favor of the insurer, held that the words "public or livery conveyance" as used in the policy refer to "a vehicle used indiscriminately in conveying the general public, without limitation to certain persons or particular occasions or without being governed by special terms." Here, the insured did not use his vehicle indiscriminately in carrying the general

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CHAIRMAN

State Senate

TO: Senator Robert Ziegler

FROM: Senator Glenn Hackney GH/ss

SUBJECT: SB 311 - Ridesharing

DATE: January 23, 1980

The thrust of the 1979 annual meeting of the Western Conference, Council of State Governments, was energy. One of the facets of that energy package was energy conservation. One of the points in that facet was ridesharing.

It appeared that ridesharing might be feasible in the state of Alaska if it were possible to remove the mickey mouse aspects of indulging in that practice.

With the above in mind, I asked Legislative Affairs to come up with a bill that would render it less likely that people would avoid getting into ridesharing by addressing the points in our own state law that might discourage the practice. Attached to this memo is a copy excerpted from the report of the WCSG Annual Report.

Attachment

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To SEN. ZIEGLER WITH MEMO

MODEL STATE LAW TO REMOVE LEGAL IMPEDIMENTS TO RIDESHARING ARRANGEMENTS

INTRODUCTION

Eighty percent of travel to work is by motor vehicle and most drivers commute by themselves. If drivers participated in ridesharing arrangements, it has been estimated that over 10 million gallons of gas would be saved each day and that rush hour traffic could be reduced by 30%. For these and other reasons, people should be encouraged to share rides to work and any law that unnecessarily impedes or discourages such sharing should be changed.

The National Committee on Uniform Traffic Laws and Ordinances is an independent, non-profit, voluntary association, which exists to maintain the Uniform Vehicle Code and Model Traffic Ordinance. The Uniform Vehicle Code is a specimen set of motor vehicle and traffic laws used as a guide by state legislatures, and the Model Traffic Ordinance is a companion document used by local legislative bodies. The National Committee is a carefully selected group of over 140 individuals representing federal, state and local government, private industry, and other groups interested in achieving sound, uniform motor vehicle and traffic laws. Since 1972, the National Committee has drafted texts of model laws in areas of emerging interest that are not covered by the Uniform Vehicle Code. The purpose of this activity is to have the best possible laws to test new ideas or to conduct programs necessary to solve new problems.

Under the title "Model Ridesharing Law" (dated March 26, 1979), the first draft of this document was distributed to more than 1,000 agencies and organizations for their review. Over 65 letters commenting on the first draft were received. These comments were summarized and a second draft dated June 15, 1979 was prepared and distributed to all persons who had commented on the first draft. The second draft, and letters commenting on it, were submitted to a Special Panel, which at a meeting on August 20-21, 1979, decided the contents of this document. The members of the Special Panel were: Senator Nat Washington (Chairman), Jack Derby (California Office of Ridesharing), Ken Dirkzwager (Minnesota Division of Driver and Vehicle Services), Bill Fortune (National Association of Vanpool Operators), Charles Gray (National Association of Regulatory Utility Commissioners), Tim Letzkus (Highway Users Federation for Safety and Mobility), Herb Scheuer (American Public Transit Association), and Mavis Walters (Insurance Services Office).

The preparation of this document was preceded by a review by the NCUTLO Staff of state laws which could impede forming carpools and vanpools. This review will be published under the title "Legal Impediments to Forming Carpools, Vanpools and Other Types of Ridesharing Arrangements." Using that review will enable each state to determine which of sections of this Model Law should be considered for enactment and will facilitate determining how the sections of this Model Law compare with laws in all jurisdictions.

§ 1. DEFINITION OF RIDESHARING

Section 1. Ridesharing arrangement defined.

Ridesharing arrangement means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of the driver. The term shall include ridesharing arrangements known as carpools, vanpools and buspools.

§ 2. MOTOR CARRIER LAWS

Section 2. Motor carrier laws do not apply to ridesharing.

The following laws and regulations of this state shall not apply to any ridesharing arrangement using a motor vehicle with a seating capacity for not more than 15 persons, including the driver:

(a) Chapter ..... pertaining to the regulation of motor carriers of any kind or description by the (Public Utilities Commission).

(b) Laws and regulations containing insurance requirements that are specifically applicable to motor carriers or commercial vehicles.

(c) Laws imposing a greater standard of care on motor carriers or commercial vehicles than that imposed on other drivers or owners of motor vehicles.

(d) Laws and regulations with equipment requirements and special accident reporting requirements that are specifically applicable to motor carriers or commercial vehicles.

(e) Laws imposing a tax on fuel purchased in another state by a motor carrier or road user taxes on commercial buses.

§ 3. WORKMEN'S COMPENSATION LAWS

Section 3. Workmen's compensation law does not apply to ridesharing.

Chapter ..... providing compensation for workers injured during the course of their employment shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and place of employment or termini near such places, provided that if the employer owns, leases or contracts for the motor vehicle used in such arrangement, Chapter ..... shall apply.

§ 4. LIABILITY OF EMPLOYER

Section 4. Liability of employer.

(a) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle, not owned, leased or contracted for by the employer, in a ridesharing arrangement.

(b) An employer shall not be liable for injuries to passengers and other persons because he provides information, incentives or otherwise encourages his employees to participate in ridesharing arrangements.

§ 5. INCOME TAXES

Section 5. Ridesharing payments are not income.

Money and other benefits, other than salary, received by a driver in a ridesharing arrangement using a motor vehicle with a seating capacity for not more than 15 persons, including the driver, shall not constitute income for the purpose of Chapter ..... imposing taxes on income.

Comment: Excepting income received by a driver in smaller ridesharing arrangements from taxes will avoid keeping records. Such a record-keeping requirement is perceived as an impediment to forming carpools and vanpools.

§ 6. MUNICIPAL LICENSES AND TAXES

Section 6. Municipal licenses and taxes.

No county, city, town or other municipal corporation may impose a tax on, or require a license for, a ridesharing arrangement using a motor vehicle with a seating capacity for not more than 15 persons, including the driver.

§ 7. OVERTIME AND MINIMUM WAGE LAWS

Section 7. Overtime compensation and minimum wage laws.

The mere fact that an employee participates in any kind of ridesharing arrangement shall not result in the application of Chapter ..... (laws requiring payment of a minimum wage, overtime pay or otherwise regulating the hours a person may work).

§ 8. BUSES AND STATE VEHICLE CODES

Section 8. Certain ridesharing vehicles are not commercial vehicles or buses.

(a) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than 15 persons, including the driver, shall not be a "bus" or "commercial vehicle" under the portion of Chapter ..... (state vehicle code) relating to equipment requirements or rules of the road.

(b) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than 15 persons, including the driver, shall not be a "bus" or "commercial vehicle" under the portions of Chapter ..... (state vehicle code) relating to registration.

(c) The driver of a passenger car (motor vehicle that has a seating capacity for not more than 10 persons, including the driver) used in a ridesharing arrangement is not a "chauffeur" nor is he transporting persons for compensation under the driver licensing portions of Chapter ..... (state vehicle code).

Comment: As to "passenger car" in subsection (c), Uniform Vehicle Code § 1-142 defines this term as a motor vehicle designed to carry 10 passengers or less that is used to transport persons.

§ 9. USE OF PUBLIC VEHICLES

Section 9. Use of public motor vehicles for ridesharing.

Motor vehicles owned or operated by any state or local agency may be used in ridesharing arrangements (for public employees). Participants in any such ridesharing arrangement shall pay the actual total costs of using the vehicle in that arrangement.

Comment: States should enact the phrase in parentheses if they decide to allow only public employees to ride to work in vehicles owned or leased by government agencies.

MISCELLANEOUS TOPICS

Incentives

Several people commenting on the "Model Ridesharing Law" recommended the enactment of incentives that would increase sharing rides. While this subject is definitely worthy of consideration, it was deemed beyond the scope of this document.

Cost and availability of insurance

A problem for forming ridesharing arrangements in the past has been the cost and availability of insurance, particularly for vanpools.

Mandating coverage. The Special Panel considered a section which would have prohibited insurers from increasing premiums, cancelling any policy or denying coverage because a motor vehicle is used in a ridesharing arrangement. Members of the Panel unanimously agreed that this approach could be counter-productive and could even result in higher premiums for vehicles used in pooling arrangements. The Panel also thought that enactment of the sections in this document coupled with recent developments in the insurance industry should solve this problem.

No fault benefits. In states where economic losses caused by injuries in crashes are compensated on a no-fault basis, consideration of the source of such compensation in accidents involving ridesharing vehicles should be considered. There may be some reduction in insurance premiums for ridesharing vehicles if the occupants are compensated by their own insurers rather than the insurer of the owner of the vehicle.

Deduction of expenses by employer

The Special Panel considered a section which would allow employers to deduct the costs of "promoting, organizing, administering and operating" ridesharing programs as ordinary business expenses. The Panel's view was that providing for such deductions in state income tax laws was unnecessary because employers already could deduct such costs as ordinary business expenses. And inclusion of the cost of operating vanpools might allow employers to write off the cost of acquiring vans on an accelerated basis.

Parking facilities

Several people commenting on the first draft recommended that this Model Law contain sections that would facilitate establishing lots where people could park their cars and continue their journey to work or sporting events in ridesharing arrangements or by using public transit. The Panel did not regard problems in this area to be impediments to most ridesharing arrangements but it did agree that it would be helpful to alert states to possible existence of problems in establishing such lots.

Use of public funds for parking lots located on private property. If the owners of a parking lot in a shopping center agree to allow commuters to park cars in their lot, there probably should be authority to expend public funds to indicate the existence of the facility and to pay the cost of any extra maintenance that may be necessary.

Liability issue. Owners of private property who allow commuters to park probably should be liable for injury or damages to such users only when the owners are grossly negligent. Another approach would be to authorize purchasing insurance to cover any such liability.

Tax-exempt status. If a church allows commuters to park in its lot, it may be necessary to provide that such use of its property does not affect its tax-exempt status.