MEMORANDUM

TO: Genesee Transportation Council Members & Alternates

FROM: James Stack, Executive Director JS

DATE: June 1, 2023

SUBJECT: Discussion of NYS Legislation (A.5718/S.5959) allowing Risk Retention Groups which meet a minimum surplus requirement and which are registered in NYS to offer automobile insurance coverage to nonprofit organizations in this state.

In recent months, my counterpart in Ithaca has been sharing the impact of NYS Insurance regulations on the viability of Ithaca Car Share. Due to restrictions, the insurance carrier that has been used will not renew the policy. Assembly members serving the Ithaca area have introduced legislation that will allow Risk Retention Groups (RRG) to provide automobile insurance. Currently, New York is that only state that precludes RRGs from providing insurance unless they are domiciled in the state. Beyond car share organizations, this change has the potential to benefit any not-for-profit that uses volunteer drivers, for which they provide insurance coverage, to provide services to communities.

Flower City Carshare (Floshare) is a partnership between the City of Rochester and Mobility Management that is a membership-based car sharing service providing 24/7 access to electric vehicles on an hour or daily basis. Floshare aims to fill the gap in transportation and provide an affordable option in underserved areas. In order for Floshare to convert to a not-for-profit operation and expand its services, they need access to affordable insurance. Without access to RRGs, this will be difficult. The ability of RRGs to operate in New York will also make other car share options more viable.

This legislation advances the *Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045 (LRTP 2045)*, which was adopted on June 10, 2021. LRTP 2045 includes recommendation AE-14: Shared Mobility Management, which seeks to "Attempt to minimize system disruption while promoting the availability of new mobility options such as bicycle share, car share, vanpool, powered bicycles/scooters, and microtransit. Encourage adoption of new curbside management policies while identifying funding sources for new implementation." The New York State Environmental Research and Development Authority (NYSERDA) has, and continues to, provide funding to support car share programs throughout the state. Allowing RRGs to issue automobile policies will help these small not-for-profit organizations to operate at lower costs.

Proponents of the legislation have asked for support from organizations that have a stake in ensuring car share options are available in their communities. The legislation needs to be brought to the floor of the Assembly for a vote. If there is agreement, I can send a letter to Assembly Speaker Carl Heastie and Senate Majority Leader Andrea Stewart-Cousins, copying members of the respective Insurance Committees.

The final scheduled day of the legislative session is June 8. If you are so inclined, please feel free to reach out to your delegation prior to GTC considering any action. If the legislation is not taken up in the current session, I expect it will be raised in the next so any support would still be relevant.

The following items are provided for your consideration:

1. **Draft letter** to Assembly Speaker Carl Heastie and Senate Majority Leader Andrea Stewart-Cousins
2. **Bill Summary** - A.5718/S.5959
3. **Responses** to Department of Financial Services Concerns on A.5718/S.5959
4. **Memorandum** in support of A.5718/S.5959
5. **Op-Ed** from Assemblymember Anna Kelles and Senator Lea Webb
6. **Letter** from Ithaca Mayor Lewis to Assembly Speaker Heastie
7. **FAQs** - Nonprofit Carshare Insurance (provided by Ithaca Carshare)

Recommended Action:
The GTC Planning Committee has not had an opportunity to consider this request. Accordingly, there is no recommended action.

June 8, 2023

Honorable Carl E. Heastie
New York State Assembly Speaker
LOB 932
Albany, NY 12248

Honorable Andrea Stewart-Cousins
New York State Senate Majority Leader
LOB 907
Albany, NY 12247

Speaker Heastie:

Leader Stewart-Cousins:

On behalf of the Genesee Transportation Council (GTC), the designated Metropolitan Planning Organization for the Genesee-Finger Lakes Region, I would like to express support for Assembly Bill A.5718/Senate Bill S.5959, allowing Risk Retention Groups (RRGs) which meet a minimum surplus requirement and which are registered in NYS to offer automobile insurance coverage to nonprofit organizations in this state and encourage a floor vote on the matter.

GTC is responsible for transportation planning in the Genesee-Finger Lakes Region, which includes Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, and Yates counties. Additionally, the City of Rochester is a member agency. This legislation advances the *Long Range Transportation Plan for the Genesee-Finger Lakes Region 2045 (LRTP 2045)*, which was adopted on June 10, 2021. LRTP 2045 includes recommendation AE-14: Shared Mobility Management, which seeks to "Attempt to minimize system disruption while promoting the availability of new mobility options such as bicycle share, car share, vanpool, powered bicycles/scooters, and microtransit. Encourage adoption of new curbside management policies while identifying funding sources for new implementation."

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The New York State Environmental Research and Development Authority (NYSERDA) has, and continues to, provide funding to support car share programs throughout the state. Allowing RRGs to issue automobile policies will help these small not-for-profit organizations to operate at lower costs. Beyond car share organizations, this change has the potential to benefit any not-for-profit that uses volunteer drivers, for which they provide insurance coverage, to provide services to communities.

Sincerely,

James Stack

James Stack, Executive Director

cc:

Assembly Standing Committee on Insurance

David I. Weprin, Chair
Khaleel M. Anderson
Scott Bendett
Ken Blankenbush
Jake Blumencranz
Alex Bores
Vivian E. Cook
Catalina Cruz
Brian Curran
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GTC Board Members & Alternates
GTC Planning Committee Members & Alternates

S05959 Summary:

BILL NO	S05959A
SAME AS	No Same As
SPONSOR	WEBB
COSPNSR	BROUK, COONEY, KENNEDY, RYAN
MLTSPNSR	

Amd §5913, Ins L; amd §311, V & T L

Authorizes certain policies issued by a risk retention group not chartered in this state but which is registered with the superintendent of financial services under the federal liability risk retention act of 1986, comprised entirely of organizations to which contributions are eligible for deduction under section 501(c)(3) of the internal revenue code and which qualifies as a charitable risk pool under section 501(n) of the internal revenue code.

S05959 Actions:

BILL NO	S05959A
03/23/2023	REFERRED TO INSURANCE
04/10/2023	AMEND AND RECOMMIT TO INSURANCE
04/10/2023	PRINT NUMBER 5959A
05/22/2023	1ST REPORT CAL.1188
05/23/2023	2ND REPORT CAL.
05/24/2023	ADVANCED TO THIRD READING

S05959 Memo:
Memo not available

S05959 Text:

STATE OF NEW YORK

5959--A

2023-2024 Regular Sessions

IN SENATE

March 23, 2023

Introduced by Sens. WEBB, BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the vehicle and traffic law, in relation to owner's policies of liability insurance issued by a risk retention group not chartered within this state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 5913 of the insurance law, as added by chapter 109 of the laws of 1988, is amended to read as follows:

§ 5913. Financial responsibility. [Wherever] Except as provided in section three hundred eleven of the vehicle and traffic law, wherever pursuant to the laws of this state or any political subdivision of this state a demonstration of financial responsibility is required as a condition for obtaining a license or permit to undertake specified activities, if any such requirement may not be satisfied by obtaining insurance coverage from an insurer not authorized to do business in this state, such requirement may not be satisfied by purchasing insurance from a risk retention group not chartered in this state.

§ 2. Paragraphs (b) and (c) of subdivision 4 of section 311 of the vehicle and traffic law, paragraph (c) as amended by chapter 200 of the laws of 1974, are amended to read as follows:

(b) In the case of a vehicle registered in this state, a policy issued by (i) an insurer duly authorized to transact business in this state or (ii) a risk retention group not chartered in this state but which is registered with the superintendent under the federal liability risk retention act of 1986, comprised entirely of organizations to which contributions are eligible for deduction under section 501(c)(3) of the federal internal revenue code and which qualifies as a charitable risk pool under section 501(n) of the federal internal revenue code; or

(c) In the case of a vehicle lawfully registered in another state, or in both this state and another state, [either] (i) a policy issued by an authorized insurer, or (ii) a risk retention group not chartered in this state but which is registered with the superintendent under the federal liability risk retention act of 1986, comprised entirely of organizations to which contributions are eligible for deduction under section 501(c)(3) of the federal internal revenue code and which qualifies as a charitable risk pool under section 501(n) of the federal internal revenue code, or (iii) a policy issued by an unauthorized insurer authorized to transact business in another state if such unauthorized insurer files with the commissioner in form to be approved by him a statement consenting to service of process and declaring its policies shall be deemed to be varied to comply with the requirements of this article; and

§ 3. The opening paragraph of subdivision 5 of section 311 of the vehicle and traffic law, as amended by chapter 569 of the laws of 1981, is amended to read as follows:

The term "certificate of insurance" shall mean any evidence issued by or on behalf of an insurance company duly authorized to transact business in this state, or risk retention group authorized to issue an owner's policy of liability insurance pursuant to this section, stating in such form as the commissioner may prescribe or approve that such company or such risk retention group has issued an owner's policy of liability insurance on the motor vehicle or vehicles designated therein. Such certificate shall contain information as required by the commissioner including at least the following except as otherwise provided:

§ 4. Subdivision 10 of section 311 of the vehicle and traffic law, as amended by chapter 103 of the laws of 1972, is amended to read as follows:

10. "Insurance Identification Card" shall mean a card issued by or on behalf of an insurance company or bonding company duly authorized to transact business in this state, or risk retention group authorized to issue an owner's policy of liability insurance pursuant to this section, stating in such form as the commissioner may prescribe or approve that such company or such risk retention group has issued an owner's policy of liability insurance or a financial security bond on the motor vehicle or vehicles designated therein. Such card shall contain such information and shall be valid during such period as may be prescribed by the commissioner. If an owner shall have filed a financial security deposit, or shall have qualified as a self-insurer under section three hundred sixteen of this [chapter] article, the term "insurance identification

card" shall mean a card issued by the department which evidences that such deposit has been filed or that such owner has so qualified.

§ 5. This act shall take effect immediately.

The Department of Financial Services sent the following four objections to bill A.5718/S.5959 to Asm. David Weprin, chair of the insurance committee:

1. DFS cannot regulate risk retention groups ("RRGs") that are chartered in another state and registered in New York. There are currently no NY-chartered RRGs.
2. RRGs are not subject to the consumer protections of the Insurance Law or regulations promulgated thereunder.
3. DFS cannot review and prior approve policy forms and rates like it does for authorized insurers.
4. There is no guaranty fund protection for RRGs in the event an RRG goes out of business and cannot pay claims to innocent third parties.

Below are the responses to each objection from Pamela Davis, CEO of Alliance of Nonprofits for Insurance (ANI), a Risk Retention Group that provides liability insurance (not auto) to 1,200 nonprofits in New York, and liability + auto insurance to 13,000 nonprofits across the country. ANI is domiciled in Vermont.

#1. DFS cannot regulate risk retention groups ("RRGs") that are chartered in another state and registered in New York. There are currently no NY-chartered RRGs.

This is correct. RRGs are authorized by the Liability Risk Retention Act of 1986 (LRRA). This federal law preempts state law and enables business and professional associations, as well as nonprofits, to work together to create their own insurance companies called RRGs.

The LRRA was passed by Congress to solve just the sort of market failure nonprofits are experiencing in New York State right now.

Within the LRRA, Congress granted states certain authorities, including specifying acceptable means of demonstrating financial responsibility. The relevant portion of the LRRA is copied below:

> *d) State authority to specify acceptable means of demonstrating financial responsibility* ***Subject to the provisions of section 3902(a)(4) of this title relating to discrimination*** *nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person. [Emphasis added]*

However, DFS is overlooking the provisions of section 3902(a)(4) of the LRRA which specifically prohibits any state from conditioning these financial responsibility requirements simply on the fact that such an insurance company is organized as a RRG that is domiciled in another state.

The LRRA provides that RRGs may be held to the same financial responsibility requirements of other insurance companies, except that, one of those requirements *may not be to require that RRG to be chartered in the state of NY*.

Relevant portion of the LRRA is copied below:

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(4) otherwise, discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

There are 140 RRGs insuring thousands of businesses and nonprofits in New York State today. Many have been operating successfully there for decades insuring complex and difficult risks such as allegations of sexual abuse.

These RRGs must be licensed and admitted insurance companies in one state and may operate by registering there and providing quarterly financial information to all states in which they operate.

These RRGs must follow the Risk-Based Capital standards required of every licensed, admitted insurance company across the country.

DFS has access to the financial information of all RRGs and may request additional operational information from the domicile regulator of any RRG.

If DFS has concerns about any RRG operating in New York, it may request the chartering state to conduct a financial examination and if that state refuses to do so, New York may conduct its own examination.

If it uncovers financial concerns about that RRG, it may report those to the National Association of Insurance Commissioners (NAIC) Financial Analysis Working Group (FAWG) which is used by states across the country as a peer review for each regulator's solvency monitory efforts.

In the nearly 40 years since the LRRA has been law, it is our understanding that only one regulator asked the chartering regulator to conduct an examination of an RRG and that state complied.

#2. RRGs are not subject to the consumer protections of the Insurance Law or regulations promulgated thereunder.

The following is an excerpt from a Special Report on Financial Regulation of Risk Retention Groups by David Provost, deputy commissioner of captive insurance at the Vermont Department of Financial Regulation:

> *In order to promote a uniform and effective nationwide regulatory framework, the states and jurisdictions that comprise the National Association of Insurance Commissioners (NAIC) have developed the NAIC Financial Regulation Standards and Accreditation Program. In order to become an accredited jurisdiction, states must meet certain standards deemed necessary to build a sound regulatory framework: Regulators must have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs; regulators must have the necessary resources to carry out that authority; and insurance departments must have in place organizational and personnel practices designed for effective regulation [before they may be accredited to be the domicile of a risk retention group.] More information on the NAIC accreditation program is available at: http://www.naic.org/documents/committees_f_FRSA_pamplet.pdf*

Also, RRGs in New York must comply with the unfair claim settlement practices law of New York and also pay applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of New York State.

#3. DFS cannot review and prior approve policy forms and rates like it does for authorized insurers.

This is correct. The federal LRRA specifically acknowledged that RRGs would be created because the businesses or nonprofits that started them had not been well-served by the commercial insurance industry.

According to the NAIC, "Few RRGs, if any, are required to submit rate and form filings — rates are typically based on an actuarial analysis of the membership, and one of the advantages of captives is the ability to conform the policy to suit the needs of the membership."

Many states do not regulate rates and forms for commercial risks. It was specifically understood by Congress when it passed the LRRA that generic rates and policy forms were not adequately serving these business and nonprofits, and there was no value added to have each of the states opine on the policy forms and rates, since RRGs may only insure commercial businesses, which are also the owners of the RRG.

#4. There is no guaranty fund protection for RRGs in the event an RRG goes out of business and cannot pay claims to innocent third parties.

This is correct. It is a provision of the LRRA that RRGs would not participate in state guarantee funds. However, there are ample controls available to regulators to avoid failure of RRGs. Furthermore, even when an RRG fails, there are typically some assets to pay minimum limits on claims (RRGs typically offer $1 million auto limits when NY only requires $25,000/$50,000/$10,000.)

And, Risk Retention Groups tend to be small and specialized. In fact, over the past 40 years, the total number of failures of all RRGs nationwide represents about $500,000 in premium volume — about the size of a single mid-sized commercial insurance company.

Compare that with the actual significant risk being endured by New York consumers now unable to get the use of the carshare they need or of nonprofits having to decline the donation of vehicles to transport medically fragile patients because they cannot find auto insurance. It is a risk well-worth taking.

One final note:

The points above demonstrate that New York has ample opportunity to monitor the solvency and claims handling fairness of RRGs operating in their state, despite the unique nature of RRGs. Nevertheless, even if DFS does not like RRGs offering auto insurance in New York, that is not a sufficient reason to defy complying with federal law.

Memorandum in Support

A.5718 Kelles/S.5959 Webb-Brouk

> An act to amend the vehicle and traffic law and the insurance law, in relation to automobile liability insurance purchased from a Risk Retention Group.

Ithaca Carshare, Mobility Development Operations (MDO), New York Public Transit Association, and the New York Council of Nonprofits (NYCON) strongly supports A.5718/S.5959, which will make it clear that duly registered Risk Retention Groups (RRGs) in New York may provide commercial auto insurance for 501(c)(3) nonprofits in our state.

Nonprofit carshares are community-focused, membership-based services that provide access to cars for local trips to people who can't or choose not to buy their own vehicle. Carsharing provides many social and environmental benefits, such as access to private mobility options for people in low-income neighborhoods, while reducing traffic and carbon emissions.

While there are a few carshares in NYS right now, Ithaca Carshare is currently the only nonprofit. There is a nonprofit carshare in development in Buffalo, and the carshares in Rochester and the Capital Region plan to move to a nonprofit model. All of the carshares in NYS have or will receive funding from NYSERDA, and the opportunity exists to significantly expand these services rapidly as part of the State's efforts to equitably tackle climate change and make electric vehicles accessible to all New Yorkers.

However, due to an interpretation of insurance and traffic laws and regulations by New York insurance regulators, the state's only nonprofit carshare will soon be unable to secure required automobile insurance and will be forced to close its operations. This is because the two private insurers who have been offering coverage for nonprofit carshares are leaving the market in May, 2023, and the only insurer ready to write such coverage in NYS — a RRG not domiciled here — is prevented from doing so by New York State insurance regulators.

This situation is unique to New York State, as federal law allows RRGs domiciled in one state to write automobile insurance in other states.

We support this bill because it would not only help carshares across the state, but *all* 501(c)(3) nonprofit organizations, who often struggle to secure auto insurance due to their unique risk. This bill will help nonprofit programs that rely on volunteer drivers — and/or serve the elderly, disabled, and children — to secure insurance via a registered and qualified Risk Retention Group.

For more information, please see:
https://www.ithacacarshare.org/nonprofit-carshare-insurance-faqs/
https://www.ithacacarshare.org/insurance-updates/

Ithaca CARSHARE · nypta NEW YORK PUBLIC TRANSIT ASSOCIATION, INC. · nycon New York Council of Nonprofits, Inc. · Mobility Development

Last updated Thursday, May 25, 2023

Additional Signers

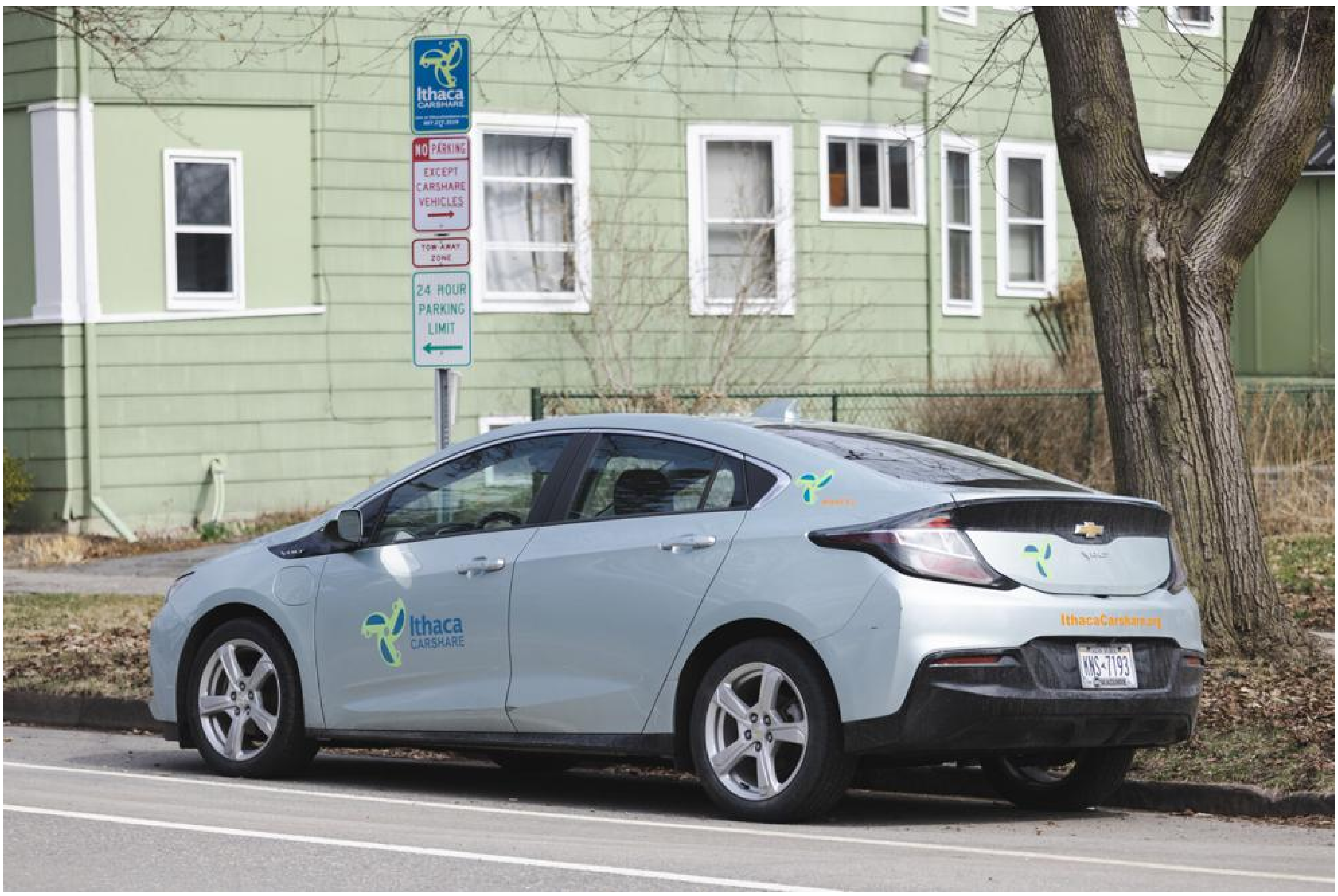
New York Council of Nonprofits (NYCON) — Albany, NY
New York Public Transit Association (NYPTA) — Albany, NY
Capital District Transportation Authority (CDTA) — Albany, NY
Environmental Advocates NY — Albany, NY
Mobility Development Operations — helping carshares in Buffalo, Rochester, and the Capital Region
Reconnected Rochester — Rochester, NY
Shared Mobility, Inc. — Buffalo, NY
GoBike Buffalo — Buffalo, NY
Reddy Bikeshare — Buffalo, NY
The Dorothy and Marshall M. Reisman Foundation — Onondaga County, NY — Robert R. Falter, Trustee
BluePrint — Geneva, NY — Dr. Jacqueline Augustine, Executive Director
Hanford Mills Museum — East Meredith, NY
Ossining Arts Council — Maryknoll, NY
Govinda Goshala Cow Haven — Belfast, NY
MODArts Dance Collective (MADC) — Harlem, NY
WESPAC Foundation, Inc — White Plains, NY
The Water Mill Center — Water Mill, NY
Tompkins Consolidated Area Transit, Inc. — Ithaca, NY
GO ITHACA — Ithaca, NY
Cornell University Transportation and Delivery Services — Ithaca, NY
Ithaca Health Alliance — Ithaca, NY
Tompkins County Climate Protection Initiative — Ithaca, NY
Finger Lakes Wealth Management — Ithaca, NY
Home Green Home — Ithaca, NY
White Hawk Ecovillage — Danby, NY
Shared Use Mobility Center — headquartered in Chicago, IL with offices in Los Angeles, CA

https://www.ithaca.com/opinion/guest_opinions/op-ed-carshare-nonprofits-are-at-risk-of-disappearing-in-new-york-state/article_da3bf802-e443-11ed-9468-fbd84297cd57.html

FEATURED

OP-ED: Carshare Nonprofits are at Risk of Disappearing in New York State

Assemblymember Anna Kelles (AD-125) and Senator Lea Webb (SD-52)
Apr 26, 2023



JOSH BALDO

Carshares across New York are facing a crisis in securing auto insurance which threatens their ability to operate.

Carshares are membership-based services that provide 24/7 access to a fleet of vehicles stationed throughout a community for their members to drive. They're different from car rentals, because they're used for local trips by members who can't afford or choose not to buy their own vehicle. They're also different from ridesharing services like Uber or Lyft, as members collectively share the cars through a membership system and drive the cars themselves.

Carsharing started in Europe as early as the 1960s and launched in the United States in the 1990s. According to a 2020 analysis by the Transportation Sustainability Research Center at the University of California, Berkeley, by 2012 there were over 800,000 active carshare memberships across the US. By 2018, there were 1,439,399 US carshare members sharing 15,224 vehicles with a ratio of 95:1 members per vehicle.

Carsharing offers many public and private benefits. Carshare members pay a small monthly membership fee for access to mobility for important day to day tasks like going to medical appointments, accessing childcare, and food shopping. Carshares also reduce carbon emissions and ease traffic. The US Environmental Protection Agency (EPA) estimates that transportation accounts for a staggering 27% of all greenhouse gas emissions, making it the largest single contributor of greenhouse gasses in the entire nation. Ultimately, carshares save members significant costs associated with owning a vehicle, which makes it an attractive option for those who can't afford to buy a vehicle.

Ithaca, Rochester, and Albany all have carsharing services in New York, and Buffalo is working to relaunch one of their own. These are all currently — or in the process of — moving to a nonprofit model, and provide a critical service for the most vulnerable people in these communities. In recognition of the role carshares play in achieving our State climate goals, the New York State Energy Research and Development Authority (NYSERDA) has invested millions into both expanding carshares in New York and helping to fully electrify carshare fleets. However, due to the State's own laws and interpretation of the federal Liability Risk Retention Act (LRRA), all nonprofit carshares in the State will be forced to close this year.

In 1981, the federal government, through the LRRA, created a mechanism for individual industries to have access to insurance through the establishment of Risk Retention Groups (RRGs), enabling them to pool their risk across the industry and establish a collective liability insurance plan. Federal law requires RRGs to be licensed in their domicile state, authorized to engage in the business of insurance under the laws of such State, and follow all regulatory requirements in that state before providing insurance coverage to members of the industry in

other states. RRGs cannot be held to different standards than requirements of commercial liability insurance companies and cannot be denied participation outright by a non-domicile state. The benefit of RRGs is that it allows the pooling of liability risk and the standardization of assessment and oversight across states. Currently New York State law does not allow for RRGs to provide auto insurance if the RRG is not domiciled within New York, a law that can be viewed as discriminatory and counter to federal law.

As a result of current New York law, carshares in the State have had to rely on commercial insurance that has both stunted the growth of carshares and caused some over the years to shut down. As of this year, the two major remaining private insurers of carsharing, Zurich Insurance Group and Philadelphia Insurance, are leaving the NYS market (February for Rochester's Floshare and Albany's CDTA that are with Zurich and May for Ithaca Carshare that is with Philadelphia).

There is a RRG, the Alliance for Nonprofit Insurance (ANI), domiciled in Vermont, that has successfully been providing auto insurance to carshares across the country for over 20 years. ANI however, has been unable to provide insurance to carshares here because New York is the only state that interprets the word "authorized" in the federal law to mean that an RRG must be domiciled in NYS in order to provide insurance in the state.

While it's clear that this is a crisis for carshares, it's also a major roadblock for thousands of other nonprofits in the state that need auto insurance. According to the New York Council of Nonprofits (NYCON), many underwriters will not write auto insurance for nonprofits they consider higher risk, such as organizations that transport the medically fragile, the elderly, or children in order to provide services to those groups. Some organizations have had to refuse vehicles that were given to them because they couldn't find insurance, while others have ended up paying exorbitant premiums because only one underwriter will cover their vehicles.

A change in state law will allow nonprofit carshares, as well as all 501(c)(3) organizations, to access auto insurance through a nonprofit RRG. This will free up the market and give all nonprofits a real choice in auto insurance, enabling them to choose the insurance that will best meet their needs and budget, while allowing carsharing nonprofits to stay in business.

That's why we've introduced legislation (A.5718a/S.5959a) which will allow nonprofit RRGs to provide automobile insurance to 501(c)(3) nonprofit organizations across the state.

The opportunity exists to significantly expand carshare services at no cost to taxpayers and as part of the State's efforts to equitably tackle climate change and make electric vehicles accessible to all New Yorkers. Given all the environmental, equity-building, and public as well as private benefits of carsharing, New Yorkers should be doing everything we can to ensure carshares flourish and give New Yorkers real choice in their transportation options.

For more information on the bill, please see:
https://nyassembly.gov/leg/?default and https://www.nysenate.gov/legislation/bills/2023/s5959

Anna Kelles is the New York Assemblymember for District 125, and Lea Webb is the New York Senator for District 52.

CITY OF ITHACA
108 East Green Street Ithaca, New York 14850-5690

MAYOR'S OFFICE
LAURA LEWIS, MAYOR

Telephone: 607-274-6501
Email: mayorlewis@cityofithaca.org
Fax: 607-274-6526

Speaker Carl Heastie
LOB 932
Albany, NY 12248

Speaker Heastie,

I'm writing today to request that you move A5718 (S5959) to a vote on the Assembly floor, regarding the ability of Risk Retention Groups (RRGs) to write auto liability insurance for nonprofits in New York State. The current regulations prevent Ithaca Carshare and all carshares from obtaining this insurance and therefore from operating at all.

New York State carshares are facing a total collapse of services if this bill does not pass to solve this issue. Failure to act will completely negate the millions invested by the New York State Energy Research & Development Authority (NYSERDA) into carshares since 2008, including millions recently awarded to both Ithaca Carshare and a potential new carshare in Buffalo to electrify fleets.

This is a market failure. Ithaca Carshare has worked with multiple brokers over many years and been unable to secure a quote for this insurance, other than one nonprofit RRG (a nonprofit entity serving nonprofits itself). This does not create a monopoly; in fact Ithaca Carshare would be glad to see multiple players in this market rather than be forced to close because there are none willing to write the coverage.

As an elected representative concerned about traffic, climate change, pollution and the affordability of cars, I wholeheartedly support the service that nonprofit carshares are able to provide. Nonprofit carshares also provide a valuable service to many low- and moderate-income people who often lack access to affordable public or private transportation. The majority of members rely on carshare services for basic necessities, such as groceries and medical appointments. Federal law allows for nonprofit carshares in all 50 states to access auto insurance via RRGs, so New York's regulation is out of line with the rest of the country. By allowing RRGs to write this coverage in New York State, community nonprofit carshares can resume operating.

Please move A5718 to the floor for a vote as quickly as possible to solve this issue.

Thank you,

Laura Lewis

Laura Lewis
Mayor

Nonprofit Carshare Insurance FAQs

For nonprofits in New York, finding auto insurance is a struggle.

For Ithaca Carshare, it's a crisis.

The reasons are twofold: New York is one of only 13 states that requires PIP (Personal Injury Protection), or no fault insurance in order to register a vehicle. This means an insurer will pay medical bills from an accident, regardless of whether the driver was at fault. *New York has the highest minimum required amount of PIP in the country at $50,000*.

This makes finding insurance difficult enough, as premiums tend to be higher in NY due to PIP, but there is more to this as well.

The other reason is that certain insurance groups, called Risk Retention Groups (RRG), are blocked from writing auto insurance in NYS due to state laws and regulations imposed by New York insurance regulators.

These laws and regulations prevent RRGs from writing auto insurance in NYS unless they are domiciled here. This problem is unique to New York State, as federal law explicitly allows RRGs domiciled in one state to write automobile insurance in other states.

Ithaca Carshare has been insured for 15 years through the private insurer Philadelphia Insurance, but they are pulling out of the NYS carshare market. Our insurance with them ends May 22, 2023. There is an RRG willing to write insurance for us, but they are not domiciled in NYS and so are blocked by the DFS regulation.

It's a complex issue we've been working to address for months, so we've compiled this list of FAQs in order to help the public better understand.

What exactly is a carshare?

Carshares are community-focused, membership-based services that provide access to cars for local trips to people who can't or choose not to buy their own vehicle. Carshares reduce vehicle emissions as members generally combine carsharing with public transit, bicycling, and walking. Nonprofit carshares, such as Ithaca Carshare, also provide access to transportation for low-income people through our Easy Access program.

Why can't Ithaca Carshare get auto insurance?

Carshares are seen as risky by insurance companies, and most private insurance companies don't want to write auto insurance for carshares with smaller fleets, such as Ithaca Carshare.

There is an insurer willing to write coverage for us, but they are a nonprofit Risk Retention Group (RRG) not domiciled in NYS, and the Department of Financial Services disallows RRGs to write auto insurance in NYS unless they are domiciled in the state.

What is a Risk Retention Group (RRG)?

According to The National Association of Insurance Commissioners (NAIC), Risk Retention Groups are liability insurance companies owned by its members. A good analogy is to think of RRGs like Credit Unions and insurance companies like banks.

RRGs allow businesses with similar insurance needs to pool their risks and form an insurance company that they operate under state regulated guidelines. RRGs are formed using a combination of state and federal laws under the auspices of the Federal Liability Risk Retention Act (LRRA).

RRGs are held to the same solvency standards as commercial insurance companies nationwide.

Read more: https://content.naic.org/cipr-topics/risk-retention-groups

What is Ithaca Carshare doing to get auto insurance?

We've been searching for insurance through our agent, Porter and Curtis, for several months. They advised us that we'd be more appealing to insurance companies if we partnered with other carshares, so we formed an LLC with Mobility Development Operations, who manages the other carshares in New York (in Rochester and Albany, and soon-to-be launched in Buffalo), as well as several throughout the country. Even with this larger contingent of carshares, so far we've been unable to obtain insurance from several companies due to the requirements in New York.

Meanwhile, we're also working on a legislative fix. Ithaca's assemblymember Anna Kelles and senator Lea Webb have introduced a bill (A.5718/s.5959) that will amend New York's insurance and vehicle and traffic laws to allow RRGs to write auto insurance for 501(c)(3) nonprofit organizations in New York.

Why can't RRGs write auto insurance in NYS?

The Department of Financial Services interprets federal law allowing RRGs to mean that RRGs must meet a fiscal responsibility of being chartered in New York.

What are the objections by NYS insurance regulators to RRGs?

Insurance is regulated in New York State by the Department of Financial Services (DFS), who also regulate banks. We received a list of four concerns from DFS. The following PDF includes their concerns and our responses to those concerns: https://www.ithacacarshare.org/wp-content/uploads/Responses-to-DFS-concerns-to-A.5718_S.5959.pdf

How many carshares are there in New York State?

Ithaca Carshare is the only *nonprofit* carshare in New York State. Other carshares in NYS include Floshare in Rochester, Drive CDTA in Albany, and a soon-to-be launched carshare in Buffalo. These three carshares aspire to be nonprofits, and there could be a lot more funding from NYSERDA to start nonprofit carshares in the state if RRGs are allowed to write auto insurance for nonprofits. For example, we know of folks in the Hudson Valley trying to get a carshare off the ground, but can't find insurance.

How do other NYS carshares get auto insurance?

Lacking the ability to get coverage through an RRG, the temporary solution for Buffalo, Rochester, and the Capital Region is for vehicles to be owned and insured by Envoy Technologies, a venture-funded company headquartered in California.

What will happen to Ithaca Carshare if they can't get insurance?

Our insurance ends on May 22, 2023. We're trying to find insurance on the free market, but most companies don't want to write auto insurance for small carsharing organizations in New York like ours due to the risk. It's possible we will have to close or pause operations as of May 23, 2023.

Have there been other nonprofit carshares in NYS? What is the history there?

Yes, and they all have been forced to close due to the insurance issues. You can read the history of nonprofit carsharing in NYS here (PDF): https://www.ithacacarshare.org/wp-content/uploads/The-History-of-Insurance-for-Nonprofit-Carsharing-in-New-York.pdf

What is the NYS Department of Financial Services' position on RRGs?

The US Liability Risk Retention Act (LRRA) (15 USC Ch. 65) of 1986 establishes RRGs "whose primary activity consists of assuming, and spreading all, or any portion, of the liability exposure of its group members," and "which is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State."

In short, the LRRA allows RRGs to be licensed and admitted in any of the 50 states to be authorized to do business in all states.

In an April 17, 2006 opinion of this issue, the NYS Office of General Counsel, (OGC) representing the Department of Financial Services (DFS), identifies in NY Insurance Law Article 59 § 5913, that RRGs must meet a fiscal responsibility of being chartered in New York.

Virtually every other state has “insurer duly authorized to transact business in this state” included in their laws for financial responsibility. The difference between NYS and every other state is that NYS DFS has made the determination that they are going to interpret this to mean insurance companies domiciled in NY whereas every other state has recognized that the LRRA supersedes state law and that NYS’ reading of “authorized” as “admitted in (domiciled as opposed to approved) the state” is not appropriate.

Why does NYS not have auto insurance RRGs?

Our understanding is that NYS does not want to allow RRGs to write auto liability, with the assumption that they may not have the appropriate capital backing. This is a spurious argument since RRGs must abide by the same Risk-Based Capital standards as commercial insurance companies. Nonetheless, regulators have shown concern that New York City taxicabs may want to use RRGs which may expose them to a collapse of collective liability if they are mismanaged or fraud is involved, which is true for any market.

Does this issue affect other nonprofits in NYS?

Yes. According to the New York Council of Nonprofits (NYCON), most commercial insurance carriers will not consider any nonprofit that has volunteer drivers, or transports elderly, children, medically fragile, or disabled people. With a nonprofit RRG in the state, all nonprofits with exposures not readily insured by most commercial carriers will be able to obtain auto insurance for their programs.

Wouldn’t allowing non-domiciled RRGs reduce auto insurance standards like PIP

No. The RRG Alliance for Nonprofit Insurance (ANI) offers commercial insurance for nonprofits in 31 States and DC. They meet all requirements for coverage in all those states including PIP, when required. They have written commercial auto in most of these states for decades with no market disruption. They tend to ensure vehicles with exposures not readily insured by most commercial carriers, such as volunteer drivers, transportation for medically fragile, elderly, and children. All rates charged by the RRG are consistent with actuarially sound principles and practice using ISO rates and forms in compliance with state laws.

ANI holds an A (Excellent) IX AM Best rating. They charge actuarially sound rates and use ISO rates and forms like other commercial carriers. The difference is their ability to underwrite nonprofits that do not fit the underwriting guidelines of many commercial insurers. They must maintain Risk-Based Capital standards like any other commercial insurer and have no ability to undercut the commercial market. They provide coverage that is either not easily available in the market or not accessible to local community-based insurance brokers and agents. Operating as a 501(c)(3) nonprofit, ANI has an open book on its financials and has no outside investors to satisfy. Their mission is to provide stable, reliable, and secure insurance to our nonprofit members.

I have another question not answered here.

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