

TESTIMONY OF MICHAEL BIGOS, ESQ., for MAINE TRIAL LAWYERS ASSOCIATION
IN OPPOSITION TO

LD 1420, An Act To Adopt the Peer-to-Peer Car Sharing Program Model Act

April 20, 2021

Health Coverage, Insurance and Financial Services Committee

Senator Sanborn, Representative Tepler, and Honorable Members of the Health Coverage, Insurance and Financial Services Committee, my name is Michael Bigos. I live in Auburn. I am a trial attorney at Berman & Simmons law firm (800-244-3576), and I am a Past President of the Maine Trial Lawyers Association. The Maine Trial Lawyers Association opposes LD 1420 as written.

LD 1420 has almost no language in it, but instead refers to a boilerplate form model act published by the National Conference of Insurance Legislators (NCOIL). To our knowledge, this bill has not been adopted in any state.

We ask that the Committee amend this bill to form a study commission comprised of stakeholders to talk with each other, share information, and seek areas of agreement, and report back to the committee. There is just too much at stake in this bill that affects citizens throughout the state. The bill was just recently printed, and the public hearing was only published a week ago.

Two years ago, the Peer-to-Peer Car Sharing Insurance Act was proposed and resulted in the beginning of a legal structure that deferred some of the more serious issues that still need addressing.

The NCOIL language referenced by LD 1420 is presently unallocated in the form of the Maine Revised Statutes. It is difficult, if not impossible for the committee to consider it at this time. Some of the form language would belong in Title 24-A; some of it mostly likely would belong in Title 29-A – Transportation liability, and some in Title 14 – Court procedure and liability statutes.

Alternatively, the committee should reject this bill and report out ONTP because it is not ready yet. The language should be in the form of the Maine Revised Statutes.

Some of the bill's NCOIL language is already in Maine law in 24-A, Chapter 95 – the Peer to Peer Car Sharing Insurance Act, and therefore unnecessary. Thus, the first thing this bill needs is a good editor. Either a study group should do it, or a sponsor should do it. Then the committee can give the issue the serious consideration that it deserves in a future public hearing. The Committee can then work to find the best language to promote the safe, predictable, accountable expansion of peer-to-peer car sharing network business transactions in Maine.

We are specifically opposed to the exemption of vicarious liability (referring to the so-called "Graves Amendment" at 49 U.S.C. section 30106). Allowing vicarious liability creates the

“private enforcer” incentive for safety and accountability, and tends to keep the government out of regulating “minimums” for what is considered “safe-enough” under the circumstances which is always a cat and mouse game, and always needing revision as technology and markets evolve. By exempting vicarious liability, the legislature puts the burden on the people of Maine for any incidents that occur as opposed to a large corporation with the funds to handle any situation.

Other parts of the bill contain good ideas, such as the consumer protection disclosures. As currently written, these disclosures are arguably more helpful to the car-sharing platform than the consumer, but certainly offer bilateral protection and contract terms that would be helpful to both parties and other stakeholders such as insurers and future casualty victims. All parts of the bill should be considered, and go through the technical editing process, following the procedures of the Maine legislative drafting manual, in order to de-duplicate surplusage and allocate language to the appropriate title of the Maine Statutes.

We urge the committee to take the time to delegate a commission to study the NCOIL form bill or simply vote ONTP. Thank you. I would be happy to answer any questions.