

TESTIMONY OF STEPHEN KOERTING, ESQ., for MAINE TRIAL LAWYERS
ASSOCIATION
IN OPPOSITION OF
LD 1420, An Act To Adopt the Peer-to-Peer Car Sharing Program Model Act
AND IN SUPPORT OF
**LD 540, An Act To Promote Safety and Protect Consumers Using Peer-to-peer
Car Sharing Programs**

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 Stephen Koerting. I live in Falmouth. I am a trial attorney at Kelly, Remmel & Zimmerman, a law firm in Portland which represents Mainers throughout the State. The Maine Trial Lawyers Association opposes LD 1420 as written and supports LD 540. My testimony addresses both bills.

LD 1420 proposes to adopt the Peer-to-Peer Car Sharing Program Model Act with minimal modifications. The Model Act was adopted and published by the National Conference of Insurance Legislators (NCOIL) after input from, and debate between, rental car companies and peer-to-peer car sharing companies advocating for their corporate interests. As such, the NCOIL model takes substantial steps to protect the industry corporations, but fails to consider the perspective of consumers, including everyday citizens who would actually use the services or might be harmed by the services. To our knowledge, the NCOIL model has not been adopted in any state. It should not be adopted in Maine, at least without serious consideration and input from all stakeholders.

The NCOIL model, which LD 1420 proposes to adopt as law, is a lengthy act, spanning ten pages with six chapters and dozens of subparts, each of which would have serious impacts on the Mainers who might use or be affected by peer-to-peer car sharing. It is because of this that a comprehensive peer-to-peer car sharing act, like LD 1420, requires the participation of everyone, especially consumers whose interests were not represented when the NCOIL drafted its model act.

Examples within LD 1420 of corporate protection without consideration of the consumer's perspective include the fact that situations may arise under LD 1420 where no bodily injury or property damage insurance applies for the injured or affected citizen and, where insurance does apply, the car sharing company only needs to carry the bare minimum insurance coverage. Further, LD 1420 puts full responsibility of automobile safety recalls on the vehicle owners and not the car sharing company if a recall is issued after the owner registers for the car sharing service. Other states, including California, properly leave the onus on the car sharing company. Additionally, as discussed below, exempting vicarious liability similarly removes private enforcement of safety and accountability to the detriment of citizens who are harmed.

The NCOIL model also omits several issues which may create uncertainty regarding insurance coverage for those injured or otherwise harmed during the course of peer-to-peer car sharing. A peer-to-peer vehicle may be used in a ride hail but LD 1420 does not clarify which insurance coverage is primary in such circumstances. Further, it is unclear whether a negligent entrustment action would survive against an owner who entrusts his/her vehicle to an unfit driver but could rely solely upon the driver's license verification requirement in the NCOIL model.

The committee can remedy oversights of the NCOIL model by bringing all of the parties to the table: not only the insurers, rental car companies and peer-to-peer car sharing companies who influenced the NCOIL model, but also representatives for the consumers and citizens throughout Maine. Otherwise, this bill would meet the needs of insurers and car sharing companies at the expense of consumers and citizens. Alternatively, but for the same reasons, the committee should reject this bill and report out ONTP.

The Maine Trial Lawyers Association is specifically opposed to the vicarious liability exemption (referring to the so-called "Graves Amendment" at 49 U.S.C. section 30106) as included in LD 1420 at Chapter 4, Section 5, and in the standing Peer-to-Peer Car Sharing Insurance Act at 24-A M.R.S.A. §7403, sub-§3. Accordingly, the MTLA supports LD 540, which would simply repeal the "Graves Amendment" in subsection 3 and allow for vicarious liability.

The Graves Amendment is a federal law which protects the owner of a motor vehicle engaged in the trade or business of renting or leasing motor vehicles from vicarious liability. The federal law does not apply to a car sharing service which does not own the vehicle being shared. When this principle was added to Maine's Peer-to-Peer Car Sharing Insurance Act, the Legislature expanded liability protections to car sharing companies and vehicle owners beyond those provided for in the federal law while simultaneously reducing the rights of those harmed through no fault of their own. In circumstances where the negligent party cannot pay for all of the harm they cause, the remainder should be paid for by the car sharing companies or vehicle owners who have the means and foresight to insure against the risk, not by citizens injured through no fault of their own. Further, allowing vicarious liability creates an incentive for private enforcement of safety and responsibility, rather than governmental oversight and regulation of minimums which are ever-changing.

We urge the Committee to vote OTP on LD 540 and to either vote ONTP on LD 1420 or allow time to bring all stakeholders to the table by delegating a study group or otherwise. Thank you. I would be happy to answer any questions.