

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
NEWPORT BEACH, CALIFORNIA
JULY 12, 2019
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at The Marriott Newport Beach Hotel on Friday, July 12, 2019 at 4:30 p.m.

Representative Edmond Jordan of Louisiana, Chair of the Committee, presided.

Other members of the Committees present were:

Rep. Austin McCollum (AR)	Rep. George Keiser (ND)
Sen. Jason Rapert (AR)	Sen. Jerry Klein (ND)
Asm. Ken Cooley (CA)	Asw. Maggie Carlton (NV)
Rep. Matt Lehman (IN)	Asm. Andrew Garbarino (NY)
Rep. Joe Fischer (KY)	Asw. Pam Hunter (NY)
Rep. Bart Rowland (KY)	Sen. Bob Hackett (OH)
Sen. Dan "Blade" Morrish (LA)	Rep. Lewis Moore (OK)
Rep. Michael Webber (MI)	Rep. Tom Oliverson, M.D. (TX)
Sen. Paul Utke (MN)	Del. Steve Westfall (WV)
Sen. Vickie Sawyer (NC)	

Other legislators present were:

Sen. Jack Tate (CO)
Asw. Ellen Spiegel (NV)

Also in attendance were:

Commissioner Tom Considine, NCOL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, NCOIL General Counsel

MINUTES

After a motion was made by Rep. Tom Oliverson, M.D. (TX) and seconded by Sen. Jason Rapert (AR), NCOIL Immediate Past President, to waive the quorum requirement, the Committee unanimously approved the minutes of its March 17, 2019 meeting in Nashville, TN upon a Motion made by Rep. Richard Smith (GA), Vice Chair of the Committee, and seconded by Asm. Ken Cooley (CA), NCOIL Treasurer.

CONSIDERATION OF MODEL LEGISLATION IN RESPONSE TO THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE LAW, LIABILITY INSURANCE

Rep. Joe Fischer (KY), stated that before presenting the Model Act Concerning Interpretation of State Insurance Laws (Model) for adoption, he would like to say a few words. Rep. Fischer stated that he has the greatest respect for the American Law Institute (ALI) and their scholars and he does not believe he would have graduated law

school or passed the bar without reference to their many restatements and treatises. NCOIL respects the work that the ALI does but in earlier conversations with Sean Kellum, ALI Law Fellow, Rep. Fischer told him that the Model is more about how to interpret insurance laws. The Model really goes to the heart of what NCOIL does as an organization as well as to legislators' constitutional duty to make the law in each respective jurisdiction. Legislators are the ones that state or re-state what the law is every time they meet in session. The Model simply magnifies that duty of legislators. The scholars of ALI have every right to state what they think the law is or what they even want the law to be but it is the duty of legislators to make the law and that is really the basis of the Model. Rep. Fischer stated that he appreciates the opportunity to sponsor the Model and looks forward to hearing from the panel.

Mr. Kellum first thanked the Committee for allowing him to speak today, and then thanked NCOIL for its dialogue with the ALI over the past two years regarding the ALI's Liability Insurance Restatement (Restatement). Mr. Kellum noted that as ALI's Law Fellow he provides research and editorial assistance to the ALI's Director and Deputy Director on ongoing ALI projects. During the final stages of this project he had the opportunity to dig in and read very carefully many of the Restatement's sections and as of today, the final official text is available on Westlaw. The Restatement attracted an enormous amount of attention, including NCOIL's, and the ALI would like NCOIL to know that its comments were very carefully considered and posted on the ALI's website for its members to read. The ALI believes that NCOIL's comments as well as comments from other interested parties really improved the project. The ALI took an additional year of review and many significant changes were made and ultimately the ALI believes the final project is much clearer and will be much more useful to litigants, lawyers, and judges.

Mr. Kellum stated that the ALI has also been observing with interest the reactions of state legislatures to the Restatement and the ALI hopes that state legislators will view the Restatement as working in tandem with the important lawmaking that legislators do. That is how the ALI views the process – a Restatement is a roadmap to caselaw to fill in the gaps where a statute does not control and a court nevertheless has to make a decision on an issue presented in a litigated case. The ALI expects that lawyers and judges always will look first to state statutory law to find the applicable rule or answer to an issue in a case before them and only look to common law if there is no statute on point to provide an answer in the case. The ALI acknowledges that Restatements, by their nature, are works of scholarship and commentary and are not controlling like sources of law. Mr. Kellum stated that the ALI hopes that this Restatement will be useful to litigants, lawyers, judges and legislators and even where a user of a Restatement disagrees with where the ALI came down on a particular issue the ALI is hopeful that the analysis of the issues and the case law will nevertheless be helpful and will improve the quality of litigation in this area of the law.

Frank O'Brien, VP of State Gov't Relations at the American Property Casualty Insurance Association (APCIA) thanked NCOIL for its engagement with this issue. Without NCOIL's attention and engagement on this issue, APCIA does not believe that the process that the ALI engaged in and the product that it ultimately developed would be in the place that it is in today. APCIA believes that the Model is warranted and that it is time for it to be adopted. APCIA congratulates NCOIL for its attention and diligence on this particular issue.

Erin Collins, Asst. VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC) echoed Mr. O'Brien's comments and noted that NAMIC and APCIA have worked together on this project for quite some time. NAMIC believes that the Model is the result of a lot of great work by this Committee and concurs that it is warranted and time for adoption.

Laura Foggan, Esq., Partner at Crowell & Moring, LLP stated that she has worked with NAMIC and APCIA throughout this process as a liaison to the ALI on its development of the Restatement. Ms. Foggan stated that she is here today to serve as a resource to answer any questions.

Rep. George Keiser (ND) stated that as he reads the Model he does not see a provision that accounts for when a state takes action by not taking action. In other words, many issues may have been debated in the legislature and bills may have been turned in and defeated. As a result, that translates into the legislature taking action but it is not in the form of the Constitution or statute. Rep. Keiser stated that he is concerned that the Model does not account for that situation.

Ms. Foggan stated that to some extent the Model does allow for that as it addresses not only statutory law but common law as well. Rep. Keiser stated that is not common law by definition and that is a problem. Ms. Foggan stated that she believes there is an argument that where the legislature has made a determination not to enact a statute, it is reflecting the public policy of the state and ultimately the common law of the state and that would be the way in which, indirectly, the Model speaks to Rep. Keiser's concern. Rep. Keiser stated that if the legislature took action and defeated a bill four sessions ago, nobody remembers it – but that is nonetheless action. Rep. Keiser stated that he is concerned that adoption will occur even though a state has taken a position by not taking a position.

Rep. Fischer stated that courts have looked at inaction of the legislature as creating an avenue for them to suggest that the law should not be applied. It is a difficult issue but it is an issue that the courts have come down on and stated that if the legislature has not acted then it is ok for courts to proceed. Rep. Fischer also stated that he does not know how to address the situation described by Rep. Keiser in a statute, such as saying "the law of the state includes inaction by the state legislature." Rep. Fischer stated that he does not believe he has seen any statutes that have expressed that and it would be difficult to include that in a Model law. Rep. Keiser suggested that Rep. Fischer and the Committee look at the law passed in North Dakota on this issue. Rep. Fischer stated that he thought the Model was modeled off of what was passed in North Dakota and Arkansas on this issue.

Upon a Motion made by Rep. Fischer and seconded by Sen. Jason Rapert (AR), NCOIL Immediate Past President, the Committee voted to adopt the Model by way of a voice vote. Rep. Keiser was the only vote in opposition.

DISCUSSION ON INSURANCE ISSUES RELATED TO THE P2P CAR SHARING INDUSTRY

Ethan Wilson, Gov't Relations Manager and Sr. Legislative Counsel at Turo, stated that Turo is a peer to peer (p2P) car sharing company marketplace facilitator that is based in San Francisco. Turo operates in 49 states as well as Canada, the U.K. and Germany.

Simply put, Turo's mission is to put the world's 1.2 billion cars to better use. There are roughly 320 million people in the U.S. and there are about 4 times that amount of cars on the planet which is a crazy number but a way to contextualize Turo's motto, part of which is to put depreciating assets to better use. Turo is a p2p car sharing marketplace and it owns no cars – that is the beauty of it. It is a decentralized platform. What makes Turo and p2p car sharing great are the men and women that share vehicles on Turo's platform. It is a vibrant community consisting of men and women, parents, students, seniors, active and retired military members (some of which are currently deployed), first responders, teachers, and many more across the U.S., Canada, the U.K., and Germany.

Mr. Wilson stated that there is a unique value proposition to both hosts who are the vehicle owners and guests who are the vehicle drivers that participate in p2p car sharing. From a guest perspective, guests can choose from an incredibly unique and vibrant selection of nearby and locally sourced vehicles – from fully electric vehicles, to minivans, pickup trucks, convertibles, and rare and exotic cars. From a host perspective, they can earn extra money off of assets that are otherwise sitting idle sometimes 90% of the time. By and large, vehicles are a person's largest depreciating asset he or she will ever buy. Mr. Wilson stated that in 2017, the average monthly Turo host earnings was \$625 and it took 11 sharing days to get to that amount of money. Importantly, comparing that to what the average car payment was in 2017, it was \$504.

Mr. Wilson stated that 75% of Turo hosts use the money they make from sharing their vehicle to pay down their car loan, pay rent, pay a mortgage, or add to savings. Turo is certainly not a panacea for the retirement crisis in America but it is another method that people can use to save money. Mr. Wilson stated that 17% of Turo's community identifies as either veterans or active duty military, some of which are deployed in the U.S. or overseas. 13% identify as a teacher/educator which is very important because since teachers have summers off, that is a great opportunity to use a depreciating asset to help pay for any expenses during that time. 13% identify as either AARP or retired, 8% identify as working in the trades or being in the labor union, and 6% identify as being in law enforcement/firefighter/emergency responder.

Mr. Wilson noted that Turo has several different types of cars on its platform from BMWs, Corvettes, Audis, to fully electric vehicles like Teslas and the Nissan Leaf, to Jeep Wranglers. This goes to show that there is no barrier to entry to anyone on the Turo platform no matter what type of car they have. Mr. Wilson stated that in 2017 the most popular car on the Turo platform was the Jeep Wrangler, but interestingly the second most popular car was the Toyota Prius which shows that many people are looking for more economical choices when sharing or driving a car on the Turo platform.

Mr. Wilson stated that Turo prides itself on having a very robust trust and safety team as that team is available 24 hours to any host or guest currently in a car sharing transaction on the platform. Also, the person driving the vehicle will have access to 24 hour roadside assistance, and there is a very robust p2p anonymous host/guest review process that does a great job to help explore and vet who the good and bad actors are. With regard to insurance, dating back to 2009, Turo worked with a licensed producer for over a year to secure the country's first p2p car sharing insurance policy and it was available for Turo's first reservation in 2010. Currently, Turo partners with Liberty Mutual. Turo is the named insurer on the blanket policy and has the full premium obligation to pay Liberty Mutual. However, it is under that blanket policy that the host and driver are covered.

Mr. Wilson stated that it is important to note that the car owners and drivers are automatically covered from the start of the reservation until the end of it, including car delivery which means that even if the vehicle's owner is driving the car to meet the person who will be driving the car, that would fall under Turo coverage. Mr. Wilson stated that when you look at insurance on a p2p platform you need to look at it through two lenses - the host lens and the guest lens. For the host lens, the Turo protection provides \$1,000,000 in liability insurance from Liberty Mutual included in every p2p car sharing reservation from until the moment the reservation (or delivery) starts until the end of the reservation (and any approved extensions). For the guest lens, it is a little different. At a no-cost added basis in the transaction, the state mandated minimum liability insurance are added. However, a driver can upgrade that liability insurance to up to \$1,000,000 which allows flexibility for a driver as many times a driver will not need redundant insurance coverage when they are driving because they have insurance that will cover them. However, even if they did not have insurance they would still get the minimums and if they knew they did not have insurance they would probably purchase the extra added \$1,000,000 coverage.

Mr. Wilson stated that this year Turo worked with Allstate's Drift, Getaround, Liberty Mutual, APCIA, and a number of other stakeholders to get legislation passed in Colorado, Indiana, Iowa and last year in Maryland. Mr. Wilson noted that Sen. Jack Tate of Colorado co-sponsored the Colorado legislation, and Rep. Matt Lehman of Indiana, NCOIL Vice President, was a co-sponsor of the Indiana legislation. Mr. Wilson stated that the negotiations in those states were great and that in those states there are now very robust consumers protections for individuals operating on a p2p car-sharing marketplace.

Mr. Wilson stated that the legislation passed in those states, which is based on model legislation mainly developed by Turo and APCIA, can be divided into three components – the first being a definitions section, the second being an insurance section, and the third being a consumer protection section. For the definitions section, it defines things like when the car sharing start time happens and what that means and looks like, what the car sharing termination time looks like, as well as coverage during the delivery period. Taking all of those things together you have the sum of the parts of what a car sharing period would look like. Other definitions include “shared vehicle owner,” “shared vehicle driver,” “p2p car sharing program,” and “car sharing program agreement.”

The insurance section of the model legislation establishes robust insurance requirements such as coverage during the entire car sharing period even beginning with a car sharing delivery period if applicable. The model does not restrict an insurer's ability to exclude or limit coverage for a p2p car sharing activity – that was negotiated with the insurers and Turo is confident that the insurance market is very competitive and dynamic and there will be a growth in availability of products for people to purchase that would cover p2p car sharing activity. However, for the time being, Turo and other market participants provide insurance for the car sharing transaction.

Mr. Wilson stated that the model legislation also establishes a number of consumer protections including recordkeeping requirements and transparency. The model also requires disclosures of indemnification, daily rates, fees and if applicable, any other insurance or protection package cost that would be charged to the shared vehicle owner or driver. The model legislation also has a provision that addresses automobile safety

recalls which means that a program such as Turo operating in a state in which the model legislation has passed must verify that every shared vehicle is free of any safety recalls prior to being shared on a p2p platform. Once a vehicle is on that platform and clears that safety threshold, the legislation requires that a shared vehicle owner report to the p2p car sharing program if at any point in time in the future a safety recall is issued on that vehicle – that vehicle will then be pulled from the platform and then that individual will provide that platform with proof that the safety recall has been properly addressed and then the vehicle can go back on the platform. Mr. Wilson stated that he is happy to serve as a resource to the Committee on these issues going forward.

Brian Rothery, VP of Gov't and Public Affairs at Enterprise Holdings stated that Enterprise has a network of car rental locations throughout the country, employs about 100,000 people, and operates a fleet of about 2,000,000 cars to operate its rental car business. In addition to its rental car business, Enterprise also is involved in van pooling, ridesharing, and just offered a new product that relates to subscription services. Enterprise is excited about the evolving transportation industry and looks forward to helping people figure out new ways in getting from point A to point B. Mr. Rothery noted that the debate is not whether or not to embrace innovation, Enterprise believes that there is a certain way to responsibly embrace it.

The issue of how to handle p2p car sharing companies has been a very active discussion in roughly 25 states besides those states that have enacted legislation. Enterprise expects that number to increase and is hopeful that by having discussions like the one being had today consensus on certain issues can be reached. Other sharing economy issues have made their way through legislatures such as Uber, Lyft, and Air BnB. And p2p car sharing is just the next version of that. There are multiple ways of thinking about these types of transactions and Enterprise appreciates the opportunity to voice their thoughts.

Mr. Rothery stated that Enterprise's perspective on these issues is not just one of a marketplace competitor but also one of a company that is thinking about getting involved in this business model as well. Enterprise very much sees an opportunity for a company like itself to create a marketplace to either leave their car when they are about to go on a flight or pick up a car when they get off a flight. Accordingly, in addition to being a competitor, Enterprise would like to see clarity on certain issues so it knows the rules of the road if it decides to participate.

Mr. Rothery stated that Enterprise wholeheartedly supports the concept of the model legislation discussed by Mr. Wilson since when you are trying to conduct a rental transaction that involves three parties it is probably best to write some rules of the road that apply to them as the business model does not fit into the current insurance codes relating to traditional car rentals. However, one aspect of the model that is problematic for Enterprise is the definitions of "peer-to-peer car sharing" and "peer-to-peer car sharing program" as there is language in there stating that the definitions do not mean rental car or rental activity as defined in the relevant section of existing law. Enterprise objects to that language because the model legislation largely deals with insurance issues and as many probably already know who have dealt with this, there is a significant issue relating to taxation. Enterprise has great concern that if something is considered a model law and does not address taxation and includes the aforementioned language, then it could have an unintended, or intended, policy implication outside the

realm of insurance and therefore the model needs to either include taxation or the aforementioned language needs to be stricken.

Mr. Rothery stated that he is not here today to debate the proper way to tax these types of transactions, rather, it is important to acknowledge that the tax conversation is important and deserves its own light of day and should not be back ended through a definitional structure in the insurance code as a justification for why taxation should be different. Mr. Rothery stated that one of the things that Enterprise applauds in the bill is that the minimum financial responsibility limits are set to be equal with the car rental companies. That is something that Enterprise supports and is something that in various versions of legislation across the country has gotten conflated sometimes. Enterprise supports equal treatment as it believes that p2p car sharing vehicles are rentals and they deserve the same protections, obligations, responsibilities, and rights that Enterprise's transactions have. Enterprise is not only looking for equality and parity with respect to taxation rates but also with back of business rules such as financial responsibility limits.

Mr. Rothery stated that on page 7 of the model in the Disclosure section, it is a great effort to encapsulate some of the good and honest consumer protection laws that are out there in various states. However, some states do have an existing scheme such as California that sets forth very specific requirements on the way in which prices are disclosed to customers, specifically the prices that they cannot avoid. Within two clicks of a webpage, you need to show a customer in California the total charge that the customer will pay when renting a car from Enterprise. That is important because customers make the decision to rent a car at their desk or at their home expecting that the price they see will be the final price they pay when getting the car, and Enterprise supports such requirements being included in the model or language saying that, in states where there is a more stringent standard such as California, the p2p law needs to reflect that. That is important because, make no mistake, Enterprise and companies like Turo are competitors as they are after the same customer.

Asw. Pam Hunter (NY) stated that she understands the realities of the sharing economy and that it is here to stay but she is concerned that the businesses in her district (Syracuse) are going out of business because of companies like Uber and Air BnB. Accordingly, it is hard to gauge what is right for progressive, leading edge businesses and also making sure that there is a level playing field. Asw. Hunter urged the Committee to take that into consideration when considering model legislation on this issue as every state is different. Asw. Hunter then asked who is paying the taxes on p2p car sharing platforms. Asw. Hunter also asked if the lienholders of the vehicles are ok with the vehicle being rented out to third parties.

Mr. Wilson stated that in the model legislation there is a disclosure that requires a p2p car sharing program to disclose to hosts on the platform that it could violate terms of a lease agreement or some type of lienholder or financing agreement if that individual does not hold title to that vehicle. It is designed to somewhat be hands-off as Turo does not want it to be a barrier to entry but at the same time it understands the importance of it and does not want individuals breaking any contractual obligations that they are already under. Mr. Wilson noted that such language may look different in different states, however.

Asw. Hunter then asked if someone owns ten cars and is renting them, can that person be an individual host on the platform? Mr. Wilson replied yes – if you have registered all

of the cars and pay registration every year, and paid the sales tax on all of the cars since you are not a rental car company then you could do that. But you would also have to pay insurance on all of those cars to register them every year so if it makes sense from a dollars and cents perspective it could certainly happen but there is a tipping point from a volume of vehicles perspective where it would no longer make sense.

Rep. Jordan then clarified to the committee that the model legislation being referenced is not a proposed NCOIL model law but only model legislation that was negotiated between Turo, APCIA, and others.

Asm. Andrew Garbarino (NY) asked Mr. Wilson out of the 49 states Turo operates in, how many of them have the specific p2p legislation that was referenced earlier. Mr. Wilson stated that legislation has recently passed in CO, IN, IA, MD, and dating back to 2010 there was "western states language" in CA OR and WA that took the form of car sharing language but the industry looked a lot different then and it will probably need to be re-visited. Asm. Garbarino asked if the legislation passed in CO, IN, IA and MD addressed the issues referenced by Mr. Rothery. Mr. Wilson stated that there was a taxation structure passed in MD and IN.

Rep. Tom Oliverson, M.D. (TX) asked if there was any other reason besides taxes as to why rental cars were excluded in the definitions referenced by Mr. Rothery. Mr. Wilson stated that excluding rental cars from those definitions was not done for tax purposes but rather because in certain states there are a myriad of regulatory components that would flow from being categorized as a rental car transaction which would be impossible or very unlikely for an individual car owner to comply with. Rep. Oliverson asked for specific examples of those regulatory components. Mr. Wilson stated that some examples include having a 1-800 number, particular signage at brick and mortar locations, and having contracts or content be in certain point font.

Rep. Oliverson then asked Mr. Wilson to state again how the insurance coverage works when a "renter" is driving a car sharing vehicle. Mr. Wilson stated that the individual's personal policy would be primary if that person has a policy that would cover p2p car sharing activity but in the absence of that, the minimums of that state are still in place and provided by Turo through Liberty Mutual and then that individual has the opportunity to increase coverage.

Rep. Oliverson then noted that the Committee has discussed other sharing economy issues and the limits of liability insurance of when someone uses something that they own personally and then they start performing a business activity. For example, someone may take a Lime scooter home and charge it in their home and burn the house down - technically that is commercial activity since you are being paid to charge it. Accordingly, Rep. Oliverson asked if there are any limitations in this marketplace being discussed with regard to the individual owning the vehicle and any insurance coverage they might have not applying because the vehicle is engaged in commerce as opposed to being a personal vehicle. Mr. Wilson replied yes and Turo knows that the individual car owner's policy would not cover that type of transaction and to be safe, that is why in the model act the delivery period is included as being covered. So for the vehicle owner, it is designed to be primary and if something were to happen and there was liability on that driver or there are attorneys fees just to defend a claim, that would be primary for that individual because we know normal, personal polices would not cover that type of activity.

Asw. Maggie Carlton (NV) asked how Turo makes money. Mr. Wilson stated that there is no subscription fee and as a startup, Turo is still not a profitable company but aims to be. There is a take-rate from the transaction as a whole and it averages at 25%. Mr. Wilson also noted that he failed to mention earlier that the vehicle owners on the platform have 100% pricing power over their car. Asw. Carlton then asked how the \$1,000,000 coverage referenced earlier would work in the scenario of leaving your car at the airport, someone picking it up and taking it out to the desert and it does not survive – what is the owner’s responsibility in getting the car replaced. Mr. Wilson stated that the owner’s vehicle, at no extra cost, is covered up to the actual cash value (ACV) established through normal means. In terms of out of pocket costs for the driver of the vehicle, they can select difference coverage options regarding damage to the vehicle. For the owner, the car would probably be retrieved from a tow, and damage would be covered and if totaled, up to the ACV. Asw. Carlton asked if that would be a claim against the owner’s personal insurance. Mr. Wilson replied no.

Asw. Ellen Spiegel (NV) stated that in NV, Air BnB’s have to be licensed as businesses and asked if something like that has come up with Turo where hosts have to be licensed as businesses. Mr. Wilson stated that he is not aware of that issue arising yet. 97% of vehicle owners on the platform share one to two vehicles so licensing on that is probably not prudent from a compliance perspective and probably would not be worth the state’s effort in enforcing it, but Mr. Wilson stated that maybe there is a threshold on how many vehicles or there may be a licensing structure but it is not clear what that would be.

Asw. Spiegel stated that she did not see anything in the model legislation requiring the host to warrant the condition of the vehicle or have periodic maintenance. From a consumer protection standpoint, how is that fulfilled? Mr. Wilson stated that in order to register a car in a state there is a certain protocol and some states require vehicle inspections. Mr. Wilson further stated that because every state is unique and because the cars are personal to the owners and they drive them, there is not a lot of issues with having to keep them safe, and there is also safety recall language in the model.

Rep. Bart Rowland (KY) asked Mr. Wilson to clarify that when the host puts his or her car on the platform, physical damage is primary under the Liberty Mutual policy for the host. Mr. Wilson replied it would be primary but it is provided through the Turo platform, not through Liberty Mutual. Rep. Rowland then asked Mr. Wilson to clarify that Turo has its own primary policy and then there is a Liberty Mutual coverage in addition to that if the buyer chooses to buy it. Mr. Wilson stated that the contractual agreement with Turo would only cover the ACV of the vehicle for physical damage – third party liability would always be through the Liberty Mutual policy. Rep. Rowland then asked if that applied regardless of value of the car such as with a Lamborghini. Mr. Wilson replied yes and there are limits on what a particular value of a vehicle would be on a platform for that reason alone. There are exotic cars on the platform but that would be a very expensive car to have on the platform because of the potential loss involved.

Rep. Keiser asked if at the end of the year Turo sends a 1099 to hosts. Mr. Wilson replied yes, for the federal limits – so to comply with states that are tethered to the 1099k, Turo does. And for MA and VT that have de-tethered, Turo will send whatever the state limit is for their equivalent of a 1099k.

Rep. Jordan then asked the Committee if is interested in working on a broad NCOIL p2p car sharing model law that includes taxation and other issues besides just insurance issues. Rep. Matt Lehman (IN), NCOIL Vice President, stated that when discussing this issue in Indiana, insurance started out as the biggest issue and taxation ended up being the biggest issue. In the end, the bill punted on the tax issue and is very heavily focused on insurance. Rep. Lehman stated that if the Committee decides to go down the road of developing a p2p car sharing model law, it should include all of the issues discussed today. Rep. Jordan stated that he wanted to note that he appreciates Enterprises' concerns about not wanting to stifle innovation but wanting to ensure a level playing field. Rep. Lehman stated that Enterprise was heavily involved in discussions in Indiana and noted that one provision that was included in the Indiana bill was that local governments cannot enact ordinances to effect p2p car sharing transactions, but airport authorities can. Part of that was that Indiana did not want communities to simply ban the use of p2p car sharing but at the same time some airports are very protective of the rental car business.

Asm. Garbarino stated that there was big push at the end of session in NY for a p2p car sharing bill and it fell apart not because of the insurance issues but because of all of the other issues. Accordingly, Asm. Garbarino agreed with Rep. Lehman that if the Committee develops a model law it should encompass all issues discussed today although it would be very difficult of course to set any sort of tax rates or anything that specific.

DISCUSSION ON AUTOMOBILE INSURANCE REFORM EFFORTS

Cameron Mazaherian, EVP of Carrier Development at Gabi, stated that Gabi is an insurance agency and is a licensed personal lines independent agent in 50 states plus Washington D.C. Gabi is one of the flavors of online direct-to-consumer insurance agents. Gabi never actually sees the client or consumers but provides a platform for consumers to go online, get a quote, and complete the entire transaction without actually seeing an agent. However, Gabi has licensed agents who get involved in the process should the customer have any questions or need any points of clarification.

Mr. Mazaherian stated that one unique aspect of Gabi's business model is that it starts with the current insureds "dec" page rather than arbitrarily coming up with coverage recommendations – Gabi actually links the insureds current policy from their current carrier and does an apples to apples match. That is a way to mitigate any confusion in the process and also a way to ensure that all consumers are protected equally in terms of having adequate coverage. From thereon, consumers have the option of increasing coverage should they need to in the process. Another unique aspect of Gabi's business model is that it feels that its value proposition with the consumer is that they are engaged in a digital environment in the shopping process which has become very popular with shopping overall, and each side to the transaction is engaged in the journey. So even if a customer does not buy from Gabi initially, Gabi keeps that information should the consumer want to come back and buy at another point.

Mr. Mazaherian stated that some things make it difficult for Gabi to provide consumers with a quick, accurate rate in an online experience and it deals with the data that is required to truly underwrite an insurance policy. Credit is a big factor, as is driving history and vehicles in the household. All of those types of reports are costly and are required in the process so Gabi cannot just provide a quote based on consumer-

admitted information – all the data has to be verified. Accordingly, third party data sources are involved such as Transunion, motor vehicles through LexisNexis and that all adds a cost to consumers which are not transparent and they don't really understand it. As a result, many platforms will provide estimated rates that are based on admitted information which is then verified. So if you think about it from the consumer point of view – they get an estimated rate and don't understand what it is but later on in the process and a couple of clicks down the line they get a refined rate that has gone up because the information has been verified.

Accordingly, the challenge for Gabi in this space is that the reports are costly and there is not currently a process in which the data can be shared on a cost basis – in other words, order the report once and share it among all carriers rather than having each carrier incur costs in the process.

Richard Gibson, MAAA, FCAS, Sr. Fellow at the American Academy of Actuaries, first discussed the fundamentals of auto insurance ratemaking. At a high level they are very simple. First, the overall rate level is a function of expected cost within the insurance system. Second, expected costs are measured from the data and information gathered by insurance companies that come from premiums collected and claims paid on the policies. Third, just as important to the overall rate need, measuring the relative risk across a structured classification plan is very important to a well-functioning insurance system.

Mr. Gibson stated that as we look at the insurance system costs, two data elements are very important to actuaries: claim frequency, i.e. how often claims occur, and claim severity, i.e. what the claims really cost. Those two elements really drive the insurance ratemaking process. Industry data from 2014 to 2018, which is broken down by bodily injury, property damage, and collision, shows that the movement in claim frequency averaged in the range of a 3% decline to a 3% increase annually. Claim severity was in the range of a 3% increase up to a 7% increase on an annual basis. Claim severity is commonly an upwardly trending data element. When you combine those two, the range comes in at around a 1% increase to an 8% increase on an annual basis. In short, costs are moving up in the insurance system. At the low end of that range, the rate increase would not be substantive and at the high end, the rate increases would be larger than general inflation. The numbers cited are based on national, industry data and would vary by state and company.

Mr. Gibson then touched on the classification structure that reflects the relative risk of loss being important to a well-functioning insurance system. Basically, not everyone should have the same rate or the same rate change over time. By way of example, it would not be wise to charge the same rate for a 20 year old inexperienced driver as you would a 50 year old experienced driver. Likewise, you would not want to ignore the existence of multiple driving violations and charge the same for someone with violations as you would for someone without. These are simple examples and the classification structures have been in place for auto insurance for decades. They are evolving as big data and analytics are pushing the classification structures to the point where they are much more sophisticated using much more data than we saw perhaps ten years ago.

It is important to understand that the overall rate need that an actuary may calculate is an economic measurement of how much the average rate should change. The average rate is just a number and no insurance company customer is going to get the average

rate. What then happens is that the classification system through the relative risk of loss determines how the overall rate change is spread across the entire insurance population. So even if there is a small rate increase on average or even a rate decrease there will be some customers who may well get large rate changes because of that classification structure. Mr. Gibson stated that you are most likely to hear about the folks who got the largest increases which should not be ignored, but it does create a skewed perception of rates if all you ever hear about are the rate increases and not rate decreases.

With regard to what some of the drivers are to the costs in the insurance system, Mr. Gibson stated that insurance obviously pays for personal injuries, medical costs, lost wages, car damage repair, vehicle theft, weather related vehicle damage, and legal costs. As those underlying costs change they get reflected in the insurance rates and data via the frequency and severity of claims and they lead to the rate changes. Clearly the long term effects of inflation in medical costs, car prices, car repair prices, and weather play a role in the price of insurance in the long term.

Mr. Gibson stated that cars are getting safer and there are a lot of new safety devices and that comes with an expectation that claim frequency might go down as a result. However, just because new cars have all of these new devices, data shows that it does not make it into the registered vehicle population that quickly. The adoption rate has muted what we had hoped the benefits would be and it is simply not known how much the claim frequency will go down in the future. You also have to keep in mind that newer cars with newer technology are more expensive to repair and as those get adopted the claim severity is going to go up over time.

Mr. Gibson stated that distracted driving is something that has clearly received a lot of attention and attention diverters are not just cell phones. The National Highway Traffic Safety Administration (NHTSA) identified 3,166 deaths in 2017 attributed to distracted driving. The National Safety Council says that 25% of crashes involve cell phone use and drivers using cell phones are 4 times more likely to crash. Mr. Gibson noted that fraud has been in the news for a long time and a recent quote from North Dakota Insurance Commissioner Jon Godfread stated that fraud costs North Dakotans \$950 per year in extra premiums. The North Carolina Department of Insurance has said recently that 20% of what you pay for insurance is going to fraudulent claims. The Coalition Against Insurance Fraud has stated that fraud costs \$80 billion per year across all lines of insurance. Property & casualty fraud is \$34 billion per year according to the Insurance Information Institute. The Insurance Research Council estimates that excess payments due to fraud represents 13% to 17% of auto insurance claims paid. Mr. Gibson stated that insurance fraud is a very difficult thing to estimate and you question whether some of those numbers are consistent with one another but it is certainly a real issue.

Mr. Gibson closed by stating that there is one simple theme: insurance rates must be reflective of expected costs on an average level and across the classification structure.

Douglas Heller stated that in addition to being a Consumer Advocate and Insurance Expert at the Consumer Federation of America (CFA) he works with state consumer groups across the country and is an appointee of the CA Insurance Commissioner on the board that oversees CA's assigned risk plan. Mr. Heller stated that CFA has looked at the ways different regulatory systems impact outcomes for consumers such as a prior

approval system which many states have that requires insurance companies to justify their rates and get approval from the state department of insurance before they can go into the market with those rates and plans. Then there are the most common systems – file & use and use & file which have less regulatory oversight. And then there are flex rating and deregulated markets. CFA found that those states that have a prior approval system that require accountability before a rate or plan can go into the market have shown the best outcomes in terms of taming rate increases over time. Looking at data from 1989 – 2015, states with prior approval systems have experienced a 45% increase in auto insurance expenditures and it is about double that for the use & file and file & use systems, and worse when you get to flex rating and deregulation.

Mr. Heller stated that the same data showed that the median in the country was Virginia at about 75% and the state that has provided the best outcomes for consumers has been California at 12.5% - that is unadjusted for inflation. Mr. Heller then discussed key elements of California's system for other states to consider. First, California has a prior approval system where rates, rule and forms all have to get approval before they can go into market. Additionally, California has a strong and standardized system and formula for rate making which does not mean that California sets the rates of insurance companies or requires them to use certain kinds of classification plans but it does require that everybody abide by the same transparent formula in demonstrating that their rates are not excessive.

California also has the strongest transparency rules in the country. There are no trade secrets in the auto insurance or broader insurance market in California. If you want to do business in this state and you want to charge a rate, you have to open up your books as there are no black boxes and no hidden tiering systems that the public cannot see. That requires full disclosure and allows for accountability from other players. California also has very strong consumer participation standards which means organizations like the ones Mr. Heller represents can hire actuaries and go to the regulator and say that we looked at a certain company's rate plan and it doesn't make sense or that it costs too much money.

Mr. Heller stated that some people, including the insurance industry, have argued that all of the provisions of California's Proposition 103, which set all of this in motion in 1988 would be a hinderance to a competitive marketplace, but if you use the DOJ's standard for measuring market concentration, California has managed to become the second most competitive auto insurance market in the nation. The point is that these rigorous regulations do not inhibit competition but rather bolsters it.

Mr. Heller further stated that California's rules prioritize driving related factors in the individual premium setting, things like your driving safety record, how many miles you drive each year and how many years of driving experience you have; and that either deprioritizes or simply eliminates non-driving related factors. So in California you cannot use credit score which does not have to do with your driving safety, and by doing that it has afforded consumers a much fairer playing field in terms of the pricing of insurance. Mr. Heller then discussed fairness in the marketplace because the folks that CFA spends its time worrying about are low to moderate income folks who are required to buy auto insurance but cannot afford it in the private marketplace because of certain problems. One of they key problems that CFA sees is that premiums are often tied to personal characteristics and socioeconomic factors that have nothing to do with driving safety.

Mr. Heller then provided an example of quotes he got for a 35 year old driver who had a perfect driving record. The driver was a male lawyer with a graduate degree who owns his home, is currently insured and buys the insurance policy paid in full. He received a premium quote for a basic policy of \$810. Going back to that company and saying that such person was a female, the quote went up to \$972. Going back to that company and saying that such person was a female factory worker, the quote went up to \$1,014. Going back to that company and saying that such person had a high school diploma, the quote went up to \$1,082. Going back to that company and saying that such person rented her home, the quote went up to \$1,114. Going back to that company and saying that such person was unemployed, the quote went up to \$1,188. Going back to that company and saying that such person had to pay in installments, the quote went up to \$1,394. Finally, going back to that company and saying that the person took a break from driving and was uninsured, the quote went up to \$1,712. Mr. Heller stated that the first example of the male lawyer could have bought two policies with money to spare compared to the last example, and in fact, when he told the company that the male lawyer had moving violations on his record he still paid more but much less than the last example of the uninsured woman. Mr. Heller stated that in many states these types of ratings are still allowed.

Mr. Heller then touched upon the role of credit score in rating and stated that the reason that, in his opinion, it has been a problem in many states is because many states adopted the NCOIL Model Act Regarding Use of Credit Information in Personal Insurance (Model) and that has been an absolute disaster for financially stressed Americans. That policy has served as the cover for insurance companies to conduct practices that result in a good driver with excellent credit in New York paying \$1,400 for insurance and that same policy goes up by \$250 if that good driver only has a good credit. If the credit score were to go to poor, the premium jumps by almost \$1,800 per year. That is outrageous because that is a good driver who is trying to comply with the state law to buy insurance and they need that car to get to work. Mr. Heller stated that if that driver with excellent credit had been convicted of driving under the influence he will still pay less than the good driver with a perfect record but poor credit. Mr. Heller stated that is unacceptable and it is not just occurring in New York but in Texas, Indiana and pretty much every state except California, Hawaii, and Massachusetts which have outlawed the use of credit history in auto insurance pricing. Mr. Heller stated that there are other factors that are problematic which can be discussed by contacting him after the Committee's meeting.

Mr. Heller stated that another issue often discussed at CFA is that even when you have good prior approval regulations and a fair system of rating there are still going to be low income people who need cars and car insurance but cannot afford it. California therefore created a low-limits plan which is below the financial responsibility limits of the state but it qualifies you as allowing to drive legally. To be eligible for that plan you must have a good driving record and an income of 250% poverty or below. In Los Angeles, which is a very expensive insurance market, you can have an annual policy anywhere in the county for \$490 and that is a supreme benefit and it costs nothing to other policyholders and the insurance industry breaks even and there are no taxpayer costs.

Mr. Heller stated that in putting all of this together, state legislators should consider strong oversight of the insurance industry, fairer practices when it comes to premium setting, and recognizing that for the lowest income people in states you may need to

look at dropping limits or finding an alternative product that will at least let them have some policy and some coverage when they get behind the wheel.

Sen. Bob Hackett (OH) stated that Ohio has some of the best rates and competition but noted that California has a strange rule that allows people to share driving lanes and noted that it seems very dangerous.

Asw. Hunter stated that she has a very high concentration of poverty for people of color in her district and it can be said that there is no red-lining and disproportionate rating by zip codes but that is not true. For districts like Asw. Hunter's that do not have adequate public transportation it is shameful that auto insurance rates are so high so that they essentially cannot work because it is too expensive to get to work. Asw. Hunter stated that it seems like we are getting this issue wrong and is not sure if there are adequate steps being taken to fix it.

Mr. Mazaherian stated that Gabi is an insurance agency and a distribution partner for carriers and agreed with Asw. Hunter that access to products in certain communities is limited. Gabi feels that regardless of where you are, everyone has a phone so there is no type of red-lining being conducted. Any consumer can go on-line on a phone and provide the information required to get a quote for a policy whereas some insurance companies may limit their distribution in certain areas but Gabi exposes all of its rates to anyone without any restrictions or guidelines.

Mr. Heller stated that with regard to red-lining, some people seem to think that red-lining is dissipating but CFA just conducted a study that looked at numerous cities, including Buffalo, and there was a situation that on the border of two zip codes, if you lived on one side of the street you would be in a different zip code and pay anywhere from 15% to 100% more than your neighbor right across the street in a different zip code. CFA correlated race and income and in the communities that had higher levels of minorities and lower incomes, that is where the rates were consistently higher. Redlining is not dead and that means that in addition to legislators, regulators need to be looking at these issues as there is no actuarial way that people who live right next to each other can have different risks based on their zip code alone.

ANY OTHER BUSINESS

Ms. Collins noted that at the NCOIL 2018 Annual Meeting this past December, this Committee heard introductory testimony about the issue of last-mile electronic scooters. There has been a strong surge in the activity of those scooters in the U.S. in 2018 and 2019 and NAMIC is hearing both in the news and anecdotally in the insurance industry that there is a necessity to try and address liability in the context of electronic scooters. Therefore, Ms. Collins requested that the Committee further advance its initial conversations towards addressing liability concerns with electronic scooters.

NAMIC believes that liability issues need to be addressed for not only the uses of the scooters but also the secondary piece of the business where individuals contract with the companies to take the scooters to a different location such as their home or somewhere else to charge the scooters in exchange for payment. NAMIC believes that there needs to be a commercial liability coverage to address those concerns both in the act of actually charging the scooter and in the collection and distribution of them. There has been evidence thus far where that has been a problem such as incidents of people

burning down their homes while charging the scooters or people getting into accidents with the vehicles that are in the midst of collecting the scooters.

NAMIC encouraged the Committee to take this issue up as soon as possible as legislation addressing the insurance issues and the establishment of where the scooters should be regulated is moving throughout the states.

Rep. Jordan then stated that due to the decision of the Special Committee on Natural Disaster Recovery to move forward with a separate private flood insurance model law rather than continuing with amendments to the NCOIL State Flood Disaster Mitigation and Relief Model Act, said Model needs to be re-adopted or it will sunset per NCOIL bylaws.

Upon a Motion made by Rep. Keiser and seconded by Rep. Fischer, the Committee voted without opposition to readopt the Model by way of a voice vote.

ADJOURNMENT

There being no further business, the Committee adjourned at 6:00 p.m.