

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
AUSTIN, TEXAS
DECEMBER 13, 2019
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at the JW Marriott Hotel in Austin, Texas on Friday, December 13, 2019 at 3:30 p.m.

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

Other members of the Committees present were:

Asm. Ken Cooley (CA)	Sen. Gary Dahms (MN)
Sen. Jack Tate (CO)	Sen. Paul Utke (MN)
Rep. Richard Smith (GA)	Sen. Paul Wieland (MO)
Rep. Martin Carbaugh (IN)	Rep. George Keiser (ND)
Rep. Matt Lehman (IN)	Sen. Jerry Klein (ND)
Rep. Joe Fischer (KY)	Asm. Kevin Cahill (NY)
Rep. Bart Rowland (KY)	Asm. Andrew Garbarino (NY)
Rep. Dean Schamore (KY)	Asw. Pam Hunter (NY)
Sen. Dan "Blade" Morrish (LA)	Del. Steve Westfall (WV)

Other legislators present were:

Rep. Deborah Ferguson (AR)	Sen. Andy Zay (IN)
Rep. Matt Gray (CO)	Rep. Bruce Grubbs (MT)
Sen. Matt Lesser (CT)	
Sen. Dan McConchie (IL)	

Also in attendance were:

Commissioner Tom Considine, NCOL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, NCOIL General Counsel
Cara Zimmermann, Assistant Director of Administration, NCOIL Support Services

QUORUM

Upon a motion made by Rep. George Keiser (ND) and seconded by Sen. Gary Dahms (MN), the Committee waived the quorum requirement without objection by way of a voice vote.

MINUTES

Upon a motion made by Rep. Martin Carbaugh (IN), and seconded by Asm. Andrew Garbarino (NY), the Committee approved the minutes of its July 12, 2019 meeting in Newport Beach and its November 19, 2019 interim committee conference call meeting without objection by way of a voice vote.

DISCUSSION ON NCOIL PEER-TO-PEER CAR SHARING PROGRAM MODEL ACT

Rep. Bart Rowland (KY), Sponsor of the NCOIL Peer-to-Peer Car Sharing Program Model Act (Model), stated that this Committee had a very productive discussion on this issue at its meeting in July in Newport Beach. At that meeting, what guided the discussion was a document, previously negotiated between peer-to-peer (p2p) car sharing companies and the American Property Casualty Insurance Association of America (APCIA), that has already served as the basis for some state p2p car sharing legislation. Rep. Rowland stated that he decided to use that document as the basis for the first draft of the Model. However, since several states are looking to adopt legislation on this issue in 2020, Rep. Rowland stated that he thought it was prudent to move quickly.

Therefore, Rep. Rowland stated that he asked NCOIL staff to put together an interim conference call meeting of this Committee, which was held just before Thanksgiving. Rep. Rowland noted that during that meeting he introduced some amendments to the Model which resulted in both sides of this issue coming to near unanimous agreement which is the version of the Model ready for discussion today. Rep. Rowland noted that since that call there has been some talk about perhaps making further amendments to the Model but stated that he believes that the Model is strong as-is and is ready to proceed to a vote. Accordingly, Rep. Rowland stated that he looks forward to the discussion today and noted to the Chair that he would entertain a Motion to adopt the Model as-is.

Ethan Wilson, Gov't Relations Manager & Senior Legislative Counsel at Turo, stated that he believes the Model is a very good piece of legislation and noted that it is important to not lose sight of the fact that it is a Model. Every state is going to have its own unique process for tailoring the Model and adopting it as appropriate for that state. Moving forward, there will certainly be issues in states that will be addressed that are not contemplated in the Model, but states offer the forum to have that debate. Mr. Wilson stated that Turo supports the Model and noted that it has been through negotiation for almost two years. Turo has seen the Model go through trial-by-fire in the 2019 legislative session and the Model came out a better piece of legislation due to that. Mr. Wilson thanked Rep. Rowland for his leadership on this issue as well as the Committee for its work on the Model.

Tomi Gerber, VP of Gov't & Public Affairs at Enterprise Holdings, thanked Rep. Rowland for his leadership and stated that the insurance aspects of p2p legislation generally are the greatest number of words on paper that have to be resolved in any state's legislative effort to deal with p2p car sharing. From Enterprise's perspective, it has been engaged in the p2p issue for four years state-by-state and Ms. Gerber noted that she is happy to state that the insurance language in the Model is one of the least contentious issues. The insurance framework is so important to get right and credit is due to the p2p companies and the insurance industry for coming together and putting forth a great framework for how insurance is handled. What allowed Enterprise to come to the table and support the Model was Rep. Rowland's leadership in bringing forth the "Scope" section in the Model. Ms. Gerber stated that the Model clearly calls out that states must reconcile other issues that are not just insurance issues as part of dealing with p2p car sharing activity comprehensively. So, whether it is airport authority to regulate p2p car sharing companies, tax implications, or other consumers protection issues, Enterprise sees that Model as the framework to bolt on those other issues state-by-state. Ms.

Gerber thanked Rep. Rowland and NCOIL staff for bringing forth the “Scope” section in order to eliminate obstacles and enable Enterprise to support it.

Frank O’Brien, VP of State Gov’t Relations at APCIA, stated that NCOIL is once again taking a leading role in the emerging sharing economy with this Model. The Model builds upon the expertise that NCOIL demonstrated when it worked to develop a transportation network company (TNC) Model act. NCOIL has again distinguished itself by developing very positive public policy on p2p issues. APCIA thanks Rep. Rowland for his leadership on this issue and APCIA believes that the Model is a good piece of legislation and would like to have the Model available to the states, noting that it is Model legislation and when it arrives in states it provides a good framework. Like all Model legislation, this Model provides a starting point and there may need to be certain changes to the Model state-by-state. APCIA supports the Committee’s adoption of the Model.

Erin Collins, Asst. VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC), thanked Rep. Rowland and the Committee for its work on the Model. NAMIC agrees that the Model is a strong piece of legislation and while NAMIC has submitted some amendments that it believes improves the Model - one which NAMIC believes solves a potential problem – NAMIC supports the Model and urges the Committee to adopt the Model with or without the amendments.

Rep. Matt Gray (CO), stated that Colorado has passed legislation that is very similar to the Model. Rep. Gray stated that p2p car sharing is a tricky issue to get through but CO ended up with broad bipartisan consensus around the issue because p2p car sharing is a service that exists in a great number of states and some of the backstops that have been put in place don’t exist in other states such as insurance requirements and safety requirements. The process of working with stakeholders was challenging but CO got through it and it is something that every state should take a look at because p2p car sharing is a very logical step in the modernization of our economy. Letting people take vehicles that are not being used and putting them into use is good not just for the people who are able to access the vehicles and for those who can make money off a vehicle that would otherwise be idle, but it also helps us in the much broader sense of having a more efficient use of roads.

Rep. Gray noted that he is Chair of the CO House Committee on Transportation and Local Government and stated that CO struggles, as many states do, with finding funding for transportation infrastructure. One of the ways to mitigate the struggles is to have more efficient uses of roads and having fewer idle vehicles. Rep. Gray again noted that p2p car sharing is a unique situation where the services exist whether or not there are safeguards put around them so safeguards should in fact be put in place moving forward.

Rep. Gray acknowledged that p2p car sharing issues will be state specific. For instance, CO has unique fiscal restraints that nobody else in the country has and it would not make sense to write those things into a Model law. The issues that had to be negotiated in CO would not make sense in other states. However, when you can create any level of uniformity and predictability for consumers of these services it makes sense. Rep. Gray stated that the foundational part of this issue is that we need to make p2p car sharing make sense for people to use the services and to have reasonable expectations of the kind of protections they are going to have when they use the services which people are

used to when it comes to other transit services. If you pay someone to have access to transportation, there is a base level of safety and insurance protections that people expect and which should be in p2p car sharing without removing the aspects of p2p car sharing that create more efficiency than other forms of transportation. Rep. Gray applauded the work of the Committee and recommended that the Committee adopt the Model as the experience in CO surrounding these issues has been very positive.

Upon a Motion made by Rep. Joe Fischer (KY) and seconded by Asm. Ken Cooley (CA), NCOIL Treasurer, the Committee voted to adopt the Model without objection by way of a voice vote.

DISCUSSION ON NCOIL ELECTRIC SCOOTER INSURANCE MODEL ACT

Sen. Jerry Klein (ND), Sponsor of the NCOIL E-Scooter Insurance Model Act (Model), stated that NCOIL is once again taking the lead on an important issue and noted that he looks forward to today's discussion as being the first step towards development of a Model regarding insurance requirements for e-scooters.

Ms. Collins stated that as this burgeoning business advances, NAMIC certainly wants to embrace advancements in technology and mobility but also wants to be cognizant of any liability concerns. The first draft of the Model is a liability framework and is trying to address three different zones of liability: that which is present for the scooter rider while on the scooter and anything that happens collision-based; the second and third pieces are situations where NAMIC believes it has identified a gap in coverage from commercial activity. Ms. Collins stated that as NAMIC understands it, there is a contract in place with citizens who go out and collect the scooters and take them to another location and charge them and return them for public use. There is a potential gap in coverage based on the commercial exclusion if someone were to take the scooters to their home and engage in that commercial activity so NAMIC has attempted to address that commercial gap in the Model with liability coverage both for the collection of the scooters and for the commercial activity in the home. That is the general purpose of the Model and NAMIC looks forward to discussing it.

Ben LaRocoo, Senior Manager of State Policy at Lime, first explained some basics as to how the scooters function: you see a scooter on your phone, go up to it with an app, scan the code which unlocks the scooter; you have to be moving in order to ride the scooter which is a safety feature that you cannot just first hit the accelerator; the scooters reach a maximum speed of about 15 mph; you ride the scooters in the bike lane and are generally not allowed on sidewalks in most cities; if there is no bike lane you ride them on the street; you obey all traffic laws as you would with any other mode of transportation; when you are done you park the scooter in what is called the furniture zone which is about three feet off the curb near a bike rack that does not block ramps or fire hydrants; you then hit "end your ride" and take a picture of the scooter so that it can be verified where people actually park in case there is a problem later on; the user's credit card is then charged – the average cost is about \$1 to unlock and then 20 to 30 cents per minute; the average trip is about 1 to 1.5 miles long so the average cost of a ride is about \$3-5 dollars.

Edward Fu, Senior Regulatory Counsel at Bird, stated that together, Bird and Lime make up about 80% of the e-scooter market. One of the main things to highlight that has changed from when a Lime representative spoke at an NCOIL meeting last year is that

Bird and Lime now have a greater sense of what the scale of the industry is. In the first year, there were about 40 million rides completed in the U.S. and it is expected to be greater next year. Accordingly, this is in fact a burgeoning new industry for which there is not a lot of legislation in place and that is something that Bird looks forward to discussing. Mr. Fu stated that people have embraced e-scooters because they have eliminated tens of millions of city car trips thereby avoiding traffic; they are affordable – and Bird and Lime work with cities to make sure there are e-scooters available for those with fixed and low incomes; they boost local businesses as the e-scooters increase foot traffic since people are encouraged to shop in-person instead of online; and they are safer or at least as-safe as bicycling through a city. Mr. Fu noted that at the conclusion Baltimore’s pilot program, the city found that e-scooters were associated with fewer injuries than walking.

Mr. Fu stated that e-scooters are currently regulated at the state level and are generally treated like bicycles or e-bicycles which means that they are generally not subject to registration, titling, equipment, insurance or liability insurance requirements. The businesses that make the e-scooters available to rent, however, are typically regulated at the local level and as it pertains to insurance, every city – and several states – requires such companies to carry commercial general liability (CGL) insurance for operations. This is an area where there is certainly a patchwork of regulation throughout the entire country and the companies, along with cities and states, have asked for some level of uniformity. The companies are also engaged outside of the legal landscape with third party standard setting organizations such as SAE and ASTM to develop taxonomies and standards relating to the e-scooters themselves.

Mr. Fu stated that what is being seen now in the industry is an evolution away from the traditional idea of what a scooter may be which is to say that the real demand within American cities is for light, electric vehicles – something that you can travel on. SAE has determined what some popular examples of such transportation to be, including e-scooters so the point is that it is not just about e-scooters but rather a variety of light, electric vehicles that are seen on American streets as really changing urban transportation.

With regard to the Model, Bird and Lime believe that it is a step in the right direction in terms of legislating in an area where there has not been a lot of legislation thus far. The Model speaks to two elements – liability insurance and insurance for the chargers of the e-scooters. With regard to liability insurance, every company throughout the country carries commercial general liability insurance and, in that regard, everyone has started to realize that having a patchwork of requirements is not a great idea and they have started asking for uniformity legislation. At the same time, what has not been seen yet is rider liability requirements which is to say that you have to purchase liability insurance before you get on a e-scooter. Several states have explicitly rejected that, and the issue has been discussed but the current state of the matter is that the companies are aware of no product on the insurance market that would allow a rider to purchase that type of liability insurance. Mr. Fu also noted that Bird and Lime do not see a high level of third-party incidents resulting from the e-scooters. As mentioned earlier, Baltimore’s safety study found no third-party incidents relating to e-scooters and in Austin, the CDC conducted a study and found that over a time period of about 1 million trips, only two third-party incidents were found, both of which were minor and did not require hospitalization.

With regard to the chargers of the e-scooters, Mr. Fu stated that Bird and Lime hire independent contractors who are on their way home from work or school to pick up scooters. After picking the scooter up, bringing it home, charging it, and bringing it back out on the street the person will get paid a flat rate of about \$2-5 depending on the scooter. Mr. Fu stated that this is not an activity that necessarily requires a car although certainly some people do. In that sense, these folks are like a traditional independent contractor and less like the modern gig worker in that the car is not integral to the services they provide, and they don't have any customer contact. With that being said, Mr. Fu stated that he believes Ms. Collins is right in that there is a concern that the commercial exclusion on many commercial auto policies may present a gap in coverage.

Mr. Fu stated that Bird and Lime look forward to working on the Model with the Committee and with interested parties moving forward. Bird and Lime understand that there is already a demand out there for uniformity in terms of commercial general liability insurance for providers and whether the issue of rider liability is dealt with is something that requires a bit more discussion. Resistance has been shown from states to get involved with that and the companies have not yet seen what that product would ultimately look like. If such a product is created, it is expected to look very different than current auto MFR requirements largely because current auto liability insurance policies are written with the idea of a 5,000 pound vehicle traveling at 65 mph as opposed to e-scooters which are closer to 50 pounds and max out at about 15 mph.

With regard to the chargers of the e-scooters, Bird and Lime recognize that the new gig economy means that there are a lot more independent contractors and a lot of them now use their car as part of their work. Bird and Lime appreciate the concern surrounding the fact that the commercial exclusion may apply to those folks and they may not be covered under their personal auto policy. Mr. Fu stated that in that regard, the best approach is probably to address the larger issue as there a lot of people who do these services – not just charging e-scooters – as they may be delivering food or supplies or just traveling to another task and many of them do those things at the same time. From surveys conducted, Bird and Lime know that a lot of its e-scooter chargers pick up the e-scooters and then drive around and do other activities whether it be for work or personal reasons. A broad framework that encompasses those realities is appropriate and something that Bird and Lime would be happy to work on in order to address the gaps in coverage we increasingly see among independent contractors in the new gig economy.

Mr. LaRocco stated that he believes much progress has been made on these issues in just the last 24 hours and he feels that Bird and Lime are in a really good place for finding something to agree upon that addresses concerns and enables the product to still be provided at an affordable rate.

Rep. Matt Lehman (IN), NCOIL Vice President, stated that he believes Indiana passed a law regarding e-scooters a couple of years ago that stayed away from insurance issues. The argument that is often heard is that bicycles are not regulated and e-scooters are very similar, but bicycles do create liability – if I leave my bicycle out on the sidewalk and someone trips over it, I am liable for that. Accordingly, Rep. Lehman asked where that liability is attaching now. Mr. LaRocco stated that the answer depends on who's negligence caused that liability. If a scooter company put a scooter out or one of its chargers put a scooter out in a way that was inappropriately blocking a sidewalk, the company would be liable, but if a rider parked a scooter in an improper way it would be their liability. That is one of the issues right now as e-scooters are sort of a new situation

and are not easily defined. Part of the problem as well is that there are not society established norms relating to scooters yet so there tends to be more issues with them than with more established technologies.

Rep. Lehman stated that this seems to be mirroring the discussion the Committee had a few years ago regarding Uber and Lyft in the sense that there was an insurance gap and now the question becomes how the gap can be bridged with scooters. There are other issues, but from the insurance side, Rep. Lehman asked if the Uber-model so to speak can be used to bridge this gap. Mr. LaRocco stated that one difference between Bird and Lime and some of the other technology companies is that Bird and Lime are not platforms. Bird and Lime own their own scooters and provide the services directly so they are not connecting two groups of customers. Accordingly, Bird and Lime have different responsibilities than companies such as Uber and they recognize that. Bird and Lime also want to ensure that people still have responsibilities for their own actions and if others are contributing to negligence which harms someone else, they want to ensure that they are responsible for their negligence and not for other's negligence.

Rep. Lehman stated that the fact that Bird and Lime own the product makes things clearer in his view. Rep. Lehman always tells his clients that ownership does not create liability, but if it's yours and liability becomes attached to it then the owner does have to respond. If I leave my bicycle in the street, I am responsible if someone trips over it and if I leave my neighbor's bicycle in the street I could be responsible as could my neighbor. Accordingly, ownership of the scooters almost seems to increase the level of responsibility to make sure they are properly maintained and to make sure there is insurance to cover all situations. Rep. Lehman cautioned Committee members when dealing with this issue in their states as it is not as simple as saying "they are our scooters but we have no responsibility beyond ownership." Mr. LaRocco stated that he does not believe anyone is claiming that and noted that e-scooters have only been around for about 26 months – it was 42 years from the car until the first car insurance law. So, the market has not had enough time to necessarily develop a lot of mechanisms that are taken for granted in other modes of transportation. Bird and Lime appreciate the expertise of the Committee members and interested parties to help decide what is appropriate on a lot of questions that are to be determined. Rep. Lehman thanked Bird and Lime for being here and stated that he believes the final product developed will be something that everyone can support if everyone stays involved in the conversation.

Rep. George Keiser (ND) stated that a few communities have banned e-scooters and others are considering it. Rep. Keiser asked how Bird and Lime's business model addresses the scenario of a user inadvertently or knowingly going into a banned community and then having liability attach from an accident. Mr. LaRocco stated that is an issue that has some nuance between the difference in scooters and scooter sharing. Some communities have banned scooters but scooter sharing, for the most part, only exists in cities that permit companies to do so and there is a regulatory framework for that. Generally, when there is a city that has permitted scooter sharing next to a city that has not, there is a technology called geo-fencing that has GPS in the scooter so it will know when the user has crossed into the city that does not allow scooter sharing. The scooter will slow down and stop and you would need to either leave the scooter there or go back to the permitted community.

Asm. Andrew Garbarino (NY) asked if someone from the hotel here took a scooter and left it outside of a bar and someone tripped over it, who would be liable? Mr. LaRocco stated that if that person parked the scooter improperly such as in the middle of a crosswalk, they would be liable. Mr. LaRocco stated that the scooters are allowed to be parked in the “furniture zone” which is essentially three feet from the curb and is where you generally see utility poles and parking signs. Asm. Garbarino asked how the riders know where they can and cannot park the scooters. Mr. LaRocco stated that there is in-app messaging that tells them that and the rider must also take a picture of where the parked the scooter at the end of the ride. At the end of the ride there is a message that says “park appropriately.”

Ms. Collins stated that there are good policies and procedures surrounding the scooters but noted that probably almost everyone in the room today has experienced that the riders don’t always follow those policies and procedures as evidenced by a lot of them being rode on sidewalks. In that context, that is part of what is being talked about in Section 4 of the Model with liability coverage for the rider themselves. The great news about insurance companies is that they love to write insurance so they will at some point get to a specific product for something like this. In the interim, almost every insurance lobbyist present at this meeting would love to tell the scooter companies about their umbrella policies that the riders can be connected to. Ms. Collins stated that the negligence of the rider is what is trying to be addressed in Section 4 of the Model. Mr. LaRocco stated that there is an argument that there is a responsibility of the rider to park appropriately and a responsibility of the company to teach riders how to park appropriately. There is probably also a responsibility of the city as people are trained to look at signs such as speed limit signs and parking signs and no turn on red signs and none of those things exist for scooters so that circles back into what was said earlier regarding there not being societal norms established yet for scooters. What Bird and Lime hears from people is that they don’t know certain things about parking, etc. so they try to teach them certain things.

Mr. Fu stated that as this industry grows there have been tremendous strides in communities in terms of both social norms and local governments such as cities building out certain corrals to park scooters or designating one car parking spot which can be used to park up to 20 scooters. There have been dramatic decreases in sidewalk riding and parking. Accordingly, this is a shifting landscape and what we saw last year is what is different from today, and what we see next year will be much different.

Asm. Garbarino asked if it is a requirement to wear a helmet when riding a scooter. Mr. Fu stated that there is only one state in the country that requires adult scooter riders to wear a helmet – Oregon. Broadly speaking, scooters are treated like bicycles and there is no state in the country that requires adult cyclists to wear a helmet. However, Bird and Lime of course strongly encourage riders to wear helmets and have taken a lot of steps to encourage that. Bird and Lime have found out that legislation doesn’t work very well in terms of getting people to wear helmets. They tried giving helmets away but it turns out that is a great way to get rid of helmets but not to get people to wear them. Accordingly, Bird and Lime continue to work on the issue and have introduced technology that enables the rider to take a picture of themselves after the ride and if they are wearing a helmet they will get a credit on the next ride. It is looking promising thus far but it is still early. There is a burgeoning industry out there in terms of technology trying to develop more portable helmets that people can bring along with them as not

everyone is always interested in carrying around a helmet all the time. Hopefully this is something that with more and more innovation, the problem will be solved.

Sen. Gary Dahms (MN) stated that he assumes Bird and Lime carry primary liability and insurance that it covers the scooters while they are out on the street. Sen. Dahms asked what kind of limits Bird and Lime have for such coverage. Mr. LaRocco stated that Bird and Lime do have commercial general liability coverage for each city it operates in and it generally is \$1 million per occurrence and then between \$2 and \$5 million in the aggregate but it varies a bit from state to state and city to city. Sen. Dahms asked if he is correct in assuming that if something happened while driving a scooter that the scooter company's CGL would be primary and that if there was some excess after that, the rider's insurance company would step in and be secondary. Mr. LaRocco stated that an important distinction is if there was negligence. If the rider is injured because the scooter malfunctioned, which is the company's negligence for putting out a scooter that malfunctioned, the CGL would cover that. If the rider was injured because of their own negligence such as not paying attention or operating it under the influence, the CGL would not cover that. Sen. Dahms asked where the liability would fall if someone rented a scooter and they don't know how to drive it and they end up getting injured while riding. Mr. LaRocco stated that he believes that it would depend on the specific circumstances.

Commissioner Tom Considine, NCOIL CEO, stated that there are obviously two different liability issues, one in which was just discussed by Sen. Dahms. Cmsr. Considine noted that there was a case in New Jersey fairly recently where a rider was riding on the sidewalk where they had no business to be and ended up hitting a stroller and injuring a baby. Cmsr. Considine stated that he in no way, shape or form attributes that liability to the scooter companies, but noted that it seems to him that the solution for rider liability is a point of sale insurance requirement similar to the rental car process. The limits of coverage would obviously be a lot less but the companies would have their liability for the \$1 million per occurrence if something happens with the scooter that injures someone, but the arms really have to get around the operator of the scooter for when she or he hits somebody. Cmsr. Considine stated that it is a generalization but he believes that a lot of people operating the scooters fall into the demographic of not having a lot of insurance coverage. So, they hit somebody and it's not the company's liability, they get sued and they are judgment proof. Accordingly, Cmsr. Considine stated that he believes adding an insurance fee/surcharge at the point of sale is probably the best way to fix that.

Asm. Ken Cooley (CA), NCOIL Treasurer, stated that on the topic of general liability it is interesting that riders may be able to take pictures of themselves wearing a helmet and then get a discount on their next ride. The fact that the riders are required to take pictures from the get-go in that they have to take a picture at the end of the ride to verify where they parked the scooter sort of opens up a potential of "did they appear to drop it off in a place that did not create liabilities" and opens up some potential to score the conduct in some small degree of riders to provide feedback to them just as Uber and Lyft drivers are scored. That sets up the potential to evaluate the conduct of riders and companies could also go in a direction of something like the old travel insurance concept in the 1960s of going to the airport and you could buy a travel policy. You could also roll coverage into the rider's charge on a cumulative basis and based upon a person's track record as a customer, have a benchmark rate or some adjustment.

Asm. Cooley stated that he sees people all the time in his city leaving the scooters in all sorts of places and impairing the ability of walkers or people in motorized wheelchairs. It is remarkable where they scooters are left with no apparent thought. Accordingly, there are some pieces in the liability conversation that are difficult to know where they will end up through the application of tort principles because you have the company, the rider, and the business where the scooter may have been left out in front of all involved. California has a whole body of law stemming from the Easton decision in the 1980s which basically said that whenever realtors show a house to someone they cannot turn anything on or flip any switches because the house is as the house is and if the realtor touches it then they own it and they have liability for it. So, there is an aspect of if you are a street-front business and you touch the scooter outside, does the business now have liability? This also gets into the whole conversation of a local government planning standpoint of complete streets. Scooters reshuffle the deck in terms of what the plan is for where you leave them.

Mr. Fu stated that he was recently in California and understands Asm. Cooley's concerns about where the scooters are being left and noted that one of the unspoken truths of the industry is that it is not always just the companies and riders as there are sometimes third parties who don't like the devices and throw them into the street or sometimes the wind will knock the scooters over. Accordingly, it presents a difficult question that everyone can appreciate in that the scooters are of course owned by the companies which put them on the road but at the same time there is a limit of what the companies can do physically and financially as far as ensuring what their state is at all times. Bird and Lime work closely with local governments to set up 311 systems so that they can respond rapidly to something and they also hire people to patrol city streets to monitor the scooters. However, one of the conversations that Bird and Lime would love to have going forward is how to set up a sensible liability structure that protects everyone but at the same time is feasible and realistic for the industry to implement.

Asm. Cooley asked if the independent contractors who charge the scooters also take a picture indicating where they have dropped off the scooter. Mr. Fu replied yes and noted that is something that the companies have a lot more control over because they have the independent contractor relationship with the chargers and they can and often do terminate such chargers who drop them off in inappropriate locations. Mr. LaRocco stated that an important part of it is enforcement. The companies can tell customers to do things but just like many people do not read all of the terms of their agreements for many products, the riders can be told where to park the scooters but if the city government is sending the signal that they are not enforcing any rules then people are going to read that as "I don't have to follow those rules." Accordingly, there is a responsibility of local governments to establishing those enforcement mechanisms as well.

Sen. Jack Tate (CO) stated that he spends his time in two different cities where there is a difference in the user behavior and the civic response to scooters primarily regarding how often they are used on sidewalks. Sen. Tate stated that he rode scooters quite often last year and he did not remember scooter companies stating where the scooters should be ridden. Sen. Tate asked if the scooter companies now are emphasizing them to be ridden in streets and bike lanes only as the proper way to ride, and asked how the company perceives risk differences. Mr. LaRocco stated that sidewalk riding and parking are the two biggest complaints received around the world. Bird and Lime have thought a lot about those issues and believe that they are in a better place today, but

what their customers say is that they often know they are not supposed to ride on the sidewalk but they don't feel safe in the street and they would much rather take their chances of getting a ticket for riding on the sidewalk than getting hit by a bus in the street. While pedestrian-scooter conflicts are bad, car-scooter conflicts are much worse and people are not willing to take their life in their hands. Until people feel safe riding in the streets, Mr. LaRocco stated that you will probably continue to see riding on the sidewalk no matter what the rules and messaging are.

Mr. Fu stated that in several cities, if not all, there is a sticker directly on the scooter informing the rider to stay off sidewalks and noted that Bird and Lime are very hopeful to see more of what certain cities such as Atlanta have done which is a commitment to triple its protected bike lane infrastructure in the next few years as a result of the extraordinary demand for the devices. What Bird and Lime have seen is that in cities with bike lanes, even if they are not fully protected bike lanes, sidewalk riding drops a tremendous amount. Bird and Lime look forward to continuing to work on this issue and there is a lot that they can do along with cities and local governments to address the issue.

Sen. Dan McConchie (IL) stated that as someone who is in a wheelchair, Austin is the first city that he has been in that has a lot of scooters. On his first day here he was on a sidewalk on which he could not advance further because there was a scooter blocking the way forward. Sen. McConchie had to wait for someone to come along to pick the scooter up so that he could move forward. Sen. McConchie stated that he has concerns about the scooters being blown over by wind, especially in windy cities such as Chicago where the scooters just started operating. Sen. McConchie asked where that type of liability lies – if someone parks the scooter in what seems to be an appropriate spot but it is not because of wind propensity as there are certain areas in Chicago that act like wind tunnels. Someone may be able to pick the scooter up or walk around it but a disabled person cannot.

Mr. Fu stated that he does not believe the wind issue is a new issue since if you parked a bike near a bike rack and the wind blew it over into the street, the same question of liability would arise. Sen. McConchie noted that almost all bicycles are going to be tied down to guard against theft. Mr. Fu stated that this is an issue that has certainly grown since the arrival of scooters and noted that he does not believe there is a clear answer to the question of liability in that scenario. Bird and Lime would like to work with NCOIL and local governments to answer these questions. Mr. LaRocco stated that next week in Washington DC, Lime has a meeting scheduled with several members of the disability community who are affected by scooters and urged the Committee members to reach out to Lime with suggestions as to who else should be spoken to in order to make sure that everyone understands the effects of scooters in the community.

INSURANCE RATING VARIABLES: WHAT THEY ARE AND WHY THEY MATTER

Ken Williams, Staff Actuary at the Casualty Actuarial Society (CAS), stated that the topic of rating variables has been coming up frequently in a lot of legislative sessions and at the federal level so the CAS and Insurance Information Institute (III) drafted a paper on the topic earlier this year. Mr. Williams noted that there are three main actuarial organizations in the country. The American Academy of Actuaries (AAA) is sort of the CAS' public relations wing and they get involved in a lot of individual legislation and they are also CAS' professionalism wing. It is important to note that actuaries have

professional standards to follow and if an actuary is found to violate those standards, the AAA takes care of the discipline. The second large group is the Society of Actuaries (SOA) which specializes in pensions, life insurance and health insurance. CAS is the smallest of the three actuary organizations and is the only one in the world that deals with property & casualty topics. CAS has been around for about 100 years and has over nearly 9,000 members worldwide, primarily in the U.S. and Canada. CAS is growing fairly rapidly as last year it had 8,000 members. Mr. Williams noted that the goal of both CAS and III is to educate as they are not lobbying organizations. Mr. Williams noted that he is a staff actuary at CAS and prior to that he was with the Illinois Farm Bureau which was called Country Financial for 26 years working as a pricing actuary.

Mr. Williams stated that all policyholders are different and have different risks. Rating variables help insurance companies quantify that risk such that they can get the right premium for the risk. The white paper was written because there are at least two states this year, California and Michigan, that had legislation involving rating variables and there were some hearings on the issue at the federal level. The goal is not to influence legislation but to let folks know how rating variables are used today so when there are decisions made about rating variables in a regulatory or legislative environment there is a better understanding of how they work.

Mr. Williams stated that actuaries are doing two things when thinking about premiums. The first is to make sure that enough money is made at the state level so that they cover costs, expenses and make a little profit. The second thing is to charge different risks different premiums. For example, a \$300,000 car is a much different risk than a \$25,000 car so they should be charged different premiums. That is all rating variables are doing – making sure the right premium is charged for the right risk. There are four things that actuaries and regulators are going to do to make sure there is an effective rating variable. The first deals with being statistically significant. Actuaries are known as being mathematicians and this is the most important issue for them. A rating variable is not going to be used unless it shows a difference in cost. There is no incentive for insurance companies to charge different premiums unless the costs are different. So the most important question is: does this group of people have a higher or lower average risk compared to other groups of people? The unusual thing about insurance is that the product is sold before it is known what the costs are. Accordingly, it is the actuary's job to determine how much they think it is going to cost for the person to buy insurance.

The reality is that with all insurance, the majority of people are not going to have a claim and the company therefore makes money off of that; and very few people are going to have large claims that causes the company to lose money. Mr. Williams stated that one thing to think about with insurance, especially auto and homeowners, is that they are relatively low frequency policies. The data shows that usually 4 out of 100 people have claims. So, if there is a group of 1,000 insureds that are thought to have about 30 claims and then another group of 1,000 insureds that are thought to have about 33 claims, that is only a small difference but nonetheless that group with 33 claims should have a premium that is 10% higher. Accordingly, very small changes in frequency will result in premium changes.

Mr. Williams stated that once the group is selected to be put together, insurers want them to have similar characteristics. On the flip side of that, if you make the group too homogenous and too small, the data will not tell you anything. A good example is that 16 year olds who just got their license are probably not as good drivers as 17 year olds

who have been driving for a year. The reality is that there are not that many 16 year old's, especially if the company is not that big so the company will group 16/17/18 year old's together and look at their loss experience because that group is big enough to have the data tell you something. Mr. Williams stated that the issues of homogenous and credibility really battle each other. One thing that is heard a lot when talking about rating variables is that the person across the street, who is a very similar risk, has a higher or lower premium. Mr. Williams stated that the way actuaries use geography, which is one of the most important rating variables, is that lines must be set somewhere to group certain folks. The lines are often, streets, zip codes, and city boundaries. As technology gets better, it is hoped that actuaries can get more granular as to how they classify risk.

Mr. Williams stated that operational criteria is also very important when considering rating variables; operationally, can the actuary get the data and is it objective? Nobody is going to say that they are a bad driver so asking that question is not objective data. It is also important to make sure that the data is verifiable and inexpensive to administer. One of the things that is often heard is why tickets and accidents aren't being used more as a rating variable. That information is obtained from state Department's of Motor Vehicles (DMV) and some states are now charging \$50 for insurance companies to obtain ticket data. Since most drivers don't have tickets it may not be worth it for the insurer to spend that money on each application to get that ticket data. However, if the cost was \$5, it may be worth it.

Mr. Williams stated that another thing often asked is why real driver data is not being used. In the past, that data could not be obtained but as technology improves and driver apps become more common, that data will be obtainable. Companies such as Allstate and Progressive are starting to advertise these types of rates but now there are certain privacy concerns that must be addressed. Mr. Williams stated that insurers also take into account consumer considerations when developing rating variables and premiums. One such consideration is that there is a desire for insurance to be affordable, especially when it is really needed. All states have mandatory auto liability insurance rules. Also, in order to buy a house you typically have to have homeowners insurance. Mr. Williams noted that as insurers get better at segmenting risks and figuring out who will file claims, the very high risk folks may see insurance become unaffordable and that is a concern in the insurance industry and for consumers.

Mr. Williams stated that consumers also like when they are able to see how a rating variable impacts their driving. Most would agree that a 60 year old driver is not as good of a risk as a 40 year old driver, so charging the 60 year old driver more makes sense. However, people struggle with the fact as to why credit has anything to do with driving ability. Clear relationships between the rating variable and the risk is not mandatory for actuaries but they like them. Another thing that is often discussed is if the rating variable can be controlled. You can control how much you drive and the kind of car you drive and to some extent you can control where you live. You cannot control your gender and age and there is a desire to not have uncontrollable things being used as rating variables.

There is more and more discussion about wanting driver history and the use of telematic apps. Progressive has been using telematics for about 20 years but only about 1/3 of their customers use it. Consumers want their driving history to be used for insurance but are hesitant to provide the data so there is a real balance between accurate rating and privacy issues and it will be interesting how this develops as more companies get

involved with driver-based premiums. Mr. Williams stated that regulations certainly impact rating variables. Most states have laws which state that rates cannot be excessive, inadequate or unfairly differentiation. The question then becomes what is unfair differentiation? Actuaries, regulators and insurers all have different views to that question and it is important to work together to figure out what is an unfair rating variable.

Mr. Williams then discussed what can happen when states restrict rating variables. What may happen is that another rating variable becomes stronger and the example used in the white paper is if gender was banned as a rating variable in a state; and gender is an indicator as men are worse drivers than women. But men have more pickup trucks so what may show up in the data is that pickup truck rates should increase. That penalizes women who drive pickup trucks. Mr. Williams further stated that often times restricting rating variables is often pitted as insurance companies vs. consumers, i.e. the consumer is being overcharged. But it really is consumer vs. consumer because if you take away a rating variable on a higher risk group, another group is going to have to pay for it because the insurance company will ultimately meet its profit goals either way. Accordingly, you are essentially forcing a subsidization which is not necessarily a bad thing as things are subsidized all the time in society.

Mr. Williams noted that ultimately, if there is a group of policyholders known to be a higher risk, and the premium can't be obtained, then there is not much of an incentive for insurance companies to write that risk. Insurance companies like to write insurance and want to write as much as they can but if they know that they are going to lose money on a policy, they have less reason to do so. Mr. Williams then closed with some final thoughts. Insurance companies are using rating variables to try and be fair; they want to make sure the premiums that consumers should pay are based off of the actuarial calculations. That really gives consumers more choice because companies are using different rating variables and algorithms to come up with premiums and for some folks, the premiums will be lower at a different company. At the same time, to the extent that it is decided that a rating variable should not be used, everyone needs to work together to determine what a fair rate is to charge without being unfairly discriminatory.

Rep. Keiser noted that his family members do not want to share their driving history data for telematics purposes. Mr. Williams stated that is a real issue because insurers would obviously love to know how a driver drives all the time so the premium could be set very accurately, but consumers don't necessarily want the insurer to know how they drive all the time. It will be interesting to see how that issue evolves over time.

RE-ADOPTION OF NCOIL MODEL ACT REGARDING THE USE OF INSURANCE CLAIMS HISTORY INFORMATION IN HOMEOWNERS AND PERSONAL LINES RESIDENTIAL PROPERTY INSURANCE

Upon a Motion made by Rep. Keiser and seconded by Rep. Martin Carbaugh (IN), the Committee voted without opposition to re-adopt the NCOIL Model Act Regarding the use of Insurance Claims History Information in Homeowners and Personal Lines Residential Property Insurance by way of a voice vote.

ANY OTHER BUSINESS

Rep. Jordan thanked Sen. Dan “Blade” Morrish (LA), NCOIL President, for urging him to get involved with NCOIL and wished him great luck in retirement.

Alan Smith, Midwest Director at The R Street Institute, applauded NCOIL for dealing with new issues such as p2p car sharing and e-scooters. There is a strain in public policy that wants to restrict and limit things because something may go wrong. NCOIL has done a great job of coming together to draw lines around new issues that should be discussed.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:30 p.m.