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NCOIL ADOPTS PEER-TO-PEER CAR SHARING PROGRAM MODEL ACT *Protects Against Loss and Bridges the Trust-Gap*

Manasquan, NJ – During the 2019 NCOIL Annual Meeting in Austin, TX, the organization adopted the NCOIL Peer-to-Peer Car Sharing Program Model Act sponsored by Kentucky Representative Bart Rowland, 2020 Chair of the NCOIL Workers’ Compensation Insurance Committee. The Model passed without objection by the Property & Casualty Insurance Committee and the NCOIL Executive Committee.

The Property & Casualty Insurance Committee had been discussing the growing sharing economy in general for several years. In 2015, NCOIL passed groundbreaking TNC legislation for ridesharing companies such as Uber & Lyft, which has passed either in whole or in part in nearly every state. This peer-to-peer car sharing model legislation was first discussed thoroughly at the 2019 Summer Meeting in Newport Beach, CA. Sensing that both the peer-to-peer car sharing and insurance industries were in agreement with several issues, the Committee, and NCOIL as a whole, acted in an expeditious manner to ensure that a Model was ready for states to consider adopting in 2020 legislative sessions.

KY Rep. Bart Rowland stated, “With the rise of collaborative consumption and sharing, it is important that the insurance industry keep up and create trust between the consumers and companies. If you pay someone to have access to transportation, there is a base level of safety that people expect. The car sharing industry must work in conjunction with legislators and regulators to properly accommodate the sharing economy. I am proud to sponsor this Model and commend NCOIL for taking the lead on this issue. Good public policy requires putting parameters in place for these rapidly emerging platforms and technologies.”

A document previously negotiated between peer-to-peer car sharing companies and the American Property Casualty Insurance Association (APCIA) had served as the basis for peer-to-peer car sharing legislation enacted in some states. Rep. Rowland decided to use that document as the basis for the first draft of the Model.



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Sound Public Policy In 50 States For 50 Years

“Since several states are looking to adopt legislation on this issue in 2020, it was crucial that NCOIL move quickly. It is also important to remember that this is a Model. Every state is going to have its own process for tailoring it to accommodate the particular needs of that state. The Model provides states the vehicle for that debate,” stated Commissioner Tom Considine, NCOIL CEO. “I applaud the peer-to-peer companies and the insurance industry for coming together with legislators and creating a great framework on how insurance for the car sharing economy is handled. NCOIL thanks Rep. Rowland for his leadership in developing very positive public policy on this issue,” continued Commissioner Considine.

During drafting discussions, NCOIL legislators and staff worked closely with interested parties such as: Turo, APCIA, Enterprise Holdings, Allstate, the National Association of Mutual Insurance Companies (NAMIC), State Farm, and Getaround.

During drafting discussions, KY Rep. Rowland took the lead in bringing forth an amendment to the Model in the form of a “Scope” section in order to clarify what NCOIL’s intent as an organization is when it comes to legislation such as peer-to-peer car sharing. The “Scope” section states, “This Act is intended to govern the intersection of peer-to-peer car services and the state-regulated business of insurance. Nothing in this Act shall be construed to extend beyond insurance or have any implications for other provisions of the code of this state, including but not limited to, those related to motor vehicle regulation, airport regulation, or taxation.” This amendment proved vital in getting both the peer-to-peer car sharing and insurance industries to support the Model. “The I in NCOIL does stand for insurance, after all. We understand that legislators and regulators may need to deal with other policy issues impacted by this peer-to-peer auto business,” concluded Commissioner Considine.

Highlights of the Model include the requirement that a peer-to-peer car sharing program ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts set forth in state minimum coverage statutes; the requirement that a peer-to-peer car sharing program assume liability of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than those set forth in a State’s financial responsibility law; the requirement of the peer-to-peer car sharing program to notify the shared vehicle owner if the shared vehicle has a lien against it; exclusions in motor vehicle liability insurance policies may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner’s motor vehicle insurance policy; recordkeeping requirements for peer-to-peer car sharing programs pertaining to the use of a vehicle; consumer protection disclosure requirements for peer-to-peer car sharing programs such as the daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver; driver’s license verification and data retention requirements; requiring sole responsibility of the peer-to-peer car sharing program for any equipment, such as a GPS system or other special equipment put in or on the vehicle to

monitor or facilitate the car sharing transaction; and reporting requirements related to automobile safety recalls for both shared vehicle owners and peer-to-peer car sharing programs.

A full copy of the Model is below.

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National Council of Insurance Legislators (NCOIL)

Peer-to-Peer Car Sharing Program Model Act

**Sponsored by Rep. Bart Rowland (KY)*

**Adopted by the Property & Casualty Insurance Committee and Executive Committee on December 13th, 2019.*

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AN ACT concerning transportation.

Be it enacted by the Legislature of the State of X:

[(New Act) / or / (The statutes of the jurisdiction are hereby amended as follows)]:

Chapter 1. Short Title

This Act may be cited as the Peer-to-Peer Car Sharing Program Act.

Chapter 2. Scope

This Act is intended to govern the intersection of peer-to-peer car services and the state-regulated business of insurance. Nothing in this Act shall be construed to extend beyond insurance or have any implications for other provisions of the code of this state, including but not limited to, those related to motor vehicle regulation, airport regulation, or taxation.

Chapter 3. Definitions

Drafting Note: These definitions need to be read, interpreted and implemented within the limitations placed upon this Act by its scope set forth in Chapter 2.

Application of definitions

Sec. 1. Except as otherwise provided, the definitions in this chapter apply throughout this article.

“Peer-to-Peer Car Sharing”

Sec. 2. “Peer-to-Peer Car Sharing” means the authorized use of a vehicle by an individual other than the vehicle’s owner through a peer-to-peer car sharing program. “Peer-to-Peer Car Sharing” does not mean rental car or rental activity as defined in _____.

“Peer-to-Peer Car Sharing Program”

Sec. 3. “Peer-to-Peer Car Sharing Program” means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. “Peer-to-Peer Car Sharing Program” does not mean rental car company as defined in _____.

“Car Sharing Program Agreement”

Sec. 4. “Car Sharing Program Agreement” means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program. “Car Sharing Program Agreement” does not mean rental car agreement, or similar, as defined in _____.

“Shared Vehicle”

Sec. 5. “Shared vehicle” means a vehicle that is available for sharing through a peer-to-peer car sharing program. “Shared vehicle” does not mean rental car or

rental vehicle as defined in *[insert citation to the State’s statutory definition of “rental car” or the equivalent term in that State’s laws]*.

“Shared Vehicle Driver”

Sec. 6. “Shared Vehicle Driver” means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement.

“Shared Vehicle Owner”

Sec. 7. “Shared Vehicle Owner” means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

“Car Sharing Delivery Period”

Sec. 8. “Car Sharing Delivery Period” means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program agreement.

“Car Sharing Period”

Sec. 9. “Car Sharing Period” means the period of time that commences with the car sharing delivery period or, if there is no car sharing delivery period, that commences with the car sharing start time and in either case ends at the car sharing termination time.

“Car Sharing Start Time”

Sec. 10. “Car Sharing Start Time” means the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program.

“Car Sharing Termination Time”

Sec. 11. “Car Sharing Termination Time” means the earliest of the following events:

- (1) The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement;

(2) When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program; or

(3) When the shared vehicle owner or the shared vehicle owner's authorized designee, takes possession and control of the shared vehicle.

Chapter 4. Insurance

Insurance Coverage During Car Sharing Period

Sec. 1. (a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this chapter, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than those set forth in (State's financial responsibility law).

(b) Notwithstanding the definition of "car sharing termination time" as set forth in Chapter 3 or 4 of this Act, the assumption of liability under subsection (a) of this subsection does not apply to any shared vehicle owner when:

(1) A shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred, or

(2) Acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of car sharing program agreement.

(c) Notwithstanding the definition of "car sharing termination time" as set forth in Chapter 3 or Chapter 4 of this Act, the assumption of liability under subsection (a) of this section would apply to bodily injury, property damage, uninsured and underinsured motorist or personal injury protection losses by damaged third parties required by [*insert citation to the applicable state financial responsibility law*]

(d) A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a

motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts set forth in [*insert citation to applicable statute establishing state minimum coverage*], and:

(1) Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; or

(2) Does not exclude use of a shared vehicle by a shared vehicle driver.

(e) The insurance described under subsection (d) may be satisfied by motor vehicle liability insurance maintained by:

(1) A shared vehicle owner;

(2) A shared vehicle driver;

(3) A peer-to-peer car sharing program; or

(4) Both a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

(f) The insurance described in subsection (e) that is satisfying the insurance requirement of subsection (d) shall be primary during each car sharing period.

(g) The peer-to-peer car sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under subsections (d) and (e) and:

(1) a dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

(2) the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by Section 5 of this Chapter 4.

The shared motor vehicle's insurer shall indemnify the car sharing program to the extent of its obligation under, if any, the applicable insurance policy, if it is determined that the shared motor vehicle's owner was in control of the shared motor vehicle at the time of the loss.

(h) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (e) has lapsed or does not provide the required

coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage required by subsection (d) beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances as set forth in Chapter 4 Section (1)(b).

(i) Coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program shall not be dependent on another automobile insurer first denying a claim nor shall another automobile insurance policy be required to first deny a claim.

(j) Nothing in this Chapter:

- (1) Limits the liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program; or
- (2) Limits the ability of the peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

Notification of Implications of Lien

Sec. 2. At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Exclusions in Motor Vehicle Liability Insurance Policies

Sec. 3. (a) An authorized insurer that writes motor vehicle liability insurance in the State may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including but not limited to:

- (1) liability coverage for bodily injury and property damage;
- (2) personal injury protection coverage as defined in [CITE STATUTE];

- (3) uninsured and underinsured motorist coverage;
- (4) medical payments coverage;
- (5) comprehensive physical damage coverage; and
- (6) collision physical damage coverage

(b) Nothing in this Article invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

Recordkeeping; Use of Vehicle in Car Sharing

Sec. 4. A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation. The peer-to-peer car sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

Exemption; Vicarious Liability

Sec. 5. A peer-to-peer car sharing program and a shared vehicle owner shall be exempt from vicarious liability in accordance with 49 U.S.C. § 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

Contribution against Indemnification

Sec. 6. A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program if the claim is: (1) made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period; and (2) excluded under the terms of its policy.

Insurable Interest

Sec. 7. (a) Notwithstanding any other law, statute, rule or regulation to the contrary, a peer-to-peer car sharing program shall have an insurable interest in a shared vehicle during the car sharing period.

(b) Nothing in this section creates liability on a Peer-to-Peer Car Sharing Program to maintain the coverage mandated by this Chapter 4, Sec. 1.

(c) A peer-to-peer car sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for:

(1) liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement; or

(2) any liability of the shared vehicle owner; or

(3) damage or loss to the shared motor vehicle; or any liability of the shared vehicle driver.

Chapter 5. Consumer Protections Disclosures

Sec. 1. Each car sharing program agreement made in the State shall disclose to the shared vehicle owner and the shared vehicle driver:

(a) Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement;

(b) That a motor vehicle liability insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program;

(c) That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;

(d) The daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

(e) That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle.

(f) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.

(g) If there are conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared motor vehicle.

Driver's License Verification and Data Retention

Sec. 2. (a) A peer-to-peer car sharing program may not enter into a peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle:

(1) Holds a driver's license issued under _____ that authorizes the driver to operate vehicles of the class of the shared vehicle; or

(2) Is a nonresident who:

(i) Has a driver's license issued by the state or country of the driver's residence that authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(ii) Is at least the same age as that required of a resident to drive; or

(3) Otherwise is specifically authorized by _____ to drive vehicles of the class of the shared vehicle.

(b) A peer-to-peer car sharing program shall keep a record of:

(1) The name and address of the shared vehicle driver;

(2) The number of the driver's license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

(3) The place of issuance of the driver's license.

Responsibility for Equipment

Sec. 3. A peer-to-peer car sharing program shall have sole responsibility for any equipment, such as a GPS system or other special equipment that is put in or on the vehicle to monitor or facilitate the car sharing transaction, and shall agree to indemnify and hold harmless the vehicle owner for any damage to or theft of such equipment during the sharing period not caused by the vehicle owner. The peer-to-peer car sharing program has the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that occurs during the sharing period.

Automobile Safety Recalls

Sec. 4. (a) At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall:

(1) Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

(2) Notify the shared vehicle owner of the requirements under subsection (b) of this section.

(b) (1) If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, a shared vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer car sharing program until the safety recall repair has been made.

(2) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car sharing program, the shared vehicle owner shall remove the shared vehicle as available on the peer-to-peer car sharing program, as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, as soon as practicably possible after receiving the notice of the safety recall, the shared vehicle owner shall notify the peer-to-peer car sharing program about the safety recall so that the shared vehicle owner may address the safety recall repair.

Chapter 6. Effective Date.

Sec. 1. This Act shall take effect on the day that occurs [*the effective date should be at least nine (9) months after the Act becomes law—insert date **here***] after the date on which the Act becomes law.

Drafting Note – *The effective date should be a minimum of 9 months from the date the Governor signs the legislation.*