



GOV. MSG. NO. 1345

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 12, 2016, the following bill was signed into law:

HB260 HD1 SD1 CD1

RELATING TO INSURANCE
ACT 236 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that transportation
2 network companies are entities that use a digital network or
3 software application service to connect passengers with
4 transportation network company drivers. The legislature further
5 finds that concerns have been raised about potential gaps in
6 motor vehicle insurance coverage associated with transportation
7 network companies. In response, by the end of 2015, twenty-nine
8 states had enacted legislation to establish insurance
9 requirements covering transportation network company drivers
10 engaged in prearranged rides, thereby protecting transportation
11 network company drivers, their passengers, and the public.

12 Accordingly, the purpose of this Act is to close the
13 insurance gaps associated with transportation network companies
14 by establishing motor vehicle insurance requirements for
15 transportation network companies and transportation network
16 company drivers.



1 SECTION 2. Chapter 431, article 10C, Hawaii Revised
2 Statutes, is amended by adding a new part to be appropriately
3 designated and to read as follows:

4 "PART . TRANSPORTATION NETWORK COMPANIES

5 §431:10C-A Definitions. As used in this part:

6 "Personal vehicle" means a vehicle that is:

- 7 (1) Used by a transportation network company driver to
8 provide a prearranged ride;
- 9 (2) Owned, leased, or otherwise authorized for use by the
10 transportation network company driver; and
- 11 (3) Not a taxicab, limousine, or other for-hire vehicle.

12 "Prearranged ride" means the provision of transportation by
13 a transportation network company driver to a passenger,
14 beginning when a transportation network company driver accepts a
15 passenger's request for a ride through a digital network or
16 software application service controlled by a transportation
17 network company, continuing while the transportation network
18 company driver transports the requesting passenger, and ending
19 when the requesting passenger, or the last passenger from the
20 requesting passenger's party, departs from the personal vehicle.
21 A prearranged ride shall not include transportation provided



1 through a ridesharing arrangement, as defined in section 279G-1;
2 use of a taxicab, limousine, or other for-hire vehicle; or a
3 regional transportation provider.

4 "Transportation network company" means an entity that uses
5 a digital network or software application service to connect
6 passengers to transportation network company drivers; provided
7 that the entity:

- 8 (1) Does not own, control, operate, or manage the personal
9 vehicles used by transportation network company
10 drivers; and
11 (2) Is not a taxicab association or a for-hire vehicle
12 owner.

13 "Transportation network company driver" means an individual
14 who operates a personal vehicle used to transport a passenger
15 between points chosen by the passenger and prearranged through a
16 transportation network company and that is:

- 17 (1) Owned, leased, or otherwise authorized for use by the
18 individual;
19 (2) Not a taxicab or for-hire vehicle; and
20 (3) Used to provide prearranged rides to passengers.



1 §431:10C-B Relation to other laws. Solely for the
2 purposes of this article, neither a transportation network
3 company nor a transportation network company driver shall be
4 deemed to be a common carrier by motor vehicle, a contract
5 carrier by motor vehicle, a motor carrier as defined in section
6 271-4, a taxicab, or a for-hire vehicle service.

7 §431:10C-C Transportation network company and
8 transportation network company driver; disclosure; limitations;
9 insurance requirements. (a) Upon entering into an agreement
10 with a transportation network company driver, a transportation
11 network company shall immediately disclose the following in
12 writing to the transportation network company driver:

- 13 (1) The insurance coverage and limits of liability that
14 the transportation network company provides when the
15 transportation network company driver uses a personal
16 vehicle while engaged in a prearranged ride; and
17 (2) That the transportation network company driver's
18 personal motor vehicle insurance policy might not
19 provide any required or optional coverage when the
20 transportation network company driver uses a personal
21 vehicle while engaged in a prearranged ride.



1 (b) On or before September 1, 2016, and thereafter, a
2 transportation network company driver or transportation network
3 company on the transportation network company driver's behalf
4 shall maintain a primary motor vehicle insurance policy that
5 recognizes that the transportation network company driver is a
6 transportation network company driver or otherwise uses a
7 personal vehicle to transport passengers for compensation and
8 covers the transportation network company driver:

9 (1) While the transportation network company driver is
10 logged onto the transportation network company's
11 digital network or software application service; and

12 (2) While the transportation network company driver is
13 engaged in a prearranged ride.

14 (c) The following motor vehicle insurance requirements
15 shall apply while a participating transportation network company
16 driver is logged onto the transportation network company's
17 digital network or software application service and is available
18 to receive transportation requests but is not engaged in a
19 prearranged ride:

20 (1) Primary motor vehicle liability insurance in the
21 amount of at least \$50,000 for death and bodily injury



1 per person, \$100,000 for death and bodily injury per
2 accident, and \$25,000 for property damage per
3 accident, costs of defense outside of all such limits;

4 (2) Personal injury protection coverage that meets the
5 minimum coverage amount where required by section
6 431:10C-103.5; and

7 (3) The coverage requirements of this subsection may be
8 satisfied by any of the following:

9 (A) A motor vehicle insurance policy maintained by
10 the transportation network company driver;

11 (B) A motor vehicle insurance policy maintained by
12 the transportation network company; or

13 (C) Any combination of subparagraphs (A) and (B).

14 (d) The following motor vehicle insurance requirements
15 shall apply while a transportation network company driver is
16 engaged in a prearranged ride:

17 (1) Primary motor vehicle liability insurance that
18 provides at least \$1,000,000 for death, bodily injury,
19 and property damage per accident, costs of defense
20 outside such limits;



- 1 (2) Personal injury protection coverage that meets the
2 minimum coverage amount where required by section
3 431:10C-103.5; and
- 4 (3) The coverage requirements of this subsection may be
5 satisfied by any of the following:
- 6 (A) A motor vehicle insurance policy maintained by
7 the transportation network company driver;
- 8 (B) A motor vehicle insurance policy maintained by
9 the transportation network company; or
- 10 (C) Any combination of subparagraphs (A) and (B).
- 11 (e) If insurance maintained pursuant to subsection (c) or
12 (d) has lapsed or does not provide the required coverage, the
13 transportation network company insurer shall provide the
14 coverage required by this section beginning with the first
15 dollar of a claim and shall have the duty to defend the claim.
- 16 (f) Insurers providing the motor vehicle insurance
17 policies pursuant to this section shall offer the following
18 optional coverages, which any named insured may elect to reject
19 or purchase:
- 20 (1) Uninsured and underinsured motorist coverages for the
21 transportation network company driver and passengers,



1 as provided in section 431:10C-301, which shall be
2 equal to the primary liability limits specified in
3 subsections (c) and (d); provided that uninsured and
4 underinsured motorist coverage offers shall also
5 provide for written rejection of the coverages as
6 provided in section 431:10C-301;

7 (2) Uninsured and underinsured motorist coverage stacking
8 options as provided in section 431:10C-301; provided
9 that the offer of the stacking options shall also
10 provide for written rejection as provided in section
11 431:10C-301; and

12 (3) An offer of required optional additional insurance
13 coverages as provided in section 431:10C-302.

14 (g) In the event the only named insured under the motor
15 vehicle insurance policy issued pursuant to this section is the
16 transportation network company, the insurer or the
17 transportation network company shall:

18 (1) Disclose the coverages in writing to the
19 transportation network company driver;

20 (2) Disclose to the transportation network company driver
21 in writing that all optional coverages available may



1 not have been purchased under sections 431:10C-301 and
2 431:10C-302; and

3 (3) Obtain a written acknowledgment from the
4 transportation network company driver of receipt of
5 the written disclosures required in paragraphs (1) and
6 (2).

7 The standard disclosure forms used in paragraphs (1) and (2),
8 and every modification of such forms intended to be used, must
9 be filed with the commissioner within fifteen days of providing
10 such disclosure to the transportation network company driver.

11 The insurer shall also send to the transportation network
12 company driver every modified disclosure form within fifteen
13 days of the filing of such modified disclosure form and comply
14 with paragraph (3). Such disclosures and acknowledgment may be
15 sent and received by electronic means.

16 (h) Coverage under an insurance policy maintained by the
17 transportation network company shall not be dependent on a
18 personal motor vehicle insurer first denying a claim nor shall a
19 personal motor vehicle insurance policy be required to first
20 deny a claim.



1 (i) Insurance required by this section may be placed with
2 an insurer licensed under section 431:3-203 or with a surplus
3 lines insurer eligible under section 431:8-301 that has a credit
4 rating of no less than A minus from A.M. Best or A from Demotech
5 or similar rating from another rating agency recognized by the
6 insurance division.

7 (j) Insurance satisfying the requirements of this section
8 shall be deemed to satisfy the financial responsibility
9 requirement for a motor vehicle under chapter 287, the motor
10 vehicle safety responsibility act.

11 (k) A transportation network company driver shall carry
12 proof of coverage that meets the requirements of subsections (c)
13 and (d) at all times during the transportation network company
14 driver's use of a personal vehicle in connection with a
15 transportation network company's digital network or software
16 application service. In the event of an accident, a
17 transportation network company driver shall provide this
18 insurance coverage information to the directly interested
19 parties, motor vehicle insurers, and investigating police
20 officers, upon request. Upon such request, a transportation
21 network company driver shall also disclose to directly



1 interested parties, motor vehicle insurers, and investigating
2 police officers whether the transportation network company
3 driver was logged on to the transportation network company's
4 digital network or software application service or engaged in a
5 prearranged ride at the time of the accident.

6 (1) Unless specified in the personal motor vehicle
7 insurance policy or endorsement, nothing in this section shall
8 be construed to require a personal motor vehicle insurance
9 policy maintained by a transportation network company driver to
10 provide primary or excess coverage while engaged in a
11 prearranged ride. While the transportation network company
12 driver is engaged in a prearranged ride, and notwithstanding any
13 other law to the contrary, the following shall apply:

14 (1) The transportation network company driver's or the
15 vehicle owner's personal motor vehicle insurance
16 policy shall not be required to provide any coverage
17 to any person or entity unless the policy expressly
18 provides for that coverage while the driver is engaged
19 in a prearranged ride, with or without a separate
20 charge, or the policy contains an amendment or
21 endorsement to provide coverage while the driver is



1 engaged in a prearranged ride, for which a separately
2 stated premium may be charged; and

3 (2) The transportation network company driver's or the
4 vehicle owner's personal motor vehicle insurance
5 policy shall not be required to provide a duty to
6 defend or indemnify the driver's activities in
7 connection with the transportation network company,
8 unless the policy expressly provides otherwise while
9 the driver is engaged in a prearranged ride, with or
10 without a separate charge, or the policy contains an
11 amendment or endorsement to provide coverage while the
12 driver is engaged in a prearranged ride, for which a
13 separately stated premium may be charged.

14 (m) This section shall not restrict any motor vehicle
15 insurance policy coverage applicable to a passenger or
16 pedestrian, other than the limitations in the transportation
17 network company driver's or the vehicle owner's personal motor
18 vehicle insurance policy described in subsection (1).

19 (n) Notwithstanding any other law to the contrary, a
20 personal motor vehicle insurer may, at its discretion, offer a
21 motor vehicle liability insurance policy, or an amendment or



1 endorsement to an existing policy that covers a private
2 passenger vehicle, station wagon type vehicle, sport utility
3 vehicle, or similar type of vehicle with a passenger capacity of
4 eight persons or less, including the driver, while the driver is
5 logged onto the transportation network company's digital network
6 or software application service, or while engaged in a
7 prearranged ride, if the policy expressly provides for coverage
8 while the driver is logged onto the transportation network
9 company's digital network or software application service or
10 engaged in prearranged rides, with or without a separate charge,
11 or the policy contains an amendment or an endorsement to provide
12 coverage while the driver is logged onto the transportation
13 network company's digital network or software application
14 service or engaged in a prearranged ride, for which a separately
15 stated premium may be charged.

16 (o) Notwithstanding any other law affecting whether one or
17 more policies of insurance that may apply with respect to an
18 occurrence is primary or excess, this section shall determine
19 the obligations under insurance policies issued to
20 transportation network companies and, if applicable,
21 transportation network company drivers.



1 §431:10C-D Records. (a) A transportation network company
2 shall maintain:

3 (1) Global positioning system records and electronic
4 records for each period while a transportation network
5 company driver is logged onto the transportation
6 network company's digital network or software
7 application service or is engaged in a prearranged
8 ride for at least five years from the date each
9 prearranged ride was provided; and

10 (2) Transportation network company driver records at least
11 until the five year anniversary of the date on which a
12 transportation network company driver's activation on
13 the transportation network company digital network or
14 software application service has ended.

15 (b) Records maintained under this section shall be made
16 readily available for purposes of an accident investigation
17 pursuant to section 431:10C-C(k) or resolving any other dispute
18 related to transportation network company drivers while they are
19 logged onto the transportation network company's digital network
20 or software application service or while they are engaged in a



1 prearranged ride, no later than ten days after receipt of a
2 written request for such record.

3 §431:10C-E Disclaimers, waiver of liability, and indemnity
4 agreements invalid. None of the following agreements between a
5 transportation network company or transportation network company
6 driver and a passenger shall be valid or enforceable in this
7 State:

- 8 (1) A disclaimer of liability of a transportation network
9 company or transportation network company driver;
- 10 (2) A waiver, before the occurrence of an accident, of any
11 claim or right to file a lawsuit by a passenger
12 against a transportation network company or
13 transportation network company driver; or
- 14 (3) An agreement by the passenger to defend, indemnify, or
15 hold harmless a transportation network company or
16 transportation network company driver."

17 SECTION 3. The insurance commissioner shall conduct an
18 annual study on the impact of this measure on personal motor
19 vehicle insurance policy rates in the State and shall submit a
20 written report of findings and recommendations, including any
21 necessary proposed legislation, to the legislature no later than



1 twenty days prior to the convening of the regular sessions of
2 2017, 2018, 2019, 2020, and 2021.

3 SECTION 4. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 5. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 6. This Act shall take effect upon its approval;
14 provided that section 2 of this Act shall take effect on
15 September 1, 2016; provided further that this Act shall be
16 repealed on September 1, 2021.

APPROVED this 12 day of JUL , 2016



GOVERNOR OF THE STATE OF HAWAII

