

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
TRANSPORTATION

February 9, 2015
10:00 a.m.

MEASURE: H.B. No. 1287

TITLE: Relating to Transportation Network Companies.

Chair Aquino and Members of the Committee:

DESCRIPTION:

This measure would add a new chapter to Hawaii Revised Statutes (“HRS”) to regulate transportation network companies (“TNCs”).

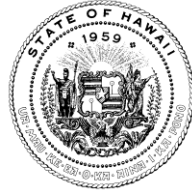
POSITION:

The Commission offers the following comments for the Committee’s consideration.

COMMENTS:

The Commission notes that taxicab services are exempt from Commission regulation pursuant to HRS 271-5(3) and are presently regulated under the authority given to the counties pursuant to HRS 46-16.5(c). It appears to the Commission that TNCs and their drivers engage in similar activities and provide similar services as taxicabs and taxicab drivers. Therefore, the Commission believes that it is appropriate for the counties to have similar authority to regulate TNCs.

Thank you for the opportunity to testify on this measure.



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TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Monday, February 9, 2015
10:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1287 – RELATING TO TRANSPORTATION
NETWORK COMPANIES.**

TO THE HONORABLE HENRY J.C. AQUINO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department provides the following comments:

The purpose of this bill is to regulate transportation network companies and their driver. Clarification is needed on page 8, line 17 regarding "the owner's insurance policy." It is not clear whether a personal automobile policy or a commercial automobile policy is being referenced. Further, as proposed § 9(b) is written, insurers do not have to provide coverage, nor do they have a duty to defend, when either a personal or commercial automobile policy is in place.

We thank this Committee for the opportunity to present testimony on this matter.

**HOUSE COMMITTEE
ON
TRANSPORTATION**

February 9, 2015

House Bill 1287 Relating to Transportation Network Companies

Chair Aquino and members of the House Committee on Transportation, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm offers the following comments about House Bill 1287 Relating to Transportation Network Companies. We believe that Transportation Network Companies (hereinafter TNCs) should be subject to certain basic insurance principles.

- TNCs need to provide insurance coverage to protect the public, passengers, and their drivers.
- This is a commercial activity that should not be covered by the private passenger auto policy (PPAP). To do so would affect the rates of all purchasers of individual personal auto policies to subsidize the cost of doing business for TNCs.

Liability Coverage: the **primary** coverage should be with the TNC from time the app is turned on by the TNC's driver.

- There should be an affirmative duty to defend under the primary TNC coverage **once the app is turned on**. This provides a bright line and clarity so that there can be no disputes. At this point, the law should provide that the driver's PPAP does not provide coverage.
- All businesses are subject to liability for negligence, and they protect themselves with insurance coverage. TNCs should be no different and there should be no limit to their potential liability, which they can insure against.
- The liability coverage should match livery coverage limits required by law:

Hawaii Revised Statutes § 271-17 (Security for Protection of Public) gives the Public Utility Commission the authority to determine the amount of insurance, and this is provided for in Hawaii Administrative Rules § 6-62-8.

Although we believe the limits should be sufficient to protect the public, State Farm believes required limits should be left to the sound discretion of the Public Utilities Commission and the Legislature, but we suggest that they should be at least equivalent to and similar to other livery requirements.

- TNCs should disclose to their drivers their coverage and limits of liability, and that the driver's personal policy might not provide any coverage in the event of an accident while the vehicle is driven by a TNC driver.
- The law should be clear that the PPAP shall not provide any coverage and has no duty to defend, unless the coverage is expressly stated in the policy language or an endorsement. This will allow the private insurance market to develop products for TNC drivers to purchase, if they so choose, and will prevent the costs of this coverage from being borne by consumers that do not act as TNC drivers.

Claims Cooperation

- The law should provide that TNCs and their insurers must cooperate with the claims investigation by providing data of when their app is turned off and on.
- TNCs should be required to maintain records for at least 1 year past the statute of limitations.

1st Party Coverages for TNC drivers from the time the app is turned on should at a minimum be as follows:

- Property Damage Coverage equal to but not less than those in driver's own PPAP.
- UM/UIM coverage for the driver and passengers equal to but not less than those in driver's own PPAP.
- PIP Coverage for driver and passengers equal to but not less than those in driver's own PPAP and sufficient to meet Hawaii's minimum requirements.

HB 1287 as drafted lacks the following elements:

- There is no clear statement that the TNC insurance policy must provide primary coverage and has the sole duty to defend from app on.
- There is no requirement for the TNC to notify its drivers of the coverage it provides.
- There is no requirement for record retention for claims purposes.
- There is no requirement for any first party coverages.

If the proposed measure is to move forward we believe that these principles should be embodied in it. We would be willing to provide a draft bill containing these elements to the Committee, if it so desires.

Thank you for the opportunity to present this testimony.

TESTIMONY OF BRIAN HUGHES ON BEHALF OF UBER TECHNOLOGIES IN
SUPPORT OF H.B. No. 1287 RELATING TO TRANSPORTATION NETWORK
COMPANIES

Monday, February 9, 2015

10:00 a.m.

To: Chairman Henry Aquino and Members of the House Committee on Transportation:

Thank you so much for allowing me the time to testify today. My name is Brian Hughes from Uber Technologies (Uber), and I am the general manager for the business here in Hawaii.

We appreciate that the committee has taken an interest in ridesharing services, often called Transportation Network Companies (TNCs). As we are seeing all over the country, this is an opportunity to put into place a regulatory framework that works for these exciting and emerging new technologies.

At Uber, we are supportive of reasonable requirements for TNCs that ensure rider safety, adequate insurance, and driver and vehicle inspection requirements. The most important thing we can point out to the committee this morning, is that the technology and business model developed by these companies necessitates a new regulatory framework that doesn't necessarily look like the transportation regulations of the last 50 years.

I'd like to first explain briefly how the system works and the choices that Uber offers, and then touch on a few of the benefits that Uber provides for a community. Here in Hawaii, Uber provides three main options: UberBlack, uberTaxi and uberX. UberBlack connects riders with traditional active motor carrier limo companies, and

uberTAXI connects riders to a traditional metered taxi. Finally, uberX is our extremely popular ridesharing option.

Ridesharing, like other industries in what is often called the Shared Economy, increases the efficiency of an underutilized resource. The Uber platform occasionally makes a personal vehicle into a commercial one. Because we can now determine exactly when commercial activity is taking place, we can make the operating costs of a vehicle for hire much more efficient.

At Uber, we took a simple idea – press a button on your phone and get a ride when you need it – and leveraged technological advances to make it a reality. When you sign up for Uber, you enter your credit card information so you never need cash. When you request a ride through the Uber app on a smartphone or a desktop computer, you are connected to the nearest driver who is offering services using their own personal vehicle. Once the ride is accepted, the screen displays the driver's name and photograph, the vehicle make and model, and the license plate number, so that a rider knows who is picking them up ahead of time.

After a ride is completed, the rider receives a receipt delivered via email, along with a map and record of the route taken. After every ride, a two-way rating system allows drivers and riders to rate one another, bringing an unprecedented level of accountability to the transportation industry.

Safety is Uber's top priority. Uber uses a nationally accredited third party to perform local county, multi-state, and federal criminal background checks going back seven years for every potential driver. We also use a Social Security trace, cross-check

the National Sex Offender Registry, and review DMV driving record reports.

Likewise, providing appropriate insurance coverage is also very important to Uber. Uber provides end-to-end insurance coverage so that riders are protected from the moment an operator is available to receive a ride request until the moment they safely exit a vehicle. Uber offers \$1,000,000 of commercial liability insurance from the moment the app connects a driver with a rider until they drop them off. Taxis in Honolulu, by comparison are only required to carry mandatory liability coverage of \$100,000 per person, \$200,000 in the aggregate and \$50,000 for property damage at all times. There is also \$1,000,000 of uninsured/underinsured motorist coverage to address accidents that aren't the driver's fault but were the fault of an uninsured motorist or hit and run. The policy also provides \$50,000 of contingent comprehensive and collision coverage to protect the driver's own vehicle. Additionally, the Uber policy provides for the mandatory Personal Injury Protection (PIP) coverage of \$10,000.

During the period when the driver has the app on but before they have accepted a ride from a passenger, an insurance policy with \$50,000/\$100,000/\$25,000 coverage is in effect. This coverage is provided as contingent, meaning that if the drivers' personal insurance validly denies the claim, the Uber coverage goes into effect. This is more than twice the required amount that Hawaii requires which is \$20,000/\$40,000/\$10,000 for personal vehicles. It's important to remember that at this time, there is no passenger in the car, and no money is changing hands.

Regarding the vehicles used by Uber partners, all vehicles authorized for use on the Uber platform are inspected by third party mechanics before they are able to receive

ride requests and annually thereafter. The vehicles must be 2005 or newer and pass a 19 point vehicle inspection performed by a licensed mechanic. Uber partners with shops like Goodyear, JiffyLube, Firestone, and Midas to complete the inspections.

I'd finally like to mention some of the incredible benefits Uber provides to the communities where we operate. Because driver partners can set any type of schedule they prefer, we are offering entrepreneurial opportunities for thousands of people with flexible hours. These are parents whose kids are in school, transitioning veterans, people in between jobs and entrepreneurs saving up while they work on their dream. The flexibility offered by the Uber platform has allowed one veteran to balance pursuing his Bachelors degree with raising a newborn daughter. It has allowed a social worker to take his wife on their first trip together to the mainland. Ridesharing has enabled a recent immigrant to build his own small business in Honolulu without being weighed down by unwieldy startup costs. These stories are plenty, and the data is more compelling.

Data suggests that when Uber enters a market, DUIs actually decrease. We tested this theory in Seattle and found a causal relationship between the arrival of Uber and a roughly 10 percent decline in DUI rates. We can tell that a huge percentage of Uber's requests come late on weekend nights, when DUIs peak just after bar closing time, suggesting that bar-goers are trying to use Uber as a safe, reliable way to get home after drinking. Readily available driver-partners and the affordable pricing of ridesharing help lower the hurdle for Hawaii residents to make the right decision.

Uber is thrilled to have received incredible support from Hawaii residents and we continue to strive for ways that we can improve our service here. We look forward to

continuing the conversation around developing a reasonable framework for this exciting new model for the citizens of this State.

Thank you for allowing me to present this testimony and I will be happy to answer any questions that you may have.

Hawaii State Legislature
House Committee on Transportation
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

February 7, 2015

Filed via electronic testimony submission system

RE: TNC bills (HB 1287 and HB 1463) - NAMIC's Written Testimony for Committee Hearing

Dear Representative Aquino, Chair; Representative LoPresti, Vice Chair; and members of the House Committee on Transportation:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 9, 2015, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members appreciate the importance of business innovation and we support the development and growth of transportation network companies (TNCs) and other "sharing-economy" business endeavors.

NAMIC believes that TNCs, like all other business operations, need to take full responsibility for the legal liability exposure and public safety risks posed by their business activities. Since the TNCs are engaged in a new form of commercial transportation, it is reasonable and appropriate

for them to be required by state law to be responsible for all the commercial transportation liability issues created by their business activities.

The TNC commercial transportation model requires TNC drivers to transport TNC passengers for hire in the TNC driver's private vehicle. Since the TNC driver's activities are clearly commercial in nature, the TNC driver's private passenger automobile insurance policy is most likely not going to provide a duty to defend or any insurance coverage for the commercial transportation use of the TNC driver's personal automobile. Consequently, the TNC commercial transportation model creates an "insurance coverage gap" which poses a legal liability exposure problem and public safety risk for the TNC service driver, TNC passengers, and the general public.

State Legislatures throughout the nation have been working on passing pro-consumer protection legislation to address this "insurance coverage gap", in a way that is pro-business innovation, pro-consumer-protection, and pro-business responsibility. In the two states that have enacted laws to date (California and Colorado) and in all the states evaluating proposed legislation, elected officials have focused their attention upon making sure that there is a clear demarcation between commercial auto activities and private passenger auto activities, so that TNC activities don't become an unnecessary insurance rate cost-driver for private passenger auto insurance consumers.

NAMIC appreciates the fact that there are presently seven TNC bills pending before the Hawaii State Legislature, and that a number of these proposed bills offer different legislative and regulatory approaches to address the "insurance coverage gap" issue. NAMIC is confident that the House Committee on Transportation will properly decide which proposed legislation best promotes "responsible" transportation business development, best preserves the availability and affordability of private passenger auto insurance coverage, and best facilitates consumer safety.

In regard to the two bills before this committee for public hearing, NAMIC respectfully submits the following comments for consideration by the House Committee on Transportation.

From a public policy standpoint, NAMIC believes that TNC legislation should set forth clear and specific insurance coverage requirements for TNC commercial activities, expressly acknowledge the legal and practical distinction between private passenger use of a motor vehicle and commercial transportation use, and protect private passenger auto insurance consumers from having to subsidize the standard business operational costs of TNC commercial activities.

NAMIC is encouraging State Legislatures across the country to pass legislation that thoroughly addresses the following TNC insurance coverage public policy elements:

- 1) "Sharing economy" business innovation, like the TNC industry, should be encouraged, but it must be thoughtfully regulated to address liability exposure created by these evolving business models. Clear guidelines for TNC insurance requirements are necessary to protect consumers and facilitate the growth of a healthy and sustainable "sharing-economy" business sector.

- 2) Legislation should safeguard private passenger automobile insurance products and consumers from legal uncertainty created by the TNC business model, by expressly protecting the enforceability of private passenger automobile policy language that excludes insurance coverage and the duty to defend for “livery” or “for hire” operations of a motor vehicle, and preserves the ability of auto insurers to engage in appropriate risk-based insurance rating and underwriting practices.
- 3) Legislation should clearly define the TNC activity and TNC insurance requirements, so that there is no legal ambiguity that could lead to costly litigation for private passenger automobile insurers and their consumers. TNC activity should have a “bright-line” standard that defines the scope and duration of TNC activities. Both the California and Colorado laws, and the clearly emerging national trend defines the TNC activity as being tied to the TNC driver logging on/off the TNC app. NAMIC suggests that the TNC activity definition should be “the period of time when a driver is logged onto the TNC’s app to the time the driver logs off the app or the ride is completed and the passenger has exited the vehicle, whichever is later.” This “bright-line” approach provides reasonable clarity for all interested parties, and a practical and discernable legal standard to resolve disputes over whether the driver was engaged in a TNC activity at the time of the accident/incident.

As for the specific TNC insurance requirement, in an effort to reduce the potential for protracted and costly insurance coverage litigation, NAMIC recommends that TNCs and/or TNC drivers be expressly required to have in effect *primary* insurance coverage that specifically covers the TNC activity as defined in the legislation, including the *sole* duty to defend the TNC driver for accidents/incidents arising out of or relating to the TNC activity. The TNC insurance coverage and/or TNC driver’s insurance coverage should be primary without requiring any denial of coverage from the TNC driver’s private passenger automobile insurer.

In regard to specific coverage limits, NAMIC believes that coverage limits should be left to the sound discretion of the Public Utilities Commission and the Legislature, but we suggest that they should be at least equivalent to and similar to other livery requirements, and at a minimum comparable to private passenger automobile financial responsibility coverage limits.

- 4) TNCs should be required to disclose to TNC drivers that the TNC driver’s private passenger automobile insurance may not provide any insurance coverage or a duty to defend for TNC activities, and disclose to consumers information about TNC and/or TNC driver’s insurance coverage and coverage limits. TNCs should be required to provide proof to consumers and regulators that the TNC and/or the TNC drivers are in compliance with the required TNC activity insurance coverages. NAMIC believes that TNCs should be required to maintain commercial coverage in case the TNC driver’s insurance coverage for TNC activities fails to comply with state law, or is cancelled, non-renewed or lapses.

- 5) The legislation should require TNCs to promptly cooperate with the TNC driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities, if there is an incident/accident arising out of or relating to the TNC activity, and that TNCs should be required to retain all TNC activity records and digital logs for the length of the state statute of limitations for automobile accident civil lawsuits. TNCs should also be required to provide timely copies of information and documentation relating to the TNC driver's TNC activities to the TNC driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities.

In light of the aforementioned TNC insurance coverage public policy elements, NAMIC is concerned that neither HB 1287 nor HB 1463 fully address all of the essential "insurance coverage gap" issues raised by the TNC business model.

NAMIC's concerns with HB 1287 –

- 1) The proposed legislation defines the TNC activity as commencing once the "driver accepts a request for transportation". This creates an "insurance coverage gap" for the TNC driver during the time that the driver is engaged in a commercial transportation activity but has yet to be matched to a passenger;
- 2) The proposed legislation creates arguably a situation where the TNC insurance coverage doesn't become operative until the TNC driver's private passenger auto insurer formally denies the TNC driver's insurance claim. The language specifically states, "the insurer shall notify an insured after receiving a notice of loss within the time required by section 431:13-103(a) (11) that the insurer has no duty to defend or indemnify any person or organization for liability for a loss that is properly excluded pursuant to the terms of the applicable primary or excess insurance policy." NAMIC is concerned that this will create an unreasonable delay in the settlement of insurance claims to the detriment of TNC drivers, passengers, and injured parties. Additionally, this formal coverage and duty to defend denial requirement will create an unnecessary administrative burden and cost (and possible legal expense) for private passenger auto insurers, which could act as an insurance rate cost-driver; and
- 3) The proposed legislation also fails to require necessary and appropriate insurance coverage disclosures to the TNC driver, and fails to require the TNC to retain TNC driver activity records necessary to resolve liability and coverage disputes.

NAMIC's concerns with HB 1463 –

- 1) Although the proposed legislation states that TNC drivers are to procure commercial insurance coverage consistent with the "motor carrier" law in an amount in amounts required by the financial responsibility statute (Section 431:10C-301(b) or "in such greater amounts as the [public utilities] commission may require", NAMIC is concerned that this commercial insurance coverage requirement fails to address a number of important "insurance coverage gap" legal issues. For example, the proposed legislation still leaves open to legal dispute whether the

“motor carrier” coverage requirement for TNC drivers is primary insurance coverage, and whether the “motor carrier” coverage requirement for TNC drivers provides the sole duty to defend the TNC driver.

2) The proposed legislation also fails to require necessary and appropriate insurance coverage disclosures to the TNC driver, and fails to require the TNC to retain TNC driver activity records necessary to resolve liability and coverage disputes.

In essence, the fundamental problem with HB 1463 is that it fails to recognize that TNC activities, although clearly commercial in nature, are somewhat different from the traditional “motor carrier” commercial activity, and TNCs retain the services of many drivers who are not traditional “motor carrier” drivers, i.e. they may not fully appreciate the legal implications and liability exposure associated with commercial transportation. Therefore, these “motor carrier” statutes need to be amended to address more than just the inclusion of a reference to TNCs within the purview of the statute, they also need to include provisions necessary to address TNC business model created “insurance coverage gap” legal issues.

Consequently, NAMIC believes that the House Transportation Committee should consider all of the various TNC bills introduced and available for introduction, and then select the bill that best addresses all of the “insurance coverage gap” legal issues that need to be properly resolved in order to preserve the availability and affordability of private passenger auto insurance coverage, address public safety concerns created by the TNC model, and establish a sound public policy and legal framework for the growth of the TNC industry and the development of new “sharing economy” business models.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC’s written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region

**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
USAA**

DATE: February 8, 2015

TO: Representative Henry Aquino
Chair, Committee on Transportation
Submitted Via TRNTestimony@capitol.hawaii.gov

RE: **H.B. 1287 – Relating to Transportation Network Companies**
Hearing Date: Monday, February 9, 2015 at 10:00 a.m.
Conference Room: 309

Dear Chair Aquino and Members of the Committee:

We submit this testimony in regard to H.B. 1287 on behalf of USAA, a diversified financial services company. USAA is the leading provider of competitively priced financial planning, insurance, investments, and banking products to members of the U.S. military and their families. USAA has over 82,000 members in Hawaii, the vast majority of which are military-based members.

USAA offers the following **comments** regarding this measure. Fundamentally, USAA believes that any proposal to regulate TNCs must include:

- **Insurance coverage:** TNCs must have primary insurance coverage that specifically covers TNC activity. Because TNC activity is commercial activity, this activity should not be covered by personal insurance.
- **Definition of TNC activity:** To provide a clear guideline, TNC activity needs to be defined specifically as – the period of time an app is turned on to the time the app is turned off.
- **Clear Exclusion of Personal Auto Policy:** It must be very clear that personal auto insurance does not provide coverage for TNC activity unless the policy expressly provides for that coverage. It must also be clear that

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- the personal auto policy will not have any duty to defend, which will limit coverage disputes.
- **Claims Cooperation:** TNCs must be required to demonstrate that the required coverage is in place. They should also be required to share data and information in timely fashion to facilitate resolution of any coverage disputes.

The insurance industry needs clear guidelines, such as the ones outlined above, in order to preserve its ability to take rating and underwriting actions for specific populations of insureds, including TNCs. Several concerns that USAA has with H.B. 1287 include the following:

- 1) **Approval of Exclusion Language** (page 8, line 20-page 9, line 1): This bill provides that the Insurance Commission must approve any language that excludes the personal auto insurance policy and the duty to defend. The Insurance Division already has a process in place to approve insurance rates and policy forms, and this added approval does not seem necessary.
- 2) **Disclosure of Exclusion of TNC on Application** (page 9, line 19-page 10, line 6): The bill requires insurers to prominently disclose to an applicant for an insurance policy that a personal policy includes an exclusion for ridesharing. The majority of Hawaii residents will not be TNC drivers – this information will not help the average applicant and will make the process more complicated. It is also not clear how this type of disclosure would be implemented when a policy is renewed.
- 3) **TNC Coverage Period** (page 5, line 7 – page 6, line 4): The bill requires TNCs to have only secondary coverage in basic minimum amounts during the time an app is turned on to the time a rider is matched with the driver. This poses an uncertainty for the insurance coverage, and does not fully reflect “app-on, app off” insurance. This means that, during the initial period an app is on, coverage disputes could arise regarding whether the personal policy or the TNC policy is in effect.
- 4) **TNC Claims Cooperation** (page 10, lines 7-16): This bill does not provide for adequate record maintenance or cooperation by TNCs and their drivers. TNCs should be required to maintain log on/log off data; instead, this bill only requires them to keep data about actual rides given. Failure to include a requirement that log on/log off data be kept will make claims coverage disputes difficult and will not provide for true cooperation. In addition, the bill requires that data may not be disclosed without the driver’s consent. This will ultimately prevent cooperation in claims disputes, because for an at-fault driver, it is against their self-interest to agree to release data.

USAA believes that innovation should be allowed both in the transportation and insurance marketplace, but only if there are clear guidelines regulating TNCs. If the Committee is inclined to move this measure, we would ask that the bill be amended to address the issues outlined above. USAA will be happy to work with the Committee and provide language that embodies these comments.

Thank you very much for the opportunity to testify.



To: The Honorable Henry J.C. Aquino, Chair
The Honorable Matthew S. LoPresti, Vice Chair
House Committee on Transportation

From: Mark Sektnan, Vice President

Re: **HB 1287 – Relating to Transportation Network Companies**
PCI Position: Oppose

Date: Monday, February 9, 2015
10:00 a.m., Conference Room 309

Aloha Chair Aquino, Vice Chair LoPresti and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to certain sections of HB 1287 which begins to set up an appropriate regulatory structure for this new type of passenger transportation. In Hawaii, PCI member companies write approximately 42.2 percent of all property casualty insurance written in Hawaii. PCI member companies write 43.2 percent of all personal automobile insurance, 65.2 percent of all commercial automobile insurance and 75 percent of the workers' compensation insurance in Hawaii.

PCI supports the provisions of the bill which require the Public Utility Commission to regulate the operation of transportation network companies (TNC) to protect the driver engaged in TNC services and the public. PCI **opposes**, however, the language that treats TNC services different than other common carriers because it ignores the fact that these businesses are engaged in the same activity – the transportation of passengers and property for compensation and should be required to maintain the same type of insurance

PCI also believes the “duration of service” standard created in Section 5 of the bill is too narrow. The bill says the services begins at “match” when the application has paired up a driver with a passenger and concludes when the passenger exits the vehicle. The language in the bill would force the driver’s personal automobile policy to cover, and therefore, subsidize the driver’s commercial activity during period one. This is the period when the driver has logged on to the system and “announced” to the system they are ready to accept rides. TNC passengers will look on the company’s app and note the number of rides that are available to pick up rides. The TNC companies market their business on the representations that drivers are constantly available. This time period is similar to a cab “trolling” for fares. The driver may be driving around after a game at Aloha Stadium looking for rides or driving outside bars in a neighborhood they are not familiar with. The bill should also cover these activities within the definition of “duration of services” and require appropriate insurance.

Personal automobile insurance policies include a “livery” exclusion for commercial activity. This provision protects the vast majority of drivers who use their cars for personal use as intended from having to subsidize those drivers who engage in commercial activity. These drivers should have insurance that is written specifically to cover their commercial activity. It is also important that the bill reduce potential conflicts between the personal auto policy and the commercial activity insurance policy. The commercial activity insurance must be primary during the entire time the driver is engaged in TNC services and there should be no requirement that the personal auto policy which does not cover commercial use of the car be required to deny coverage before the TNC insurance will cover the claim.

The bill should also provide appropriate levels of insurance to reflect the increased risk inherent in this type of activity. Clearly the risk of operating a personal auto in a commercial manner is greater than while operating as a personal vehicle and the insurance requirements should reflect this. The TNCs insurance policy should also protect their drivers by providing collision and comprehensive coverages as a primary insurer even when there is a passenger for hire in the vehicle. Under the requirements of this bill, a driver who gets into an accident and incurs an injury or damage to their vehicle will have no protection. The driver may be forced to seek coverage under their personal auto policy where the costs will be borne by consumers who are not driving for transportation network companies.

The bill requires TNC companies to provide a notice to their drivers that their personal auto policy most likely will not provide coverage while the driver engages in TNC services. This disclosure is appropriate since it is the driver engaging in TNC services that triggers the livery exclusion in the personal auto policy. The bill then requires insurers to disclose on the insurance application whether or not the insurance policy covers TNC drivers. Why should an insurer have to change all of their applications to provide information which only a very small number of their customers might be interested in? This would be costly, and possibly confusing disclosure with no real benefit.

PCI is opposed to HB 1287 in its current form but welcomes the opportunity to work with this Committee and stakeholders on crafting a bill supporting innovation in both the transportation and insurance market place by providing clear guidelines for TNC insurance. Thank you for the opportunity to provide our comments.



February 9, 2015

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION
ON HB 1287 RELATING TO TRANSPORTATION NETWORK COMPANIES**

Thank you Chair Aquino and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

HTA opposes this bill in favor of House Bill 1463.

The Public Utilities Commission (PUC) regulates common and contract motor carriers, and this bill proposes to have the PUC regulate a TNC without it being defined as a motor carrier nor being subject to rules that motor carriers must follow. This is not even placed in chapter 271. This does not make any sense.

A transportation network company (TNC) does not function as a motor carrier since they do not own, control, operate or manage rolling stock. Rather they function as brokers who facilitate the use of independent contractors to execute the transportation service.

These independent contractors are the for hire (common) motor carriers and they are who are regulated by the PUC, or by the various county taxi administrators.

This bill either, does not address the following requirements, or is contrary to them.

1. Filing of tariffs to ensure a fair and reasonable level of rates and fees;
2. PUC required markings on TNC utilized motor vehicles;
3. PUC insurance levels for the appropriate type vehicle and operation;
4. Filing Annual Financial Reports and paying the PUC fee based on a percentage of regulated revenue rather than a flat rate; and many others.

In conclusion, a TNC is not a motor carrier and should not be the entity regulated by the PUC. It is the driver or independent contractor who is the motor carrier.

Thank you.



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February 8, 2015

To: Hon. Henry Aquino, Chair, Hon. Matthew LoPresti, Vice Chair and Members, House Committee on Transportation

From: Steven Suchil, Assistant Vice President

Subject: HB 1287 – Transportation Network Companies

This letter is to inform you that the American Insurance Association (AIA) opposes certain provisions in HB 1287, which relates to Transportation Network Companies (TNCs). This bill will be heard in the House Transportation Committee on February 9, 2015.

The American Insurance Association (AIA) is the leading property- casualty insurance trade organization, representing approximately 300 insurers that write more than \$100 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

HB 1287 would establish oversight for TNCs in the Public Utilities Commission, and provide for insurance and other requirements.

TNC insurance legislation should provide proper protection to the public, passengers and drivers. At the same time, personal automobile insurance policy holders should not subsidize the commercial activities of businesses, and their drivers, who choose to participate in the new and creative commercial ride sharing enterprises that capitalize on technology and the willingness of passengers to use new methods of urban transport.

Specifically, AIA opposes those provisions in the bill relating to providing TNC services, requirements for insurance, and notice from insurers.

Section 5 defines TNC services and Section 8 sets forth insurance requirements. Section 8 provides for minimum insurance coverage when a driver is logged on to the TNC network until a ride is accepted, and for a higher level of primary coverage when a driver accepts a ride until a passenger exits the vehicle.

These sections, when read together, do not clearly address insurance requirements and contemplate coverage from personal automobile insurance policies. Such ambiguity can lead to

confusion as to coverage - which could adversely affect recoveries in the event of accidents involving TNC vehicles, needless litigation and the subsidization of commercial activities by personal automobile insurance policyholders.

From the time of log on to the TNC system until log off a driver is engaged in commercial activity – not only providing rides but going to and coming from where passengers are located and lingering in areas where there are likely to be passengers who will use the TNC system to secure a ride. What makes TNCs unique is the ability of a driver to use a personal car for commercial rides, unlike taxi or limousine services. Being available for, and providing, rides in a TNC system is clearly different than the regular daily use of a driver's vehicle to commute to work or doing errands – such as contemplated by personal automobile insurance policies. Personal automobile insurance policies include a livery exclusion which does not cover commercial activities.

Any TNC insurance provisions should clearly reflect the commercial nature of this type of arrangement for providing rides for remuneration. Further, TNC insurance legislation should not involve personal automobile insurance policies in commercial ride sharing or TNC activities from the time of log on to the system until log off and provide that commercial coverage for such activities is primary. Such clarifications will serve to protect the public, passengers and drivers by stating explicitly the types of coverage applicable to TNC activities.

The bill requires insurers to provide notice to personal automobile insurance policy applicants whether TNC activities are covered. It would be costly for insurers to have to change applications processes to provide a disclosure applicable to only a few drivers. This also could prove to be confusing to applicants.

AIA is opposed to HB 1287, as provided above, but wishes to work with the Committee and interested parties to draft a measure that sets forth proper insurance for protection of the public, passengers and drivers.

TESTIMONY OF WESLEY YAMADA IN SUPPORT OF
H.B. No. 1287 RELATING TO TRANSPORTATION NETWORK COMPANIES

Monday, February 9, 2015

10:00 a.m.

Hi, My name is Wesley Yamada. I am a full time Partner with Uber for the past 6 months. Before that I was a Taxi Cab driver for about 8 years. As you know, most Cab drivers have to work long hours, because their expenses are so high. I love Uber because my expenses are drastically lower. Now I work 45-50 hours a week, and yet my net pay is greater than when I drove a Taxi for 60+ hours a week! I feel uberX partners are much safer than Taxi drivers, because they drive less hours and are not fatigued like taxi drivers. I also feel safer, because Uber is a cashless system and I don't carry a huge wad of cash on me like when I drove a taxi.

Another thing I love about Uber is that it is safer for passengers, because they have a photo, license plate, car, and driver information in case anything happens. Also the rating system ensures riders and drivers both do their part to make it a good experience. One of the problems I faced as a taxi driver, was hearing how some drivers were rude, ripping people off by taking the long routes, speeding or driving dangerously and were not being corrected.

With Uber, drivers and riders have to maintain good ratings in order to use the software. This is a fair and effective regulating system. Customer satisfaction is one of the biggest reasons why Uber is so popular and loved all around the World. It is cheaper, safer, more convenient, way more efficient, and friendlier. I encourage you to just try riding with an Uber Partner, and in just one ride you will know why Uber is so loved by drivers and passengers alike.

Tourism is Hawaii's biggest industry, and you all know how the Aloha Spirit is a big thing here. Uber brings Exceptional Customer Satisfaction, which only helps our Tourist based Economy. The Uber platform also prevents drivers from hiding their income resulting in better opportunities for the state to collect the taxes it needs.

Uber Partners like myself benefit from the Uber one million dollar liability insurance, which I didn't have as a Taxi Driver. Uber Partners have to pass a mandatory 7 year background check, whereas I believe Taxi drivers only go back 2 years. Taxi cars go through just 1 safety Inspection but Uber cars have to go thru 2 safety inspections each year: the state inspection, and a thorough Uber Inspection by a certified third party. Cars used on uberX cannot be older than ten years, and because they are owned by the partners, the maintenance is generally better.

Having driven for Both Taxi and Uber, I can point out more differences, but the Best way to find out about ridesharing is to take an Uber ride. You will see why ridesharing is a win, win, win for the State, the passengers, and the drivers and why People Love Uber all over the World.

Thank you for listening, and I will be happy to answer any questions you may have.

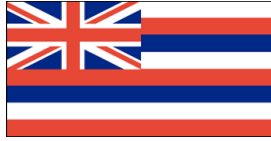
TESTIMONY OF WESLEY YAMADA IN SUPPORT OF
H.B. No. 1287 RELATING TO TRANSPORTATION NETWORK COMPANIES

Monday, February 9, 2015

10:00 a.m.

Thank you for allowing me to speak about ridesharing today. My name is Jason Cutinella, and I am a small business owner here in Honolulu. I've used Uber since the app became available here in Hawaii and now use it across the world. I've tried all their products, but uberX has changed how I get around the most. Ease of transportation is very important to the nature of my business, and the affordability of ridesharing has enabled me to better grow my small business here in Honolulu. The availability and reliability of the ridesharing product is what allows riders like myself to go carless many days. When I know a cheap ride is just five minutes away with the tap of a button, I don't need to worry about parking in Chinatown or adding to congestion with my own car. As you know, most Hawaii residents are also car owners. I'm actually in the process of selling my personal car as I rarely use it anymore.

The convenience of uberX is a true game-changer. Not having to carry around cash to pay or worry about tipping at the end of a ride is a godsend. As part of my job, I often have to entertain clients. With just the tap of a button and at 40% less than the cost of a taxi, we're able to make the safe decision and be passengers if we've had a drink. I hope the legislature can find a way to support ridesharing here in Hawaii. Many of your constituents like myself have come to rely on it as a safer, more affordable, and frankly - more enjoyable - transportation alternative. I ask that the committee supports Bill 1287 so we can continue to enjoy improved transportation options.



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February 9, 2015

Representative Henry Aquino, Chair
Representative Matthew S. LoPresti, Vice Chair
Committee on Transportation
Hawaii State Capitol, Room 309

RE: HB1287 Relating to Transportation Network Companies

Dear Chairman Aquino, Vice Chairman LoPresti and Members of the Committee:

HB1287 is, arguably, the least positive piece of legislation introduced in 2015, from a public safety and fairness standpoint. Its numerous provisions would exempt UBER, the intended beneficiary, from everything with which all the other vehicle for hire companies must comply. The bill is filled with language like the so-called "zero tolerance for drug and alcohol use" provision. In that one, the driver is not supposed to be drunk or under the influence of dangerous drugs while driving passengers. And while UBER touts its so-called high hiring standards, the record in many cities, Chicago, as one example, that (quote) "Many UBER drivers are being hired who should not be according to the company's own hiring policies." If that were not enough, Candy Lightner, the founder of Mothers Against Drunk Driving (MADD), and the current national president of We Save Lives, which campaigns against drunk, drugged, and distracted driving, has stated flatly, for the record, that "UBER encourages distracted driving."

Also, the bill specifies that drivers not only do not have to accept passengers with physical disabilities, they can direct such people to other, wheelchair-accessible, service providers. Like taxis. Taxis in Hawaii are absolutely required by law to accept passengers with disabilities, whether **or not they have the ability to pay**. Members of the Committee may or may not know that, but every taxicab driver knows it. And that language sums up the UBER effort pretty well. They are trying to get away with something under the guise of being "new and different."

Perhaps these Transportation Network Companies, or TNC's, ought to be known as Trying **Not** to Comply organizations.

Instead of allowing UBER and others to skirt and flout the laws, wouldn't be far better to allow them to do their business only if they played on a level playing field and complied with all the same laws, rules, and regulations as their competition? They are not so special. They ought to have to abide by the same rules that other vehicle for hire companies must work under. They should pay the same taxes and be required to be just as safe.

Representative Henry Aquino, Chair
Representative Matthew S. LoPresti, Vice Chair
Committee on Transportation
February 9, 2015
Page 2 of 2

Thank you for the opportunity to submit written testimony.

Respectfully Submitted,

John H. Radcliffe
President

TESTIMONY OF MICHAEL ONOFRIETTI

COMMITTEE ON TRANSPORTATION
Rep. Henry J.C. Aquino, Chair
Rep. Matthew S. LoPresti, Vice Chair

Monday, February 9, 2015
10:00 a.m.

HB 1287

Chair Aquino, Vice Chair LoPresti, and members of the Committee on Transportation, my name is Michael Onofrietti, President of the Hawaii Insurers Council, a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately thirty-six percent of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **opposes** certain provisions of HB 1287, which creates a new chapter in the Hawaii Revised Statutes to address regulation of “transportation network companies” and “transportation network company drivers.”

The Hawaii Insurers Council opposes all provisions of HB 1287 (for example, § -1 and § -2) stating that a transportation network company, a transportation network company driver, and transportation network company service do not include, nor are they deemed, a taxicab, a for-hire vehicle, a street hail service, a common carrier by motor vehicle, a contract carrier by motor vehicle, or a motor carrier as defined in section 271-4. While transportation network companies and their drivers may operate under a different business model to connect drivers to passengers, their essential services are the same as more traditional common carriers – the transportation of passengers and property for compensation.

The Hawaii Insurers Council also opposes the insurance requirements section of HB 1287 (§ -8). This section creates a two-tiered system of insurance:

1. When the transportation network company driver is logged into the transportation network company's digital network and available to receive requests of transportation, but is not then providing transportation network company services, only the minimum motor vehicle insurance limits are required (\$20,000 per person and \$40,000 per accident for bodily injury, and \$10,000 per accident for property damage). This insurance may be provided under a personal motor vehicle insurance policy.
2. Only when the transportation network company driver is actually providing transportation network company services (i.e., "the transportation of a passenger between points chosen by the passenger . . ."), the driver must be protected by primary insurance coverage of at least \$1,000,000 for death, personal injury, and property damage. This insurance may be provided under a personal motor vehicle insurance policy, a commercial motor vehicle insurance policy, or a combination of both.

While it is laudable that the Bill requires \$1,000,000 in insurance coverage for the period that the passenger is actually being transported in the vehicle, the minimum insurance requirements for the period before the passenger is actually being transported in the vehicle is insufficient and against public policy.

The transportation network company's insurance policy will not cover collision and comprehensive coverages as a primary insurer even when there is a passenger for hire in the vehicle. Again, the differing levels of coverage and having different insurers involved for the same vehicle will only lead to disputes and litigation. If there is coverage forced upon the private motor vehicle insurer while the driver is conducting

commercial activity, costs will be borne by consumers who are not driving for transportation network companies.

Once the transportation network company driver is logged into the transportation network company's digital network, he or she is already engaging in a commercial activity, being distracted by the digital device, traveling on perhaps unfamiliar roads, and looking out for the intended passenger. All of these and other activities increase the risk to the public. They also increase the exposure to the personal motor vehicle insurance carrier, and are more appropriately placed with a commercial motor vehicle insurance carrier.

In addition, § -9(d) of the Bill notwithstanding, the tiered insurance system would no doubt result in increased disputes between insurers, increased costs to investigate the timing and location of accidents, and increased costs in claims handling and litigation.

Accordingly, in order to expedite accident and claims investigations, to assure continued availability and affordability of personal motor vehicle insurance policies, and to protect the consuming public, the Hawaii Insurers Council advocates that HB 1287 be amended to state that:

1. All transportation network company drivers be required to maintain, at all times, a commercial motor vehicle insurance policy with minimum limits of \$100,000 per person and \$200,000 per accident for bodily injury liability, and \$50,000 per accident for property damage liability. These limits are the same as those required of taxicabs under county ordinances and of motor carriers under regulations of the Public Utilities Commission (PUC).
2. No personal motor vehicle insurance policy be required to provide coverage for a transportation network company or transportation network company driver.

The Hawaii Insurers Council does agree with various other provisions of HB 1287 dealing with the PUC's regulation of transportation network companies and transportation network company drivers for the protection of the public.

Therefore, while the Hawaii Insurers Council opposes HB 1287, it welcomes the opportunity to work with this Committee and stakeholders on revising the Bill. Thank you for the opportunity to testify.