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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 17, 2016
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1828, H.D. 1 – RELATING TO
TRANSPORTATION NETWORK COMPANIES.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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 Department requests that language in proposed section -4(b) in section 1, page 5, lines 3 to 18, mandating primary insurance policy requirements reflect the mandatory insurance requirements set forth in chapter 431:10C, Hawaii Revised Statutes ("HRS"). Section 431:10C-301, HRS, governs mandatory insurance requirements, including mandatory offers of uninsured and underinsured motorist coverage and written rejection of the same by the insured, as well as optional stacking of such coverages.

The Department also requests language be inserted in the proposed bill that an insurer must submit policies covering transportation network company ("TNC") activity to the Insurance Division for review and approval prior to the initial offer to TNCs or TNC drivers, with a provision that a mandatory delay period be in place prior to the TNC policy becoming effective.

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

Hawaii State Legislature
House Committee on Consumer Protection and Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

February 13, 2016

Filed via electronic testimony submission system

RE: HB 1828, HD-1, TNC bill - NAMIC's Written Testimony in Support with Request for Amendments

Dear Representative Angus L.K. McKelvey, Chair; Representative Justin H. Woodson, Vice Chair; and honorable members of the House Committee on Consumer Protection and Commerce:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 17, 2016, 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 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 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.

Twenty-nine State Legislatures throughout the nation have passed 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. State 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 a number of TNC bills pending before the Hawaii State Legislature, and that these proposed bills offer different legislative and regulatory approaches to address the "insurance coverage gap" issue. Although NAMIC does support HB 1828, HD-1, because it provides clarity as to when a driver is engaged in a TNC commercial transportation activity, spells out in a clear manner the TNC primary insurance coverage requirements, preserves the longstanding legal distinction between private passenger auto insurance coverage and commercial auto insurance coverage, and provides for a number of pro-consumer protection disclosures, NAMIC recommends that the bill be amended to conform to the National Conference of Insurance Legislators' (NCOIL's) TNC Model Act.

The NCOIL Model Act contains the essential "insurance coverage-gap" national insurance compromise language and comports with the recommendations contained in the National Association of Insurance Commissioners (NAIC) Sharing Economy Working group white paper on TNC issues drafted for use by legislators and regulators. Moreover, the NCOIL Model Act was created after extensive evaluation, thoughtful debate, and reasoned compromise by a broad cross-section of interested stakeholders, including representatives of the national insurance trade associations, multi-state insurance companies, the TNC industry, and consumer protection groups.

NAMIC believes that the NCOIL Model, which is currently being considered by a multitude of state legislatures, best promotes "responsible" transportation business development, preserves the availability and affordability of private passenger auto insurance coverage, and facilitates motor vehicle consumer safety. Since the TNC business endeavor and operational model is a national phenomenon, which reaches beyond the boundaries of any one state, it makes sense for the Hawaii State Legislature to adopt a legislative approach that promotes uniformity between and among the states.

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 MICHAEL ONOFRIETTI

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair
Rep. Justin H. Woodson, Vice Chair

Wednesday, February 17, 2016
2:00 p.m.

HB 1828, HD 1

Chair McKelvey, Vice Chair Woodson, and members of the Committee on Consumer Protection & Commerce, my name is Michael Onofrietti, Chairman of the Board of the Hawaii Insurers Council. Hawaii Insurers Council is 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.

Hawaii Insurers Council **supports** Section 1 of HB1828, HD1 as an insurance solution to the coverage issues presented by Transportation Network Companies (TNCs). Hawaii Insurers Council takes no position on Section 2 of the bill, empowering the counties to regulate TNCs, TNC activities, and TNC drivers; and takes no position on Section 3 of the bill, exempting TNCs from oversight by the Public Utilities Commission under the motor carrier law.

Insurance Issues

Section 1 of this bill includes insurance-related language contained in SB1280, SD2, HD2 from the 2015 Legislative session which generally makes insurance requirements consistent for TNCs and other entities that transport passengers for compensation.

The Legislature considered several insurance structures for TNCs during the 2015 session and settled upon the language in SB1280, SD2, HD2. Hawaii Insurers Council

supported that bill because the insurance structure was simple when compared to the other more complicated coverage schemes proposed. This structure is in HB1828, HD1.

HB1828, HD1 mandates limits of insurance coverage that are equal to those required under Hawaii's Motor Carrier Act and those required of taxis. These limits are \$100,000 per person/\$200,000 per accident for Bodily Injury Liability, \$50,000 for Property Damage Liability and \$10,000 in Personal Injury Protection benefits. HB1828, HD1 also mandates uninsured and underinsured motorist coverages,¹ as well as coverage to protect the TNC driver's vehicle.

TNCs have typically requested lower coverage limits for bodily injury and property damage liability coverages until a passenger is matched to a driver. These entities have also not wanted to provide uninsured motorist, underinsured motorist, comprehensive and collision coverages for TNC drivers' vehicles. In exchange for lower limits pre-match, TNCs prefer to offer \$1,000,000 in liability coverage once a rider is matched to a TNC driver.

Rather than provide coverage to protect TNC drivers' vehicles, TNCs tend to support a version of the NCOIL model, which instead requires a lienholder disclosure to TNC drivers. The state of Utah went beyond disclosure and required that TNCs or TNC drivers provide comprehensive and collision coverages, which is similar to the coverage provisions in HB1828, HD1.

¹ HB1828, HD1 appears to require uninsured and underinsured motorist coverages even for the property damage liability exposure. See page 5, at line 6 (requiring uninsured and underinsured motorist coverages "equal to the primary liability limits specified in paragraphs (1) and (2).") While paragraph (1) addresses bodily injury liability coverage (see page 4, lines 9-14), paragraph (2) addresses property damage liability coverage (see page 4, lines 15-20, and page 5, lines 1-2). Hawaii's Motor Vehicle Insurance Law does not require insurers to offer uninsured and underinsured motorist coverages for property damage. See HRS § 431:10C-301. Therefore, Hawaii Insurers Council requests that the reference to paragraph (2) be deleted from page 5, line 6 in HB1828, HD1.

There are several proposals to address the insurance, and more controversially the regulatory requirements, for TNCs pending before the Legislature. Hawaii Insurers Council believes that the insurance structure in HB1828, HD1 is a reasonable, consistent approach to ensuring that appropriate insurance coverages are available to protect TNC drivers, their passengers and the public. Other insurers and some TNCs prefer the more complicated approach presented by the complete NCOIL model, which also includes higher coverage limits once a rider is matched to a TNC driver.

In hearings on HB1828 before the Committee on Transportation and other TNC bills, the Hawaii Association for Justice (HAJ) has objected to the personal motor vehicle insurers' ability to exclude coverage for TNC drivers while they are using a vehicle during TNC activity. This ability to exclude coverage during TNC activity, HAJ objects, would create a "gap" in insurance coverage and would be contrary to other present scenarios that require or present primary/excess insurance situations. Hawaii Insurers Council anticipates that HAJ will continue to raise the same or similar objections to HB1828, HD1.

HB1828, HD1 Does Not Create A Coverage "Gap": Contrary to HAJ's anticipated position, it is Hawaii Insurers Council's position that HB1828, HD1 would not create a coverage "gap." The reason there are legislative proposals being enacted countrywide, and so many bills introduced in this Legislature, regarding TNCs is exactly because there are coverage gaps today. Short of a law defining when the personal auto policy is effective and when the TNC policy is effective, legal disputes over insurance coverage and gaps are guaranteed. HB1828, HD1 actually closes the coverage gap, and likely will eliminate costly insurance coverage litigation, by specifying which policy applies at different times.

HB1828, HD1 Correctly Places Coverage Where It Belongs: The bill appropriately and clearly places insurance coverage where it belongs, depending upon the activity in which the TNC driver is engaged. When the TNC driver is driving for purely personal reasons, the driver's personal motor vehicle insurance policy will still apply. But when

the TNC driver is engaging in TNC activity – *i.e.*, when the TNC driver is “open for business” – the insurance required by HB1828, HD1 (either the TNC’s policy or a policy specifically providing coverage required by HB1828, HD1) will be primary. This system makes common sense and draws a clear delineation: personal uses and activities would still be covered under the personal auto policy, while TNC activities, which are commercial in nature, would now be covered under the TNC policy.

HB1828, HD1 also wisely requires the TNCs to disclose to their TNC drivers in writing the insurance coverages and limits provided by the TNCs and that the TNC driver’s own personal motor vehicle insurance policy might not provide coverage while the TNC driver uses a vehicle during TNC activity. This requirement reduces confusion on the part of TNC drivers and reinforces the delineation between TNC and personal uses of the vehicle.

HAI has argued that State statute does not allow personal motor vehicle insurance policies to exclude coverage for taxicabs, moving trucks and vans, and other commercial uses. However, no statutory exclusion is needed in those situations because the vehicles are insured under commercial auto policies, not under less expensive personal auto policies. The vehicles in those situations are being used to carry passengers or property for compensation, a clear commercial purpose. HAI itself has conceded that taxis and TNC drivers do virtually the same thing. That “same thing” is transportation of persons and property for a fee, a commercial activity that should be insured under a commercial auto policy, rates for which are set to reflect the greater exposure to accidents. However, because HB1828, HD1 does not require that TNC drivers purchase commercial motor vehicle insurance policies, like taxi drivers and commercial delivery companies do, statutory exclusions for TNC activities in personal auto policies are necessary to protect the affordability of personal auto policies.

TNC Activities Differ From Incidental Uses Of Personal Vehicles: HAI also points to other mixed activities involving personal auto policies, which do not require commercial motor vehicle insurance coverage. However, those examples (*e.g.*, transporting a

relative to the airport in exchange for \$20) are only incidental to the private, personal use of the vehicle. TNC activities, on the other hand, are intended to be commercial in nature and directly related to the business purpose of the driver – the transportation of passengers and/or property for a fee.

HB1828, SD 1 Would Help Keep Personal Motor Vehicle Insurance Premiums

Affordable: A law requiring the personal auto policy to apply, even if secondarily, while the TNC driver is using a vehicle in TNC activity would result in higher personal motor vehicle insurance premiums for the specific driver and could even drive up prices for all Hawaii drivers. In essence, a mandate that the personal motor vehicle insurance policy provide coverage, even if on a secondary basis, would force non-TNC drivers in Hawaii to subsidize those who choose to drive for TNCs.

In addition, a law requiring the personal motor vehicle insurance policy to apply, even on a secondary basis, could create disincentive for the TNC companies and TNC drivers to maintain adequate primary “commercial” TNC coverage. If the TNC companies and their drivers know that less expensive personal motor vehicle insurance policies will cover the TNC drivers on a secondary basis, they will not be motivated to ensure that they have higher, primary “commercial” TNC coverage. Again, this would shift the cost burden from the “commercial” TNC activity – where it belongs – to the personal motor vehicle insurance policies in Hawaii.

In summary, Hawaii Insurers Council **supports** the insurance provisions in HB1828, HD1. It closes coverage “gaps,” clearly specifies insurance coverage limits, and appropriately delineates the insurance risks between “personal” uses and “commercial” TNC activities.

Recordkeeping Provision

Hawaii is a Personal Injury Protection (PIP) state, so claims under PIP coverage must be paid within a proscribed period of time. Claims for bodily injury liability, uninsured motorist, and underinsured motorist coverages can be presented many years after an

auto accident. Therefore, Hawaii Insurers Council supports the provision for the TNC to turn over driver or other records within ten days of request and to keep records for a period of five years. These provisions are included in HB1828, HD1.

Hawaii Insurers Council is committed to working with the Legislature and all interested parties to craft a bill that is appropriate for the unique elements of Hawaii statutes, and the interpretation by our courts of those statutes. HB1828, HD1 is a good vehicle to continue to facilitate these discussions.

Thank you for the opportunity to testify.

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

DATE: February 16, 2016

TO: Representative Angus McKelvey
Chair, Committee on Consumer Protection & Commerce
Submitted Via CPCtestimony@capitol.hawaii.gov

RE: **H.B. 1828, H.D.1 – Relating to Transportation Network Companies**
Hearing Date: Wednesday, February 17, 2016 at 2:00 p.m.
Conference Room: 325

Dear Chair McKelvey and members of the Committee:

We submit this testimony 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 **supports the intent** of **H.B. 1828, H.D.1**, which establishes motor vehicle insurance requirements for transportation network companies and persons who operate or serve as drivers for transportation network companies (“TNCs”).

This measure contains insurance requirements which reflect key principles that should regulate TNCs, including: 1) requiring TNCs to have primary insurance coverage that specifically covers TNC activity, 2) providing clear guidelines for TNC activity and 3) requiring claims cooperation by TNCs.

USAA supports this bill’s efforts to institute responsible insurance requirements on the TNC industry. We have indicated our support as well for the NCOIL model, which was adopted with input from many of the stakeholders.

Thank you very much for the opportunity to submit testimony on this measure.

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
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TESTIMONY OF HAWAII ASSOCIATION FOR JUSTICE (HAJ)
IN OPPOSITION TO S.B. NO. 1828, HD 1

Wednesday, February 17, 2016

2:00 pm

Conf. Rm. 325

TO: Chairman Angus McKelvey and Members of the House Committee on Consumer Protection and Commerce:

This OPPOSITION is focused on the INSURANCE provisions of HB 1828, HD 1, that exclude or permit exclusions of coverage in personal automobile insurance policies for vehicles used to carry Transportation Network Company (TNC) passengers.

This measure has some differences with the earlier TNC bill heard and deferred by this committee (HB 1463, HD 1), but many of the same problems with a few new shortcomings.

Substantive Change to the Insurance Law

There are two ways to handle the addition of insurance requirements for special applications like TNCs. First, you can add the TNC coverage on top of existing auto insurance, specifying that the TNC policy is “primary” and applies first, while leaving auto insurance in place as a seamless safety net of “secondary” basic coverage to catch situations where the TNC coverage is cancelled, lapses, exhausts or is denied. The second alternative is to carve out a gap in auto insurance by excluding TNC activities and filling that gap with TNC coverage. This second approach is taken in this bill. The downside of this approach is that there is no safety net provided by secondary auto insurance in the event that the TNC policy is cancelled, lapses, is exhausted or coverage is denied – as there is in the first approach.

Both approaches can be used, however, Hawaii’s legislature has used the first approach in the past. The rental car insurance situation, for example, is similar to the TNC situation addressed in this measure. Rental car coverage is addressed in section 431:10C-303.5 which provides that insurance on the rental car is PRIMARY (applies first), unless the driver/renter has their own motor vehicle insurance. If the driver/renter has applicable insurance then that insurance pays first (is PRIMARY) and the rental car’s insurance applies second (is SECONDARY) for liability coverage. The statutory language is as follows:

- (a) U-drive motor vehicle insurance policy shall be primary; provided that its bodily injury and property damage liability coverages shall be secondary to the operator’s or renter’s motor vehicle insurance policy if:

The statute has no exclusions for either the rental car policy or the driver/renter's policy. Instead, the order in which they should apply (primary/secondary) is mandated by the statute to keep the secondary policy in place as a safety net should the primary policy be cancelled, lapses, is exhausted or coverage is denied.

Hawaii's motor vehicle insurance law currently provides a seamless safety net of basic benefits for persons injured in all accidents involving the lawful use of motor vehicles. There are no exceptions to the basic liability coverage. This measure would change that by mandating that a car's insurance policy exclude coverage from the time a driver logs on to a TNC network until a passenger exits the vehicle; thus creating a gap in auto insurance coverage.

There are no statutory exclusions for cars used for taxi cabs even though taxi and UBER drivers do virtually the same thing; nor are there exclusions for pizza delivery, sales persons, moving trucks and vans, newspaper delivery, or other commercial uses of motor vehicles. Coverage is based on whether the vehicle is being used lawfully or not (a car thief is not entitled to benefits from insurance on the car they are stealing), not on the type of use (personal, commercial or a combination of both).

This measure states that TNC insurance is "primary" when a TNC driver is engaged in TNC activity. However, the TNC coverage is actually exclusive, not primary, because there is no secondary auto insurance coverage which is excluded by this measure. That exclusion conflicts with the current structure of the insurance code to provide for Primary and Secondary coverage, and not allow exclusions from liability coverage.

Mandating the exclusion found in this measure would be bad public policy because it would create gaps in coverage where none currently exist. For example, if the TNC and driver fail to provide the required primary coverage (whether by oversight, deliberate nonpayment or denial of coverage) and if the policy on the car excludes coverage, there would be no insurance to cover the TNC car.

That is why auto insurance laws specify Primary and Secondary coverage, rather than permit exclusions – so there will always be protection available in the event that there is no coverage under one policy or the other. By keeping the TNC policy primary and the auto insurance on the car secondary the TNC policy would pay first, as contemplated in this measure, and auto insurance would pay secondarily if, and only if, the primary TNC policy has lapsed, been cancelled, exhausted or denied coverage. This way, there will be no gaps in coverage, and thereby preserve the comprehensive seamless safety net of coverage currently in place.

We think of Uber and Lyft, two multi-billion dollar operations, when think of Transportation Network Companies. UBER says there is nothing to worry about because it will provide the coverage. This may be true of UBER, but this statute applies generically to all TNCs whether existing now or to be created in the future. Enterprising individuals may start their own TNC operations – and fail. And who knows what will

happen to Uber and Lyft five or ten years from now. Companies worth up to \$100 billion perish (Tower Records, Lehman Brothers, ENRON, Blockbuster, Compaq, Saab, etc.). If Uber or Lyft are unable to pay their insurance premiums in the future, there could be an uninsured gap of many months before that is discovered. The prospect of failure (whether by UBER or a local startup) must be considered in the crafting of this measure; with the prudent course being to maintain auto insurance as a secondary coverage instead of excluding it entirely.

Another situation where there may be no coverage is where the primary TNC insurer denies coverage. What would happen if, for example, if a TNC driver lets a friend drive you? The TNC insurer may deny coverage because you were not being driven by an authorized TNC driver. If the auto policy excludes coverage, as proposed in this measure, you would have no insurance benefits available from either policy.

There are other possibilities. TNC companies currently require annual inspections of cars and only those that pass are “authorized” for use in TNC activities. If a driver’s authorized car broke and they borrowed a friend’s car that car may not be covered by the TNC policy. What if the driver has their license revoked or suspended for DUI; but continues to drive without the TNC or insurance company’s knowledge? What happens if there’s a malfunction with the TNC network so it is not clear if a driver had picked up a ride through the network? The potential situations where there may be denials of primary TNC insurance are varied and unpredictable, therefore, prudence requires that auto insurance remain secondary and no exclusion be allowed in order to avoid having no insurance available in case of an accident.

Where there is no insurance applicable an injured passenger may apply to the Hawaii Joint Underwriting Plan Assigned Risks Program – the State’s free insurance program. This program is not intended to provide free benefits in situations where there is an actual auto policy in effect on car (but excluded by this measure). Yet this is another unintended consequence of this measure.

This measure does not address the interplay between UBER’s terms and conditions and the insurance UBER provides. When consumers download the UBER app they are required to click a box that they agree to UBER’s terms and conditions. Buried in those terms and conditions are the following: 1) “**You agree that the entire risk** arising out of your use of the services, and any service or good requested in connection therewith, **remains solely with you;**” 2) **UBER shall not be liable for** indirect, incidental, special, exemplary, punitive, or consequential damages, including lost profits, lost data, **personal injury, or property damage** related to, in connection with, or otherwise resulting from any use of the services, **even if UBER has been advised of the possibility of such damages;**” and 3) “**You agree to indemnify and hold UBER** and its officers, directors, employees, and agents **harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys’ fees), arising out of or in connection with: (i) your use of the Services** or services or goods obtained through your use of the Services.” The relevant pages of UBER’s terms and conditions are attached.

When you agree to be responsible for the “entire risk” of riding an UBER car does UBER’s insurance have to provide you any benefits? If the entire risk “remains solely with you” why would UBER’s insurance apply? If you have agreed that UBER “shall not be liable” for “personal injury or property damage” “in connection with or resulting from any use of the services,” such as riding an UBER car, would UBER’s insurance cover a claim against UBER? Under Hawaii law, when you get a ride from UBER (and pay UBER not the driver), UBER shares responsibility for accidents caused by UBER and its drivers under “enterprise,” “joint-venture” or agency principles. If you have waived these claims, can you collect from UBER’s insurance policy? No, not likely.

In addition, you have waived your claims against UBER “even if UBER has been advised of the possibility of such damages.” If an UBER driver is intoxicated and passengers have been reporting this to UBER, UBER can still arrange to have that drunk driver give you a ride. If the drunk driver gets into an accident you have waived your claim for “personal injury or property damage” “even if UBER has been advised” that its driver was drunk. Furthermore, if you have waived this claim UBER’s insurance does not have to cover it.

You have agreed to “indemnify” and hold UBER harmless for “any and all claims” “arising out of or in connection with your use” of UBER services. So, if you called for the drunk UBER driver and had a friend with you, your friend could sue UBER for using a drunk driver if your friend has not agreed to UBER’s terms and you would be responsible for paying for UBER’s liability. Is UBER’s insurance going to cover that for you? Not likely. Is your own insurance going to cover it? Not under this bill because it’s excluded. Are you going to be personally liable? You will because there’s no insurance to cover it.

You have also given up your right to go to court or participate in any class action to enforce your rights: “**You acknowledge and agree** that you and UBER are each **waiving the right to trial by jury or** to participate as a plaintiff or class in any purported **class action** or representative proceeding.” You have also given up your right to Hawaii law and instead agree that: “**These terms are governed by** and construed in accordance with the **laws of the State of California**, U.S.A., without giving effect to any conflict of law principles, except as may be otherwise provided in supplemental terms applicable to your region.” These are unfair and anti-consumer provisions. Who knows how the application of California law will affect UBER’s liability and insurance coverage issues?

TNC companies typically provide the insurance for drivers while they are engaged in TNC activities. Under this measure the TNC company is required to provide \$100,000 per person/\$200,000 per accident for accidental harm. Many drivers have higher limits on their cars because they also have umbrella policies which provide \$1 million or more in additional benefits. The majority of umbrella policies used in Hawaii require at least \$300,000 per person/\$300,000 per accident. Under this measure, only the TNC policy will apply and the personal policy with the higher limit will be excluded.

That will result in the (unintended) loss of umbrella policy protection for both the driver and those who may be injured because the TNC policy limits are lower than the minimum limits required for most umbrella policies.

A retiree who drives for UBER part-time may have a house and an umbrella policy for protection. Under this bill, the umbrella policy will no longer provide protection so the retiree is a risk of losing their house. That would not be the case if UBER's insurance was primary and other insurance was secondary to provide the added protection consumers think they have. Many people also buy higher liability limits to protect themselves – \$300,000 is not uncommon in Hawaii. Under this bill, they will have only the \$100,000 provided by the TNC policy. If they seriously hurt someone they will be personally liable. Insurance companies will say that the driver could purchase special additional TNC coverage from their insurance company. But let's be realistic, no ordinary consumer is even going to realize that these loopholes exist, let alone know what to do to plug them.

In Hawaii many families buy optional Uninsured (UM) and Underinsured (UIM) motorist benefits with high limits because they have a family to support, a mortgage to pay and private school tuition. If you have two cars with \$300,000 UM/UIM and have the stacking option you have a total of \$600,000 in benefits. Under this bill the UM and UIM benefits are capped at \$100,000. And, because your personal auto policy is excluded you get nothing from your \$600,000 coverage.

Even if you have two cars with \$100,000 UM/UIM with stacking under current law you would have \$300,000 in benefits (\$100,000 from the TNC policy and \$100,000 for each of your two cars). Under this bill you would have only \$100,000 because your \$200,000 from your policy would be excluded.

This measure also dictates that a TNC “does not own, control, operate or manage” the TNC cars. This is an issue that should be determined by the factual circumstances of each TNC operation. Indeed, there have been rulings on this issue against TNC operations on the mainland. This should be left to the appropriate regulatory agency or court to determine based on the way each TNC operates. The outcome can affect the rights of passengers against TNC companies for injuries or the entitlement of TNC drivers to the protection of state employment laws. This provision should be deleted.

Motor vehicle insurers want to exclude coverage when drivers are engaged in TNC related activities because they want TNC companies to provide the insurance for their operations. Viewed in isolation that is understandable. But in the context of the entire motor vehicle insurance system there are several factors that counsel against taking that approach. First, as discussed above, it would create gaps in coverage that currently do not exist in the insurance code. Second, it would shift costs to the State's free insurance program where the TNC policy has lapsed, been cancelled, exhausted or denied coverage.

Third, if there is any substantial increase in risk to personal auto insurance, as a result of providing secondary coverage, that is an underwriting factor that is best addressed by adjusting the premiums to reflect that increased risk. Insurance companies charge according to the risk associated with a vehicle's use. Application forms routinely ask about typical risk factors, such as whether the car will be used primarily for personal low-mileage driving, to and from work, business, high-mileage driving, the number of drivers and whether those drivers have moving violations or clean traffic records, whether you have caused any accidents (and if so, how many), which Island the car will be located (each Island has a different base rate), and whether it's a sports car, sedan or truck. TNC driving can be included as an underwriting factor, if it is significant enough, so any additional risk can be borne by that car.

Fourth, people use their cars for all kinds of business related activities, whether driving to see customers, delivering pizza or newspapers, giving their fellow employees a ride, picking up supplies for the office, using their truck for yard services, etc. There are no statutory exclusions permitted for these activities yet this has not made auto insurance unaffordable or unprofitable in Hawaii. Hawaii has been among the most profitable insurance markets in the nation – the most profitable in more years than any other state for the past 15 years. There is no reason to believe that TNC cars will alter the overall availability or profitability of Hawaii's insurance market to any significant extent, especially since TNC companies typically provide the primary insurance. If a need to revisit this subject develops in the future it can be done at that time.

Fifth, this measure is attempting to pass legislation to provide limited insurance coverage on the one hand, while TNC apps contain waivers, exclusions and indemnity provisions in their terms and conditions on the other hand – with the interplay between the two undisclosed and unclear.

Sixth, the impact of TNC driving is minimal. There were 1,312,445 registered vehicles in Hawaii in 2014 (the most current year for which data is available). Even if 1,000 people decided to use their cars for TNC rides this would represent less than .001 (one-tenth of one percent) of vehicles. Oahu has only 1,814 taxis, as of the July 2013 to June 2014 fiscal year, so it seems doubtful that demand could support an increase of more than a few thousand additional vehicles. Even if three thousand cars joined the TNC fleet those cars would still be less than three-tenths of one percent. Furthermore, many TNC drivers tend to work part-time or sporadically because they do not need to comply with stringent and costly taxi regulation. Therefore, there may be more TNC cars but they tend to be on the road much less than Taxi cabs which are more likely to be on the road full-time. Yet taxi cabs have not created a significant problem requiring the need for a taxi exclusion to the motor vehicle insurance code.

Seventh, what would be the rationale for allowing exclusions for TNC activities but not other business activities? Lots of people use their cars for occasional business related activities. If you buy lunch for the office and send a worker to pick-up it up that is technically a business use for which there may be no coverage under a business use exclusion. If you use your car for part-time work, such as to deliver papers for an hour or

two in the morning, that is technically a business use for which there would be no insurance coverage. If you let your teenager deliver pizza after school for a few hours that would also technically be a business use that would have no coverage. If your teenager injured someone there may be no insurance for the injured person and no insurance to protect you when you and your teenager are sued. If a grandmother pays her grandchild \$20 to take her to the airport that is technically a ride for compensation. Once exclusions for this or that activity or business use are permitted the seamless comprehensive safety net of the current law will be riddled with gaps in coverage – an unintended but certainly foreseeable outcome.

We ask that all references to the exclusion of automobile coverage on the car be deleted and replaced by language requiring TNC policies to be Primary and motor vehicle policies on vehicles used for TNC activities to be Secondary.

Thank you for considering our testimony. Any questions can be directed to Bert Sakuda or Shawn Ching, attorney members of the Hawaii Association for Justice.

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UNITED STATES ▼

Last Updated:

January 2, 2016

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Advocacy. Leadership. Results.

To: The Honorable Angus L.K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
House Committee on Consumer Protection and Commerce

From: Mark Sektnan, Vice President

Re: HB 1828 HD1 Relating to Transportation Network Companies
PCI Position: Request for Amendments

Date: Wednesday, February 17, 2016
2:00 p.m., Room 325

Aloha Chair McKelvey, Vice Chair Woodson and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) thanks you for the opportunity to submit comments on **HB 1828 HD1**. Our testimony is limited to the insurance provisions in the bill. We are not taking a position on the regulatory authority. PCI would like to request that HB 1828 HD1 be amended to reflect the model adopted by the National Conference of Insurance Legislators (NCOIL) which creates an insurance structure for the operation of transportation network companies (TNC).

In Hawaii, PCI member companies write approximately 42.7 percent of all property casualty insurance written in Hawaii. PCI member companies write 44 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 Has Supported Innovation in the Market Place for Transportation & Insurance in the 29 States that have Passed TNC Laws

PCI supports innovation in the market place, for transportation and insurance. We have been active nationally on insurance issues involving TNCs with both states and municipalities beginning with the passage of the seminal California law and continuing through today as Ohio recently became the 29th state to approve legislation closing the insurance coverage gaps associated with TNCs.

TNC Insurance Issues

In Hawaii, as in all other states, there is virtually no coverage under a private passenger auto insurance policy if you use your vehicle to provide rides to strangers for compensation.

There are three phases of TNC Activity: Period 1, when the driver has the app on, but is not matched with a rider; Period 2, when the driver and rider are matched via the app and the driver is going to pick the passenger up; Period 3, when the passenger is actually in the vehicle. Without statutes to clarify insurance coverage there may be coverage gaps for TNC drivers and passengers. TNC drivers are particularly at risk of coverage disputes while the app is on and they are available for hire, but do not yet have a passenger in their vehicle (Period 1). They may find there is no coverage for their injuries or getting their vehicle repaired if there was an accident.

Insurers are in the business of selling insurance. TNC drivers and passengers need insurance, but a regulatory and statutory framework is needed. In the spring of 2015, the insurance industry and the TNCs, after many months of disagreement, mutually developed and supported model legislation establishing TNC insurance requirements from the time the ridesharing app is turned on until it is turned off. PCI supports this national insurance compromise it protects not only drivers, but their passengers and the public by closing the insurance gaps that left drivers and the public vulnerable in an accident.

The NCOIL model act contains the national insurance compromise and comports with the recommendations contained in the National Association of Insurance Commissioners (NAIC) Sharing Economy Working group white paper on TNC issues (“Transportation Network Company Insurance Principles for Legislators and Regulators”). The NCOIL model act, as does the national compromise, understands that state law varies and therefore expects that individual state law reflect the state mandated coverages.

Conclusion

PCI supports innovation that brings new products into the marketplace. The 29 states with TNC laws or regulations include: Arizona, Arkansas, California, Colorado, District of Columbia, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin and Washington.

These laws put an end to consumer confusion regarding insurance coverage, while also allowing for continued marketplace innovation. As new transportation ideas evolve to meet consumers’ needs and demands, insurers are developing new products to cover those ideas and provide peace of mind.

The NCOIL model provides a framework for companies to use in delivering needed and innovative insurance products to cover the unique risks associated with TNC operations. In the states where such legislation has become law, an insurance marketplace catering to TNC risks has begun to develop. This can happen in Hawaii, too, with the passage of appropriate legislation.

PCI respectfully requests the committee amend **HB 1828 HD1** to reflect the NCOIL model law.



- Government Employees Insurance Company
 - GEICO General Insurance Company
 - GEICO Indemnity Company
 - GEICO Casualty Company
-

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COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair

Rep. Justin H. Woodson, Vice Chair

Wednesday February 17, 2016, 2:00 p.m. Conference Room 325

HB 1828, HD1 - RELATING TO TRANSPORTATION NETWORK COMPANIES

Chair McKelvey, Vice Chair Woodson and Members of the Committee, my name is Tim Dayton and I am General Manager for GEICO, Hawaii's largest insurer of motor vehicles. **GEICO Supports HB 1828.** Hawaii Transportation Network Company drivers badly need structure and clarification of insurance requirements noted in this Bill. We do offer several technical comments for consideration by the Committee:

- The proposal is ambiguous in regards to the **stacking** of Uninsured Motorist Coverage and Underinsured Motorist Coverage.
- The Bill does not address a critical component which mandates the sharing of information between the TNC insurer and the personal insurer. The NCOIL Model Legislation is a better Bill; information sharing is addressed. GEICO believes that the language is contained in HB 2504. If the NCOIL Model language was to be adopted it

would need to address the unique Hawaii Coverages (Uninsured Motorists, Underinsured Motorists and PIP).

- Personal auto insurance policies have always excluded coverage for any vehicle acting as a taxi or other livery by carrying passengers for a fee. This is true for Hawaii and nationally. Some have suggested that this should be changed and personal auto policies should be mandated to insure these risks on a secondary coverage basis. There is no justification to spread such loss exposures on all drivers. However, in a number of states with a clear statutory framework for insurance on ride sharing automobiles, several major companies including GEICO have launched coverage products that would provide this coverage and the costs are properly borne by ride sharing operators rather than spread across all policies.

Thank you for the opportunity to submit this testimony.

A handwritten signature in black ink, appearing to read "Timothy M. Dayton", with a long horizontal flourish extending to the right.

Timothy M. Dayton, CPCU

UBER

TESTIMONY OF TABATHA CHOW ON BEHALF OF UBER TECHNOLOGIES IN OPPOSITION OF HB 1828 HD1

February 17, 2016

Thank you Chair McKelvey, Vice Chair Woodson, and members of the Committee for the opportunity to provide testimony on HB 1828 HD1. As the Operations Manager of Uber Hawaii, I am testifying in opposition of the proposed draft of HB 1828 HD1.

HB 1828 HD1 would require only one insurance limit across all periods of using the Uber app. While we appreciate the intent behind this bill, such an insurance model does not account for the unique nature of the Uber platform and business model. By requiring only one insurance limit, the insurance provisions of HB 1828 HD1 do not consider the fact that a transportation network company vehicle is fundamentally a personal vehicle with two distinct timeframes of activity ("Period One" and "Period Two") that occur when the Uber app is in use.

During Period One, when a transportation network company (TNC) driver is logged on to the app and is available to receive transportation requests from potential riders, the vehicle's use remains personal, as the driver is not transporting any passengers and has not accepted a ride for pick up. TNC drivers and riders are matched via GPS based on a TNC driver's proximity to a potential rider, rather than through a traditional street hail. It is, therefore, unnecessary for a TNC driver to drive around during Period One in search of a rider. In fact, by pushing demand to the closest TNC driver, a driver is incentivized to avoid driving around, as it would waste gasoline and add mileage to his or her vehicle. Less miles driven during this period amount to a lower risk; thus, the limits of \$50K/\$100K/\$25K appropriately address this risk.

In fact, last year, the Colorado Commissioner of Insurance conducted a study of Period One and found no actuarial justification for increasing the insurance limits during the Period One timeframe. Moreover, these limits are more than twice that required of private passenger vehicles under Hawaii law (\$20K/\$40K/\$10K).

During Period Two -- which begins when a TNC driver has accepted a ride request and continues until the last rider has exited the vehicle -- Uber supports primary coverage with a liability limit of \$1 million; an amount five times the limit required in HB1828 HD1 and consistent with the coverage Uber now provides to TNC drivers in Hawaii and throughout the country.

The model insurance legislation developed by the National Conference of Insurance Legislators (NCOIL) encompasses these principles and accounts for the unique nature of the Uber app, and we urge the Committee to adopt this model. Not only do the liability limits in the NCOIL model more appropriately address the risk presented, but the NCOIL model requires that all other compulsory coverages required by state law also be included. In Hawaii, this means that personal injury protection benefits -- \$10K per

person -- will be required coverage from the time the app is turned on, to the time the app is turned off.

To date, of the 29 states that have passed TNC legislation, nearly every state's language reflects the principles expressed in the NCOIL model. Several of those states require personal injury protection benefits, such as Minnesota, Kansas, and Maryland. The NCOIL model language, therefore, can and does take those important public protections into account. HB 1828 HD1 would be a significant departure from the NCOIL model.

An additional benefit of the NCOIL model language is that it provides consumers with the opportunity to purchase this coverage if they so choose, and thus, encourages the private insurance marketplace to innovate. Following the adoption of insurance regulations throughout the country, several large and well known insurance companies have developed insurance products for transportation network company drivers. As of today, at least 11 insurance companies have developed insurance products in some 23 states. These products provide coverage above and beyond what is required by statute, should a TNC driver wish to obtain additional coverage. One of the benefits of adopting the NCOIL model is that we expect that these products will become available in the Hawaii market and present another option for Hawaii residents.

Further, where a TNC driver chooses not to buy such coverage -- or where a TNC driver buys such coverage that lapses -- the TNC always has the obligation to provide primary insurance coverage. This ensures that there will never be a gap in coverage, and that personal injury protection benefits will always be available to injured persons.

We look forward to continuing to work with all parties involved to reach a compromise so that the over 4,000 Uber driver-partners in Hawaii may continue to have a flexible income opportunity. We thank the Committee for the opportunity to provide this testimony.



2300 Harrison Street
San Francisco, CA 94110

Lyft Testimony in Opposition to HB 1828
House Committee on Consumer Protection and Commerce
Thursday, February 17, 2016

LATE TESTIMONY

Chairman McKelvey and Members of the House on Consumer Protection and Commerce:

My name is Annabel Chang, Director of Public Policy for Lyft testifying in opposition to HB 1828. First, thank you to all of the legislators who have recognized the importance of ridesharing and who are seeking proactively to find solutions for the peer-to-peer ridesharing industry here in Hawaii.

Lyft is an online ride-sharing application that connects people with efficient, friendly and safe drivers in their community. To use, simply download and register the application on your smartphone. From then on, requesting a ride happens with just the push of a button. This innovative model of ridesharing enhances access to alternative forms of transportation for Hawaii locals and tourists alike--and acts as a complement to the existing transportation infrastructure in the state. More than anything, Lyft is about giving people choices.

The citizens of Hawaii deserve the choice to share in safe, dependable, convenient, and modern transportation options. HB 1828 proposes an "insurance only" solution that we believe does not go far enough in protecting our riders. As with any new innovation or variance from traditional and long-standing practice, questions regarding liability and risk exposure have come up regarding companies such as ours. To address this, in March, 2015, transportation network companies ("TNC's") and large national insurance companies reached a nationwide agreement on a comprehensive insurance regime that clarifies responsibility and protects TNC drivers and passengers throughout all stages of a pre-arranged ride.

The first stage of a ride, commonly referred to as "Period 1," is the time during which the application is on and a driver is available to accept ride requests, but a ride has not been accepted. During this period, primary automobile liability insurance is required in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage. The insurance requirements must be met by a policy held by the transportation network company, the TNC driver, or any combination of the two.

During Period 2, when a ride is accepted and the driver is en route to the passenger, and Period 3, when the passenger is in the vehicle, Lyft provides primary commercial liability coverage of \$1 million per incident.



2300 Harrison Street
San Francisco, CA 94110

We urge this Committee to instead move more comprehensive legislation that includes the national compromise language, as 28 other states have already done. The national compromise language provides far more coverage than the primary insurance currently required by common carriers throughout Hawaii. The national policy, adopted by insurance and transportation network companies, is better for the general public while also permitting all Transportation Network Companies - regardless of size - to compete in Hawaii. We truly believe that implementing the insurance compromise framework as part of a larger regulatory solution will bring the state into the modern age of transportation and ensure that its citizens are not left behind.

Lyft wants to work with legislators and other stakeholders to craft strong comprehensive legislation that protects consumers and allows the ridesharing industry to serve all residents of Hawaii equally.

For these reasons Lyft cannot support HB 1828, as it is not the right legislative vehicle to deliver on that shared goal. Thank you for this opportunity to testify.