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TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
10:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 1828 – 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 Department 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.

TESTIMONY OF MICHAEL ONOFRIETTI

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

Wednesday, February 3, 2016
10:30 a.m.

HB 1828

Chair Aquino, Vice Chair LoPresti, and members of the Committee on Transportation, 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** HB1828 as an insurance solution to the coverage issues presented by Transportation Network Companies (TNCs). 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 Transportation Network Companies during the 2015 session and settled upon the language in SB1280, SD2, HD2. HIC supported that bill because the insurance structure was simple when compared to the other more complicated coverage schemes proposed. This structure is in HB1828.

HB1828 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 also mandates un- and underinsured motorist coverages, 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, under insured 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, they 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.

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 and Underinsured Motorist can be presented many years after an auto accident. Therefore, Hawaii Insurers Council supports a 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.

There are several proposals to address the insurance, and more controversially the regulatory requirements, for TNCs pending before the Legislature. HIC believes that

the insurance structure in HB1828 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.

We have met with representatives of Uber and as always, HIC 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 is a good vehicle to continue to facilitate these discussions.

Thank you for the opportunity to testify.

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Hawaii State Legislature
House Committee on Transportation
Hawaii State Capitol
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February 1, 2016

Filed via electronic testimony submission system

RE: HB 1828, TNC bill - NAMIC's Written Testimony in Support of Legislation for Committee Hearing

Dear Representative Aquino, Chair; Representative LoPresti, Vice Chair; and honorable 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 3, 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.

State Legislatures throughout the nation have been 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. 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, 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 was created after extensive evaluation, thoughtful debate, and reasoned compromise by a broad cross-section of interested stakeholders, including representatives of the national insurance trades 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



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

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER

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House Committee on Transportation
Conference Room 309 State Capitol
Wednesday, February 3, 2016, 10:30 a.m.
HB 1828 – Relating to TNC

Chair Aquino, Vice-Chair LoPresti, and Members of the House Committee on Transportation: 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.

One issue with the proposal that we can see is the insurance requirement for Uninsured Motorist Coverage and Underinsured Motorist Coverage. The Bill is somewhat ambiguous in regards to stacking and we suggest that the legislative intent should be clarified; elsewhere the HRS specifies that these coverages be stacked unless the insured submits a written rejection which seems contradictory to the wording in HB 1828.

Additionally we note that the NCOIL model bill contains important information regarding information sharing in the event of an accident. These requirements are important to delineate the responsibilities of both TNC's and insurers when there is an accident and effectuate prompt claims handling and resolution. The NCOIL model also divides the TNC experience into

3 phases, before the driver is logged into the TNC app, before the match with a customer and from the time of the match to the conclusion of the ride. The NCOIL model is acceptable to GEICO and is more consistent with other jurisdictions. However as noted, an amendment would be helpful to provide clarity regarding Hawaii's unique Uninsured/Underinsured motorist statutory requirements.

Thank you for the opportunity to submit this testimony.

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

Timothy M. Dayton, CPCU



Advocacy. Leadership. Results.

To: The Honorable Henry J.C. Aquino, Chair
House Committee on Transportation

From: Mark Sektnan, Vice President

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

Date: Wednesday, February 3, 2016
10:30 a.m., Room 309

Aloha Chair Aquino and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) would like to request that **HB 1828** 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 as 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 asks the committee to amend **HB 1828** to reflect the NCOIL model law.



February 1, 2016

Re: Written Testimony in Opposition of HB 1828

Chair and Committee Members:

In my written testimony submitted last week opposing H.B. No. 1463 H.D. 1, I used an expletive because the English language lacked a non-expletive word that truly conveyed my anger and disgust towards that bill. I was criticized by some of my peers in the transportation industry for using an expletive before a legislative body so I will restrain myself from doing so in this written testimony even though H.B. No. 1828 is as deserving of an expletive as H.B. No. 1463 H.D. 1.

H.B. No. 1828 will negatively affect the ability of over 2,000 hard-working, full-time commercial drivers to put food on the table for their family. By exempting Uber-X and Lyft drivers from the requirements of the Motor Carrier Act and other rules and regulations governing commercial drivers, the legislature is providing a huge competitive advantage over other commercial drivers. And....., in anticipation of Uber and Lyft's mindless talking points drafted in San Francisco and parroted by its drivers and the press here in Hawaii, there is no taxi monopoly or cartel here. In fact, Oahu has the most open, free-market and competitive taxi market in the country.

Before the fog of a \$60 Billion venture capitalist transportation company declaring its policy of self-regulation, this august body in more lucid days had declared its own policy regarding transportation:

§271-1 Declaration of policy. The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, over the public highways of this State constitutes a business affected with the public interest. It is intended by this chapter to provide for **fair and impartial regulation** of such transportation in the interest of preserving for the public the full benefit and use of the highways **consistent with the public safety** and the needs of commerce; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, **without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices.** This chapter shall be administered and enforced with a view to carrying out the above declaration of policy. [L 1961, c 121, pt of §2; Supp, §106C-1; HRS §271-1]

And pursuant to this policy, every single commercial driver in Hawaii have invested countless hours into complying with regulatory mandates aimed at public safety and consumer protection.

H.B. No. 1828 proposes to exempt TNC drivers for some inexplicable reasons from rules and regulations governing all other commercial drivers. Though the reason for the preferential exemption is unclear, the unintended (or maybe intended) consequences are very clear:

1. This Bill will displace and decimate the lives of thousands of hard working, full-time drivers by exempting potentially tens of thousands of TNC drivers (often part time and non-residents) from the rigorous and time tested regulations aimed at public safety and consumer protection (e.g. medical exam, calibration of measuring device, markings on vehicles for identification, full commercial insurance coverage) and providing TNC drivers with a significant competitive advantage over all other commercial drivers..
2. This Bill continues to require all other commercial drivers to dedicate hundreds of hours to comply with existing regulations, but enables TNC drivers to become commercial drivers by spending literally an unconscionable 20 minutes on the computer to sign up with a TNC.
3. This Bill cheapens and denigrates the profession of thousands of commercial drivers in Hawaii by tacitly agreeing with Uber and Lyft that “anyone” can do their job. Taking responsibility over the lives of people while performing a task that kills more people by accidental death than any other activity is an important and serious job.

THE PROFESSION OF FOR-HIRE COMMERCIAL DRIVERS IS NOT A COMMON AND UNSKILLED LABOR. IF THIS LEGISLATIVE BODY BELIEVES OTHERWISE, THEN IT SHOULD REPEAL THE MOTOR CARRIER ACT ALTOGETHER RATHER THAN CARVING OUT AN EXEMPTION BENEFITTING THE DRIVERS FOR JUST 2 COMPANIES.

CONCLUSION

A smart phone app is new technology that efficiently dispatches and coordinates transportation, and technology that all transportation providers should be encouraged to adopt. However, a smart phone app is NOT A PANACEA to all the danger presented in the inherently dangerous activity of driving for profit. The means of ordering a ride may be different, but the act of transporting remains the same. Unless you believe that TNC drivers are healthier, more honest or more ethical than taxi and PUC drivers, why the favorable exemption? What the heck!!!

B.T. Trans, LLC dba EcoCab

By: /s/ David Jung
David H. Jung
Its General Manager

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

DATE: February 2, 2016

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

RE: **H.B. 1828 – Relating to Transportation Network Companies**
Hearing Date: Wednesday, February 3, 2016 at 10:00 a.m.
Conference Room: 309

Dear Chair Aquino and Members of the Committee:

USAA **supports the intent** of **H.B. 1828**, 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.

While USAA supports this bill’s efforts to institute responsible insurance requirements on the TNC industry, if offered an alternative we would prefer the NCOIL model, which was adopted with input from many stakeholders, including insurers and transportation network companies.

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

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
Tiffany N. Yajima

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TESTIMONY OF HAWAII ASSOCIATION FOR JUSTICE (HAJ)
IN OPPOSITION TO H.B. NO. 1828

Wednesday, February 3, 2016
10:30 am
Conf. Rm. 309

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

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

Substantive Change to the Insurance Law

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. This measure would change that by mandating that a car's insurance policy excludes coverage from the time a driver accepts a request until Transportation Network Company (TNC) passenger exits the vehicle; thus creating a potential gap in 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 makes TNC insurance primary when a TNC driver is engaged in TNC activity. When the legislature has determined that insurance should apply in a particular order, this has been expressed by stating which insurance policy applies first (Primary), and which applies next (Secondary). 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 coverages. 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:

There are no exclusions required or permitted for either the rental car policy or the driver/renter's policy. Instead, the order in which they should apply is mandated by the statute.

Loaner cars are treated similarly. When your car is being repaired and you are given a loaner, your insurance on your car is PRIMARY (pays first) even though you are driving a different loaner car that has its own insurance. 431:10C-305((c)(1) provides in part: "the motor vehicle insurance policy of the customer's insured motor vehicle shall be primary over the policy on the temporary substitute (loaner) vehicle." There is no exclusion for the insurance on the car, instead that insurance is secondary to the primary insurance on your car.

In contrast, when the repair shop drives your car and gets into an accident, the insurance on the repair shop is PRIMARY and applies first while your insurance on your car is secondary. 431:10C-305(c)(2) states: In the event that a customer's insured motor vehicle is operated by a registered repair shop . . . insurance policy of the repair shop shall be primary over the policy on the customer's insured motor vehicle." There is no exclusion for the insurance on your car – it is secondary to the primary insurance on the repair shop.

In this measure, the TNC insurance policy is mandated to be PRIMARY when the driver is engaged in TNC activities as it should be. However, subsections (g) and (h), on pages 7 - 10, then mandates that a personal automobile insurance policy on the car driven by a TNC driver "shall not required to provide, nor shall it provide, any coverage . . . unless the policy expressly provides . . . during transportation network company activity . . ." 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 company and driver fails 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 whatsoever available to cover the TNC car.

That is why our motor vehicle insurance laws specify Primary and Secondary coverages, 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 motor vehicle insurance on the car secondary the TNC policy would pay first, as contemplated in this measure, and motor vehicle insurance would be available to pay secondarily if, and only if, the primary TNC policy has lapsed, 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. Many companies worth up to \$100 billion have perished recently (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. There is no regulation provided in this measure that requires a TNC to show proof of insurance as part of an annual licensing process so the lack of insurance could continue undetected for a long time; and there is no provision for revoking the license of a TNC if it fails to provide the required insurance. So, the prospect of failure must be considered in the crafting of this measure; with the prudent course being to maintain motor vehicle insurance as a secondary coverage instead of excluding it entirely.

Another situation where there may be no coverage if an exclusion for motor vehicle insurance is permitted 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 motor vehicle policy excludes coverage, as proposed in this measure, you would have no insurance benefits available from either policy.

There are other possibilities. What if the driver's authorized vehicle has a problem and the driver borrows a friend's car? Under the definition of "Transportation network company driver," on page 2, lines 9-12, only cars "owned, leased or otherwise authorized for use" are covered by the TNC policy. This is because TNC companies currently require annual inspections of cars and only those that pass are "authorized" for use in TNC activities. A friend's car would not be covered by the TNC policy and excluded by its own policy so there would be no insurance. 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 motor vehicle insurance remain secondary and no exclusion be allowed in order to avoid having no insurance available in case of an accident.

TNC companies typically provide the insurance for drivers while they are engaged in TNC activities. Under this measure the TNC company is only 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 (perhaps 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 required minimum limits for most umbrella policies.

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 not unreasonable. 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, 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.

Third, 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 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. And if there arises a need in the future to re-visit this subject it can be done at that time.

Fourth, 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.

Fifth, 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 would be no insurance for the injured person and no insurance to protect you when you and your teenager are sued. If a grandmother offers 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 is 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 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.

From: Dale Evans, Charley's Taxi <dale@charleystaxi.com>
Sent: Tuesday, February 02, 2016 3:55 PM
To: Rep. Henry J.C. Aquino; Rep. Sharon Har; Rep. Linda Ichiyama; Rep. Gregg Takayama; Rep. Roy Takumi; Rep. Kyle Yamashita; Rep. Mark Nakashima; Rep. Matthew LoPresti; Rep. Aaron Ling Johanson; Rep. Jarrett Keohokalole; Rep. Joy San Buenaventura; Rep. Andria Tupola
Subject: HB1828 re Transportation Network Companies

Re HB1828

[HB1828](#)

Introducer(s) : [AQUINO](#), [LOPRESTI](#), [SAY](#)

Hearing: 02/03/16 @ 10:30 AM, House Cf Rm. 309

This bill is full of "holes". This bill gives carte blanche to all TNCs, with no oversight whatsoever. Anyone can operate without license, without insurance, without safeguards! This bill appears to address TNC insurance with carriers, only if they bother to purchase insurance --- no protections for consumers, no way to identify fraud TNCs and TNC drivers. Any company with an "app" can be a TNC, not just Uber or Lyft.

1. TNCs are exempted from any state or county regulations except for the insurance provisions. See p. 1. Definitions.

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

TNC driver: (1) Owned, leased or otherwise authorized for use by the individual; (2) Not a taxicab or for-hire vehicle; and (3) Used in transportation network company activity.

See also page 2. Relation to other laws.

Neither a transportation network company nor a transportation network company driver shall be deemed to be a common carrier by motor vehicle, a contract carrier by motor vehicle, a motor carrier as defined in section 271-4, a taxicab or a for-hire vehicle service.

2. TNC drivers do pick up passengers for cash. See pp 2-3. Duration of Fare. The insurance only applies when the App is "on". TNC drivers will not have coverage when providing for-hire-services for TNC driver cash customers who have not booked through the TNC app.

3. How is evidence of financial responsibility assured when there is no requirement for TNCs and TNC drivers to file insurance policy with any government agency? TNCs are not being required to show proof of the insurance required under this bill, except for being displayed in the vehicle. Page 9

4. TNC drivers typically use multiple Apps: Uber, Lyft, FlyWheel, Curb. Which of the APP insurance will apply if they pick up a cash customer, when no APP "on"? Whose insurance applies when the driver uses Multiple Apps?

Please don't hesitate to let me know if you have any questions or dispute with my representations.

Mahalo!
Dale Evans

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TESTIMONY OF BRIAN HUGHES ON BEHALF OF UBER TECHNOLOGIES
IN OPPOSITION TO H.B. 1828

February 2, 2016

Chair Aquino and Members of the Committee, thank you for the opportunity to give testimony on behalf of Uber Technologies. As General Manager for Uber Hawaii, I am testifying against the proposed draft of HB 1828.

While I am grateful for the efforts of the committee to recognize Transportation Network Companies (TNC's) and outline a proposed approach for insurance guidelines, the draft language could be improved with amendments.

The auto insurance and transportation network industries share a mutual commitment to ensuring safe transportation options and this includes ensuring that transportation network companies and their drivers maintain appropriate automobile insurance. The NCOIL language is supported by the major insurance trade associations, insurance carriers, and transportation network companies and reflects a true compromise.

Residents in states that have passed similar regulations have already begun to benefit from the clearly-defined insurance requirements for Transportation Network Companies and their drivers. We believe the NCOIL model imposes reasonable and workable requirements for TNCs and their drivers and provides insurers with the ability to make sound underwriting and pricing decisions. We believe it will also create an environment where TNC services will thrive and also facilitate development of a robust insurance market for this new business model.

In its current form, HB 1828 is a significant departure from the latest National Conference of Insurance Legislators (NCOIL) compromise. We'd propose incorporating the NCOIL language as well as the following requirements into the existing bill:

- Personal injury protection coverage that meets the minimum coverage amounts where required by HRS § 431:10C–103.5.
- Uninsured and underinsured motorist coverage to the extent required by HRS §431:10C–301.
- That if the vehicle that the transportation network company driver plans to use to provide transportation network company services has a lien against it, using the vehicle for transportation network company services may violate the terms of the transportation network company's contract with the lienholder.

The following language causes us to oppose the existing bill, though we are eager to support the Chair's efforts to eliminate consumer confusion, provide a framework for safe transportation options, and support continued marketplace innovation:

-1 Definitions:

- One of the hallmarks of the NCOIL model language is that the definitions recognize that the vehicle being used is a personal, private passenger automobile. HB 1828 lacks that distinction.
- Rather than recognize that there are distinct periods of use within 'TNC Activity,' with different risk present in each period, HB 1828 takes a "one size fits all" approach by lumping everything that happens when the app is on into the definition of TNC Activity. Therefore, we would amend the bill to include:

-4 Transportation network company and transportation network company driver; insurance requirements.

- There is some internal inconsistency in the bill. On the one hand it says the TNC and TNC Driver shall maintain coverage (section -4(a)). Later on (in section -4(c)) the option exists for the driver, the TNC or a combination of two to provide the coverage.
- The liability limits of \$100K/\$200K/\$50K required at all times do not recognize that the the period when a driver has his/her app on but had not accepted a ride request presents a lower level of risk as there is no passenger in this period and the driver need not drive to acquire a fare request. The limits also well exceed those of the NCOIL language. The Colorado Department of Insurance conducted a study and found that the \$50K/\$100K/\$30K limits (similar to what is prescribed by NCOIL) were sufficient and there was no actuarial justification for raising limits.
- The current language requires personal injury protection benefits greater than required by law of other vehicles. While we have no objection to PIP, HB 1828 requires a complicated system of matching the amount of PIP the driver has purchased, which can lead to confusion and litigation.
- In current Hawaii statutes, UM/UIM must be offered by the insurance company. This bill would make vehicles used in TNC activity the only vehicle in the state required to purchase it. We are glad to offer it, but do not believe it should be required.
- There is no state that requires comprehensive or collision insurance as part of their financial responsibility requirements for personal vehicles, and there is no vehicle or activity in Hawaii that currently has a statutory requirement to carry comp/collision coverage. Any requirement to carry comp/collision coverage derives from a contractual obligation between a lender and a borrower within the terms of a loan agreement and is not statutory in nature.
- The provision in section -4(g) states that a private passenger automobile can never provide coverage provided in this section. There may be personal auto policies that were issued prior to this statute that do provide coverage, and would

be available to provide excess coverage or supplementary coverage like comprehensive/collision. This provision effectively rewrites contracts that have already been issued.

- Requiring verification of a driver's purchase of TNC coverage creates an operational burden that does not solve a specific issue. The TNC always maintains coverage so that, in the event the TNC Driver purchases a TNC insurance product and it lapses, there is no gap in coverage. Thus, there is no practical reason to review and document the driver's TNC coverage. If they don't have TNC coverage, the policy provided by the TNC is there.

We would like to continue working with all parties to reach a compromise that furthers the industries involved to benefit Hawaii residents, particularly those local residents enjoying over 3,000 flexible income opportunities enabled by this model.

By taking this draft and amending with NCOIL language, rather than design a new framework from scratch, the State can enable greater consumer access to reliable, safe, and affordable transportation options.

Thank you for the opportunity to offer these comments.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 6:02 PM
To: TRNtestimony
Cc: kpiltz@ckdbw.com
Subject: Submitted testimony for HB1828 on Feb 3, 2016 10:30AM
Attachments: DOCS-#175687-v1-HB_1828_Lyft_Testimony_Feb_2__2016.docx



HB1828

Submitted on: 2/2/2016

Testimony for TRN on Feb 3, 2016 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
K. Piltz	Lyft	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



TheCAB
422-2222

LATE

LATE

February 3, 2016

RE: Testimony for Opposition on HB1828

Aloha Chairman, Vice-Chairman, and Committee Members,

Let me start to appreciate all of you, your time spend on reading and reviewing each bill needs a lot of your patience and an understanding to hear or read each person testimony. I read and strongly opposed on HB1828 that was amended/ revised/ twisted so many times from other bills that was submitted and presented to you.

I felt Transportation Network Companies (TNC) that doesn't want to follow rules and regulations find ways to waste lawmaker's time by making too many bills, and I hope those bills would not keep you busy or confused so TNC can continue to operate their unregulated business.

Last year, I suggested a STOP right away for unregulated TNC business like Uber and Lyft until the State of Hawaii can identify where they should be running under - PUC or City and County, but they are still out there growing like a virus that disrupts a good system. Don't get me wrong that TheCAB didn't like competition, we like competition as long as it is placed on the same field with the same rules and regulation to follow.

City and County should watch this kind of business because the structure of their business is similar to taxi even they denies it many times that they are different from Taxi – riders that book a ride on their mobile APP is already looking for a driver for hire, then pay them for transportation using their own "Algorithm" (to calculate or produce a certain amount and not regulated by City and County or State of Hawaii) to bill the rider.



TheCAB


422-2222

In behalf of our independent 800 taxi drivers, they also have individual needs and story. But of course many of them preferred to be silent, as long as they follow rules that the City and County lawmakers created for them and they respect it even they have to go through a lot just to pass all the requirements of acquiring certification to transport passengers. They own or rent cars, but make sure that the car they are using is under a commercial insurance to protect themselves and their passengers. I have big respect to people who follows rules and regulations because I feel safe and it gives proper order to our surroundings.

Ever since I worked at TheCAB (for more than 9 years), the company has been dispatching through internet, like the way TNC does. We also created a mobile App to keep abreast to a new technology, like the way TNC does (they were just lucky that some venture capitalists took an interest to invest on their system so their mobile APP was developed faster than us). Before Uber, Lyft and Sidecar got popular, we are already using mobile APPS (Call a Cab and Taxi Magic which is now known as CURB). Other TNC like CURB and Flywheel respects the laws of Hawaii so they try to work with our system. TheCAB is not so far behind with new technologies, it has three ways to book a taxi and besides calling 422-2222 or book online, we have Mobile App too like TNC does. TheCAB also do not discriminate riders that doesn't have mobile APP or credit card (even drivers are at risk of none payment). Maybe we should have a bill to protect the taxi drivers for none payment!

I agree to Councilman Trevor Ozawa statement , "There are certain things here in Hawaii that is unique to the state and some things may not work here but it works at Mainland". I am going to end my testimony with a question... How would you feel if you welcome someone to stay in your peaceful home, but ignores your rules and then creates new rules for you to follow?

Respectfully,


Dorothy Requilman
TheCAB, Manager

Darci Evans
VP, Charley's Taxi
1451 S. King St Ste 300
Honolulu, HI 96814

February 3, 2016

LATE

TRN COMMITTEE HEARING February 3, 2016
Hawaii State Legislature
415 South Beretania Street
Honolulu, HI 96813

LATE

Re: Testimony In Opposition of HB 1828

Dear Legislators:

HB 1828 is discriminatory.

HB 1828 illustrates how ignorant people are to how taxicab operations work in Honolulu.

As a reminder, Honolulu is an open entry system. There are no medallions, no limits on numbers, etc, etc. We are actually quite unique in most of the world in that respect.

Therefore, in Honolulu it is the small business TAXICAB DRIVERS AND TAXICAB COMPANIES who need protections against the mega-giant, mega-billion-dollar TNCs. If nothing more, we need a level playing field...and HB 1828 is not allowing for a level playing field.

It is a fact that the majority of Honolulu's taxicab companies (they are not taxicab associations), do not own the cars operated as taxicabs. But, the drivers do.

Taxicab drivers have made significant PERSONAL investment to become professional drivers, including paying for commercial vehicle insurance in order to do business in Honolulu.

Yet, this bill gives preferential treatment to non-taxicab/TNC drivers. Yes, non-taxicab drivers/TNC drivers use "personal vehicles". But, again, so do the majority Honolulu taxicab drivers.

And this bill wants to allow non-taxicab/TNC drivers to pay less insurance...again, discriminating against taxicab drivers...for the non-taxicab/TNC drivers providing the same service and some would say an inferior level of standards and service as their taxicab driver counterparts.

You want to discriminate against self-employed taxidrivers in favor Transportation Network Companies (TNCs). You have pitted Davids against Goliaths. But, these TNCs are mega-mega-Goliaths, known to usurp rules and regulations...including safety, which is at the heart of the reason taxicab companies are calling for a level playing field in vetting and insuring.

Most taxicab companies in Honolulu do what you describe TNCs doing (and in fact do far more to service Honolulu and its visitors)...meaning the larger taxicab companies can also digitally match drivers and fares.

If it looks like a duck and quacks like a duck, it is a duck. TNCs are digital dispatching services for gypsy cabs. Why then should TNC be given preferential treatment? They shouldn't!

Sincerely,

Darci Evans

February 3, 2016

Representative Henry J.C. Aquino, Chair
Representative Matthew S. LoPresti, Vice-Chair
Committee on Transportation

TheCAB at 422-2222

Wednesday, February 03, 2016

Opposition for H.B. NO. 1828, RELATING TO TRANSPORTATION NETWORK COMPANIES

My name is Ryan Matsumoto and I'm the Operations Manager for TheCAB, I oppose House Bill 1828 Relating to Transportation Network Companies and I believe that this should be handled by the City and County of Honolulu, which already has rules and regulations for taxi companies and taxi drivers. Although, Transportation Network Companies (TNC's) claim they are different from traditional taxi companies and taxi drivers and should not be considered as such. In my opinion, there are no differences between a TNC and a traditional taxi company in the way rides are given to drivers. TNC offer dispatching thru smart phones thru cellular data and TheCAB taxi management company also use cellular data to transmit rides to taxi drivers thru a in vehicle computer.

TheCAB is not against modern technologies and we believe that it's a brilliant idea by the TNC's. However, the TNC drivers are still functioning as a motor carrier. The TNC's drivers' accepts a ride from a passenger and take them from Point A to Point B for a fare. In my opinion they are acting in the capacity of a taxi driver and should follow the rules already in place by the City and County of Honolulu for Taxi's.

In H.B. NO. 1828 -2 Relation to other laws

Neither a transportation network company nor a transportation network company driver shall be deemed to be a common carrier by motor vehicle, a contract carrier by motor vehicle, a motor carrier as defined in section 271-4, a taxicab or a for-hire vehicle service.

Yet, In the Testimony of Mr. Randy Iwase, Chair, Public Utilities Commission dated February 9, 2015,

"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

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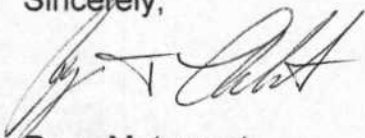
believes that it is appropriate for the counties to have similar authority to regulate TNCs."

My question is: What is the difference between a Transportation Network Company Driver and a Taxi Driver?

In summary, we ask that TNC's be regulated by the appropriate counties and to create a fair and equal working environment within the transportation/taxi industry.

I thank you for your time, consideration and the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan Matsumoto', written over a horizontal line.

Ryan Matsumoto
TheCAB, Operations Manager