

SB1351

Measure Title: RELATING TO TRANSPORTATION.
Report Title: Transportation Network Companies; Regulation; Insurance
Description: Regulates transportation network companies and requires transportation network drivers to obtain commercial motor vehicle insurance.
Companion: [HB1463](#)
Package: None
Current Referral: CPN/TRA, JDL
Introducer(s): NISHIHARA

<u>Sort by Date</u>		Status Text
1/29/2015	S	Introduced.
2/2/2015	S	Passed First Reading.
2/2/2015	S	Referred to TRA/CPN, WAM.
2/4/2015	S	Re-Referred to CPN/TRA, JDL.
2/10/2015	S	The committee(s) on CPN/TRA has scheduled a public hearing on 02-13-15 9:00AM in conference room 229.

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
TO THE
SENATE COMMITTEES ON
COMMERCE AND CONSUMER PROTECTION
AND TRANSPORTATION

FEBRUARY 13, 2015
9:00 a.m.

MEASURE: S.B. No. 1351
TITLE: Relating to Transportation

Chair Baker, Chair Nishihara and Members of the Committees:

DESCRIPTION:

This measure amends Chapter 271, Hawaii Revised Statutes (“HRS”), to provide for the regulation of transportation network companies (“TNCs”).

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for the Committees’ consideration.

COMMENTS:

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

Thank you for the opportunity to provide comments on this measure.



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Alison H. Ueoka
Executive Director

TESTIMONY OF MICHAEL ONOFRIETTI

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

COMMITTEE ON TRANSPORTATION

Senator Clarence K. Nishihara, Chair
Senator Breene Harimoto, Vice Chair

Friday, February 13, 2015
9:00 a.m.

SB 1351

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

The Hawaii Insurers Council **opposes** certain provisions of SB 1351, which amends the Motor Carrier Law, Chapter 271 of the Hawaii Revised Statutes, to address regulation of “transportation network companies” and “transportation network drivers.” However, the Hawaii Insurers Council agrees with the findings and purpose of SB 1351, and would like the opportunity to work with these Committees and interested parties to revise the specific provisions of SB 1351 to carry out the public policies of protecting the consuming public and ensuring the availability and affordability of personal motor vehicle insurance policies in the State.

The Hawaii Insurers Council opposes SB 1351 for two main reasons.

First, while the Bill correctly places regulation and oversight of “transportation network companies” with the State Public Utilities Commission (PUC), it divides regulation and oversight of “transportation network drivers” between the PUC and the counties. On the one hand, Section 3 of the Bill exempts “transportation network drivers” from the provisions of Chapter 271, thereby placing oversight with the counties. On the other hand, Section 5 (security for protection of public), Section 6 (unlawful operation), and Section 8 (identification of carrier), do govern the conduct of “transportation network drivers,” thereby empowering the PUC to regulate “transportation network drivers.” This division of jurisdiction over “transportation network drivers” is confusing and could operate to hurt the consuming public.

The Hawaii Insurers Council believes regulation and government oversight of both “transportation network companies” and “transportation network drivers” should be the sole responsibility of the PUC.

Second, the Hawaii Insurers Council opposes Section 5 of the Bill, which deals with the required security for the protection of the public. It does not explicitly mandate that all “transportation network companies” and “transportation network drivers” maintain motor vehicle insurance in amounts no less than \$100,000 per person and \$200,000 per accident for bodily injury, and no less than \$50,000 per accident for property damage liability. Section 5 also does not mandate that insurance coverage for “transportation network companies” and, especially, “transportation network drivers” be under a commercial motor vehicle insurance policy.

Because “transportation network companies” and “transportation network drivers” engage in commercial activity, their insurance must be under a commercial motor

vehicle insurance policy, at mandated higher limits, and not under a personal motor vehicle insurance policy. Properly assigning the insurance risk is of utmost importance.

Based on the foregoing, the Hawaii Insurers Counsel opposes SB 1351, but welcomes the opportunity to work with these Committees and stakeholders on revising the Bill. Thank you for the opportunity to testify.



February 13, 2015

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
COMMERCE & CONSUMER PROTECTION, AND ON TRANSPORTATION
ON SB 1351 RELATING TO TRANSPORTATION**

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

HTA supports this bill.

An entity that chooses to offer transportation services to the public must be regulated in the interest of that public. Currently, an entity is regulated by the State Public Utilities Commission (PUC) or by the various county taxi administrators.

These agencies protect the public by ensuring that reasonable levels of commercial liability insurance is in place for passengers, property and other vehicles. This also ensures a fair and reliable level of rates and fees will be charged for services. The registration of service providers facilitates the ability to locate them should the need arise.

The only item in this bill that puzzles us is the reference to chapter 431 of the Hawaii Revised Statutes on page 16, in line 5 as that chapter does not address commercial insurance and all of the levels required by the PUC are greater than that provided for in 431.

Thank you.

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

February 12, 2015

Filed via electronic testimony submission system

RE: TNC bills (SB 1280 and SB 1351) - NAMIC's Written Testimony for Committee Hearing

Dear Senator Baker, Chair; Senator Taniguchi, Vice Chair; and members of the Senate Committee on Commerce and Consumer Protection, and Senator Nishihara, Chair; Senator Harimoto, Vice Chair; and members of the Senate 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 13, 2015, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

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

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

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

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

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

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

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

NAMIC appreciates the fact that there are presently seven TNC bills pending before the Hawaii State Legislature, and that a number of these proposed bills offer different legislative and regulatory approaches to address the "insurance coverage gap" issue. NAMIC is confident that the Legislature will properly decide which proposed legislation best promotes "responsible" transportation business development, best preserves the availability and affordability of private passenger auto insurance coverage, and best facilitates consumer safety. NAMIC welcomes an opportunity to work with the Legislature to help craft appropriate legislation that thoroughly addresses all of the legal and public policy issues created by TNC activities.

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

From a public policy standpoint, NAMIC believes that TNC legislation should set forth clear and specific insurance coverage requirements for TNC commercial activities, expressly acknowledge the legal and practical distinction between private passenger use of a motor vehicle and commercial transportation use, and protect private passenger auto insurance consumers from having to subsidize the standard business operational costs of TNC commercial activities. Regulation by a state agency, like the Public Utilities Commission (PUC), is reasonable and appropriate, because TNC activities are commercial in nature. Additionally, state regulation of TNC activities is also administratively practical, because state regulation of the TNC industry will facilitate statewide uniformity in consumer protection.

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

- 1) “Sharing economy” business innovation, like the TNC industry, should be encouraged, but it must be thoughtfully regulated to address liability exposure created by these evolving business models. Clear guidelines for TNC insurance requirements are necessary to protect consumers and facilitate the growth of a healthy and sustainable “sharing-economy” business sector.
- 2) Legislation should safeguard private passenger automobile insurance products and consumers from legal uncertainty created by the TNC business model, by expressly protecting the enforceability of private passenger automobile policy language that excludes insurance coverage and the duty to defend for “livery” or “for hire” operations of a motor vehicle, and which preserves the ability of auto insurers to engage in appropriate risk-based insurance rating and underwriting practices.
- 3) Legislation should clearly define the TNC activity and TNC insurance requirements, so that there is no legal ambiguity that could lead to costly litigation for private passenger automobile insurers and their consumers. TNC activity, like other commercial transportation endeavors, have a higher risk of loss exposure so there should be a “bright-line” standard that defines the scope and duration of TNC activities. Both the California and Colorado laws, and the clearly emerging national trend defines the TNC activity as being tied to the TNC driver logging on/off the TNC app. NAMIC suggests that the TNC activity definition should be “the period of time when a driver is logged onto the TNC’s app to the time the driver logs off the app or the ride is completed and the passenger has exited the vehicle, whichever is later.” This “bright-line” approach provides reasonable clarity for all interested parties, and a practical and discernable legal standard to resolve disputes over whether the driver was engaged in a TNC activity at the time of the accident/incident.

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

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

- 4) TNCs should be required to disclose to TNC drivers that the TNC driver's private passenger automobile insurance may not provide any insurance coverage or a duty to defend for TNC activities, and disclose to consumers information about TNC and/or TNC driver's insurance coverage and coverage limits. TNCs should be required to provide proof to consumers and regulators that the TNC and/or the TNC drivers are in compliance with the required TNC activity insurance coverages. NAMIC believes that TNCs should be required to maintain commercial coverage in case the TNC driver's insurance coverage for TNC activities fails to comply with state law, or is cancelled, non-renewed or lapses.
- 5) The legislation should require TNCs to promptly cooperate with the TNC driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities, if there is an incident/accident arising out of or relating to the TNC activity, and that TNCs should be required to retain all TNC activity records and digital logs for the length of the state civil statute of limitations, plus two years for evidentiary purposes in automobile accident civil lawsuits. TNCs should also be required to provide timely copies of information and documentation relating to the TNC driver's TNC activities and any accidents/incidents during the TNC activities to the driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities.

In light of the aforementioned TNC insurance coverage public policy elements, NAMIC is concerned that neither SB 1280 nor SB 1351 fully address all of the essential "insurance coverage gap" issues raised by the TNC business model.

NAMIC's concerns with SB 1280 –

1) The proposed legislation defines the TNC activity as commencing once the "driver accepts a request for transportation". This creates an "insurance coverage gap" for the TNC driver during the time that the driver is engaged in a commercial transportation activity but has yet to be matched to a passenger. TNC insurance coverage should begin when the TNC driver logs on to the app, so that there is no ambiguity as to whether the driver's commercial activities are covered by the TNC insurance coverage. Clarity on this issue is in the best interest of all stakeholders and the general public;

2) The proposed legislation creates arguably a situation where the TNC insurance coverage doesn't become operative until the TNC driver's private passenger auto insurer formally denies the TNC driver's insurance claim. The language specifically states, "the insurer shall notify an insured after receiving a notice of loss within the time required by section 431:13-103(a) (11) that the insurer has no duty to defend or indemnify any person or organization for liability for a loss that is properly excluded pursuant to the terms of the applicable primary or excess insurance policy." NAMIC is concerned that this will create an unreasonable delay in the settlement of insurance claims to the detriment of TNC drivers, passengers, and injured parties. Additionally, this formal coverage and duty to defend denial requirement will create an unnecessary

administrative burden and cost (and possible legal expense) for private passenger auto insurers, which could act as an insurance rate cost-driver;

3) Although NAMIC supports the proposed requirement that the TNC disclose to the driver that engaging in TNC services may triggers the “livery exclusion” in the driver’s private passenger auto policy, the bill does so in a way that also creates an affirmative duty on private passenger auto insurers to disclose in the private passenger auto insurance application whether or not the insurance policy covers TNC activities. The “livery exclusion” in the private passenger auto insurance policy already addresses this issue, so why should the insurer have to replicate this information? Moreover, since the number of TNC drivers is relatively small compared to the number of private passenger auto drivers, the proposed changes to the form private passenger auto insurance applications would impose a costly and unnecessary administrative burden that would provide limited informational value to a small number of insurance consumers (those interested in engaging in TNC activities); and

4) The proposed legislation also fails to require the TNC to retain TNC driver activity records and digital logs necessary to resolve liability and coverage disputes.

NAMIC’s concerns with SB 1351 –

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

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

In essence, the fundamental problem with SB 1351 is that it fails to recognize that TNC activities, although clearly commercial in nature, are somewhat different from the traditional “motor carrier” commercial activity, and TNCs retain the services of many drivers who are not traditional “motor carrier” drivers, i.e. they may not fully appreciate the legal implications and liability exposure associated with commercial transportation. Therefore, these “motor carrier” statutes need to be amended to address more than just the inclusion of a reference to TNCs within the purview of the statute, they also need to include provisions necessary to address TNC business model created “insurance coverage gap” legal issues.

Consequently, NAMIC believes that the Senate Committee on Commerce and Consumer Protection and the Senate Committee on Transportation should consider all of the various TNC

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

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

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

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

**Testimony of
Mihoko E. Ito
on behalf of
USAA**

DATE: February 12, 2015

TO: Senator Roz Baker
Chair, Committee on Commerce and Consumer Protection

Senator Clarence Nishihara
Chair, Committee on Transportation
Submitted Via CPNTestimony@capitol.hawaii.gov

RE: **S.B. 1351 - Relating to Transportation**
Hearing Date: Friday, February 13, 2015 at 9:00 a.m.
Conference Room: 229

Dear Chair Baker and Chair Nishihara, and Members of the Joint Committees:

We submit this testimony in regard to S.B. 1351 on behalf of USAA, a diversified financial services company. USAA is the leading provider of competitively priced financial planning, insurance, investments, and banking products to members of the U.S. military and their families. USAA has over 82,000 members in Hawaii, the vast majority of which are military-based members.

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

- **Insurance coverage:** TNCs must have primary insurance coverage that specifically covers TNC activity. Because TNC activity is commercial activity, this activity should not be covered by personal insurance.
- **Definition of TNC activity:** To provide a clear guideline, TNC activity needs to be defined specifically as – the period of time an app is turned on to the time the app is turned off.

Gary M. Slovin
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- **Clear Exclusion of Personal Auto Policy:** It must be very clear that personal auto insurance does not provide coverage for TNC activity unless the policy expressly provides for that coverage. It must also be clear that the personal auto policy will not have any duty to defend, which will limit coverage disputes.
- **Claims Cooperation:** TNCs must be required to demonstrate that the required coverage is in place. They should also be required to share data and information in timely fashion to facilitate resolution of any coverage.

The insurance industry needs clear guidelines, such as the ones outlined above, in order to preserve its ability to take rating and underwriting actions for specific populations of insureds, including TNCs.

USAA supports the intent of this measure, which is to protect Hawaii drivers and consumers by requiring TNCs to be subject to the same insurance requirements as commercial motor carriers. However, USAA believes that simply requiring commercial insurance may not accomplish the dual objective of continuing to allow TNCs to operate in Hawaii while addressing consumer protection concerns. For these reasons, USAA believes that any proposed legislation should incorporate the principles outlined above. USAA is happy to work with the Committee and provide language that embodies these comments.

Thank you very much for the opportunity to testify.

**SENATE COMMITTEE
ON
COMMERCE AND CONSUMER PROTECTION**

and

**SENATE COMMITTEE
ON
TRANSPORTATION**

February 13, 2015

Senate Bill 1351 Relating to Transportation

Chair Baker, Chair Nishihara, members of the Senate Committee on Commerce and Consumer Protection, and members of the Senate Committee on Transportation, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm offers the following comments about Senate Bill 1351 Relating to Transportation. We believe that Transportation Network Companies (hereinafter TNCs) should be subject to certain basic insurance principles.

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

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

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

Hawaii Revised Statutes § 271-17 (Security for Protection of Public) gives the Public Utility Commission the authority to determine the amount of insurance, and this is provided for in Hawaii Administrative Rules § 6-62-8. Although we believe the limits should be sufficient to protect the public, State Farm believes required limits should be left to the sound discretion of the

Public Utilities Commission and the Legislature, but we suggest that they should be at least equivalent to and similar to other livery requirements.

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

Claims Cooperation

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

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

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

SB 1351 as drafted lacks the following elements:

- There is no clear statement that the TNC insurance policy must provide primary coverage and has the sole duty to defend from app on.
- There is no requirement for the TNC to notify its drivers of the coverage it provides.
- There is no requirement for record retention for claims purposes.
- There is no requirement for any first party coverages.
- The bill is internally **inconsistent**: as drafted it specifically states that TNC drivers are not subject to the "motor carrier law," but then states that the insurance requirements for "motor carriers" applies to them.

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

Thank you for the opportunity to present this testimony.



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

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII
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Senate Committee on Commerce and Consumer Protection
Senate Committee on Transportation
Room 229 State Capitol
Friday, February 13, 2015, 9:00 a.m.

SB 1351 - RELATING TO Transportation Network Companies

Chair Nishihara, Chair Baker, Vice-Chair Harimoto, Vice-Chair Taniguchi and Members of the Committees:

My name is Timothy Dayton, Branch Manager of the Hawaii GEICO office, Hawaii's largest auto insurer. Senate Bill 1351 would categorize Transportation Network Companies' (TNC) as common carriers, and place them under the regulatory authority of the counties and require that they be insured under commercial insurance policies. **GEICO supports Senate Bill 1351 which requires that TNCs be insured by commercial policies, but we do have some concerns about regulation of TNCs by the counties.**

As GEICO submitted in its testimony regarding SB 732, the requirement of a commercial insurance policy is acceptable, in recognition of the need for public safety and places the protection of the public by requiring insurance to be in place 24/7. However, the definition of Transportation Network Driver would place the regulation of TNC's under the counties. Since the development of the TNC business model is nascent and rapidly changing, GEICO submits that the regulation of these entities should be uniform statewide, and therefore opposes placing TNC's under the regulatory authority of counties.

We appreciate the opportunity to submit these comments and thank you for your consideration. **GEICO respectfully urges the Committee to pass Senate Bill 1351 but to consider further the issue of regulation by the counties.**

Sincerely,

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



February 11, 2015

Re: Written Testimony in Support of SB 732 and SB 1351

Chair and Committee Members:

HAWAII'S MOTOR CARRIER ACT INTELLIGENTLY AND EFFECTIVELY REGULATES A DANGEROUS BUT NECESSARY ACTIVITY WITH THE PURPOSE OF PROTECTING THE PUBLIC

Vehicular death is the no. 1 cause of accidental death in the United States. While driving provides us with mobility and independence that is necessary for economic growth and quality of life, it is nevertheless an **INHERENTLY DANGEROUS ACTIVITY that needs to be regulated for public safety.** Accordingly, every driver in Hawaii, personal or commercial, must be licensed by the state, and pass a written and road test administered by the city. **For those of us making a living and getting paid driving others (whether part time or full time), the standards are necessarily increased.** The additional requirements have been carefully legislated over decades to protect the safety of the public. A sample of just a few of the many safety regulations aimed at protecting the public are:

1. ALL DRIVERS FOR HIRE in Hawaii (whether part-time or full-time) are required to pass a **physical exam** that tests,
 - a) the drivers' blood pressure and diabetes level to insure that drivers do not pass out while driving passengers,
 - b) peripheral vision and hearing to minimize accidents through greater awareness of surrounding,
 - c) hernia to insure that drivers can physically assist a passenger if necessary (e.g. carrying them out of a burning vehicle or other emergency events, or just simply helping with bags).
2. Taxi drivers, because our services are on-demand (much like the TNCs) and not required to be pre-arranged, are **tested on road knowledge** of the 40 main points of interest in Honolulu that include the court houses, social service buildings, tax offices, emergency rooms of hospitals etc. This insures that in case of emergency, all drivers know where the emergency rooms of each of the hospitals are, and the poor, disabled and elderly have ready access to our social services.
3. Vehicles to be purchased for commercial purposes are provided a one year **inspection** even when purchased new.
4. In the case of taxi, the state, not Google or Uber, **calibrates and inspects every meter every year.**
5. And to further protect our consumer, our state and city law requires a **fair and predictable rate that will best allow even the poor access to the service** - i.e. no **SURGE PRICING**

during high demand including **STATE OF EMERGENCIES that favor the rich over the more vulnerable POOR.**

6. All vehicles for hire are required to be not just registered as a commercial vehicle, but clearly marked and numbered for **identification** so that, in part, law enforcement and witnesses can easily identify our vehicles **in case of accidents.**

7. All vehicles for hire also pay additional fees to both the state and city to pay for the administrative cost of regulation AND to **offset the additional wear and tear and use of public roads and facilities.** In cases of airport and harbors, there's also need to **screen access against potential terrorism.** It seems natural that if you're using public roads and facilities to make a living, you should **pay for the additional use of public roads and facilities.**

I CAME, I SAW, I CONQUERED; GREAT ATTITUDE IF YOU'RE CEASAR CONQUERING ANOTHER NATION, NOT SO IF YOU'RE COMING INTO A STATE AND ASKING ITS PEOPLE TO ENTRUST THEIR LIVES AND SAFETY

UberX and Lyft have entered every city and state, including Hawaii, by ignoring the existing transportation regulations (public safety) under the defense that they are SELF-REGULATED. Quite frankly, when I first heard from Uber the "self-regulated" argument, I thought they were joking, but they were dead serious. Uber and Lyft are venture capital led mainland companies **worth, in the case of Uber, \$40 Billion dollars.** Their meteoric valuation has led them to feel that they're **above the law.** This is reflected on how they launch their business and how they treat others. Uber, as they've done in Hawaii, simply **ignores all regulations** regarding transportation for hire and dares the regulators and legislators to go against them, and they've **threatened reporters** with "digging up dirt" against them if they dare to provide negative coverage of Uber. Uber, high on venture capitalist steroid (money), has become the **school yard bully on a national scale.**

So far the regulators and legislators in California, Seattle, Chicago and D.C. have caved in to Uber's bullying tactics to varying degree. **Recent trend, however, is for regulators and legislators to stand their ground.** The regulators and legislators in Nevada who are used to dealing with threats and bullying from real gangsters (not the wanna be Wall Street type like Uber) has required Uber to comply with all of their existing transportation laws and shut them down for non-compliance when they refused. Uber has been suspended in Portland, and they have also been required to follow existing transportation laws in San Antonio and Miami-Dade. Perhaps the biggest change has been in Asia. The entire country of China, India (following a rape of passenger) and Korea have all recognized Uber to be a "transportation for hire business" with a fancy and modern dispatching system, and required that their drivers fully comply with all existing laws governing "transportation for hire business". In all 3 countries, Uber has agreed to work towards full compliance of the country's regulations and laws. **If they're so compliant with foreign legislation, why are they so defiant of ours?**

TOTAL DISRESPECT FOR THE RULE OF LAW; UBER'S POSITION IS THAT IF YOU CAN'T BEAT'EM, IGNORE'EM

In Miami, Uber simply, unbelievably, notoriously and famously operate illegally. They coach drivers on how best to circumvent laws AND reimburse drivers for fines and cost for having vehicles impounded by law enforcement. In Portland where Uber has voluntarily suspended their activities to provide Portland's council an opportunity to pass "appropriate" legislation, Uber has warned the City that if they fail to pass the law authorizing them to operate by April, they'll terminate their "voluntary" suspension and just begin operation - talk about disrespecting the rule of law and government.

CONCLUSION

I hope that our legislators and leaders have the **intestinal fortitude** to "dare" go against such a powerful mainland interest, and **the integrity** to put Hawaii's public safety over politics and money.

B.T. Trans, LLC dba EcoCab

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

TESTIMONY OF BRIAN HUGHES ON BEHALF OF UBER TECHNOLOGIES IN
OPPOSITION TO S.B. No. 1351 RELATING TO TRANSPORTATION NETWORK
COMPANIES

Friday, February 13, 2015

9:00 a.m.

To: Chairpersons Rosalyn Baker and Clarence Nishihara and Members of the Senate Committee on Commerce and Consumer Protection and the Senate Committee on Transportation:

My name is Brian Hughes and I am testifying on behalf of Uber Technologies (Uber) in opposition to S.B. 1351 which seeks to include transportation network companies (TNCs) in the state's current definition of common carrier by motor vehicle, and would require TNC drivers to carry full-time commercial insurance. This bill is seeking to fit a new business model into regulations that were designed explicitly for a different type of transportation service. Uber is not opposed to regulations. In fact, we are working with the state toward a new framework that would recognize unique aspects of TNCs and create a new solution that embraces this technology. Over two dozen jurisdictions have taken this approach to create new regulatory frameworks that allow for a permanent home for TNCs. We seek to do the same in Hawaii and we will be testifying in support of S.B. No. 1280.

TNCs are a new and unique business model that uses smartphone apps and a driver/rider rating system to connect riders looking for transportation and drivers that provide transportation through an on-demand, safe and cashless transaction. TNCs are technology companies that provide a platform where riders and drivers can connect and individuals with their own personal vehicles can provide a ride to others in the community. Uber does not own or operate any vehicles.

Ridesharing, like other industries in what is often called the Shared Economy, increases the efficiency of an underutilized resource. The Uber platform allows a driver partner to use their

personal vehicle to supplement existing transportation options. Because we can now determine exactly when this transportation activity is taking place, we can make the operating costs of a vehicle for hire much more efficient.

To be clear, most Uber partners drive a few hours a week and use their own personal vehicles (which are inspected by a local, licensed mechanic) to make extra income and provide for their families. They are veterans, students, retirees, teachers, single parents and small business owners. Uber creates a marketplace where these individuals can use their own car to provide a ride to others when, where, and how often they want – a strong contrast to the existing model.

Uber provides end-to-end insurance coverage so that riders are protected from the moment an operator is available to receive a ride request until the moment they safely exit a vehicle. Uber offers \$1,000,000 of commercial liability insurance from the moment the app connects a driver with a rider until they drop them off. Taxis in Honolulu, by comparison are only required to carry mandatory liability coverage of \$100,000 per person, \$200,000 in the aggregate and \$50,000 for property damage at all times. There is also \$1,000,000 of uninsured/underinsured motorist coverage to address accidents that aren't the driver's fault but were the fault of an uninsured motorist or hit and run. There is also \$50,000 of contingent comprehensive and collision coverage to protect the driver's own vehicle. During the period when the driver has the app on but before they have accepted a ride from a passenger, the Uber insurance policy with \$50,000/\$100,000/\$25,000 coverage is in effect. This coverage is provided as contingent, meaning that if the drivers' personal insurance validly denies the claim, the Uber coverage goes into effect. It's important to remember that at this time, there is no passenger in the car, and no money is changing hands.

The Shared Economy departs from the clear-cut boundaries of personal use and commercial use. When a driver has the app on, but has not yet accepted a ride, they may be driving to the grocery store, on the way to the bank, or studying at a coffee shop. There is no reason why insurance cannot be similarly scaled to make sure appropriate coverage is in effect at the appropriate time. Uber wants to make sure that just as users of smartphone technology have moved quickly adapting to the tech-enabled shared economy, public policy around insurance responds in a similarly flexible way. We want to make sure there is not an inadvertent disincentive for the insurance market to bring a TNC related insurance product to the market here in Hawaii. In states where ridesharing regulation has been passed, leading insurance companies such as have developed tailored ridesharing policies. Uber believes there is a solution to ensure a safe future for ridesharing, and we are of the opinion that SB 1351 does not provide the solution.

Thank you for allowing me to testify today and I will be happy to answer any questions that you may have.

February 12, 2015

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680 Iwilei Road
Suite 700
Honolulu, Hawaii 96817

Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
Hawaii State Senate

Senator Clarence K. Nishimura, Chair
Committee on Transportation
Hawaii State Senate

robertshawaii.com

Re: SB 1351 Relating to Transportation
Committee Hearing
February 13, 2015 9:00 am
Conference Room 229

Dear Chair Baker, Chair Nishimura and Committee Members:

My name is Roy Pfund, Vice President of Roberts Hawaii, Inc., the largest tour and transportation company in Hawaii. I am submitting testimony in support of SB 1351 which is seeking to regulate TNC's (Transportation Network Companies) and their contracted drivers.

TNC's like Uber and Lyft are internet marketing companies that are using the smart phone and related technology to be the middleman between the consumer and the driver. TNC's do not own or operate any of the vehicles that provide their transportation services, but instead solicit third party or contract drivers to perform their services. If the TNC's only contracted with authorized and regulated PUC (Public Utility Company) drivers or County regulated taxi drivers to perform their services, we would not be having this hearing today. Instead of using existing regulated drivers, the TNC's have created a new class of unregulated drivers that currently operate outside of the PUC and County regulations. We need to update our existing laws as SB 1351 is attempting to do by defining TNC's and the TNC drivers such that they will fall either under the county taxi regulation or the PUC regulations for the following reasons:

1. Public Safety. The public's safety is best protected by regulating transportation companies. PUC and Taxi companies are required to carry commercial insurance to protect the public. In addition, PUC companies are required to conduct regular driver training, drug testing, vehicle maintenance, etc. designed to keep operations safe. Independent, non regulated drivers from TNC's are not subject to this higher standard.

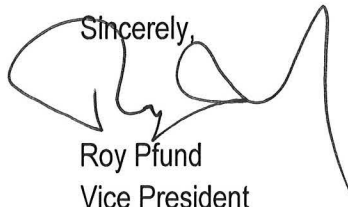
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishimura, Chair
Page 2

2. Consumer Protection. PUC and Taxi companies must file and follow a regulated rate structure. TNC's follow a demand based charge system, which allows them to charge whatever price the market will bear at a given time period. There are many documented cases of price gouging by the TNC companies, is this what we want for our consumers?

3. Fairness. To allow TNC's and their contracted unregulated drivers to operate outside of the existing PUC or Taxi driver categories is unfair and discriminatory to the existing PUC and Taxi companies and their drivers. TNC's and their drivers will have an unfair competitive advantage by not having to incur the costs to adhere to the public safety requirements and by being able to gouge consumers with surge pricing. In addition, if these drivers are unregulated, how does the State enforce GET collections and how do the Airports and Harbors collect their arrival fees? If we pay these taxes and fees, so should the TNC's and their drivers.

We have existing laws in place that regulate PUC Companies and drivers as well as County regulations over the Taxi companies and drivers. All we need to do is to define the TNC and require that any TNC driver fall under either the PUC or Taxi categories. Additionally, we need to increase the fines for non compliance with PUC laws and Taxi regulations as the TNC's have a documented history of ignoring the law where ever they operate. Thank you for allowing me to provide you with my testimony. If you have any comments or questions please contact me at roy.pfund@robertshawaii.com .

Sincerely,



Roy Pfund
Vice President