



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, March 16, 2016
10:30 a.m.

TESTIMONY ON SENATE BILL NO. 2684, S.D. 1 – RELATING TO MOTOR VEHICLE INSURANCE.

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 proposed section 431:10C-D, Hawaii Revised Statutes ("HRS"), 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. Proposed language for the Committee's consideration could be inserted as a new subsection in section 2, proposed section 431:10C-D, HRS, as follows:

"All policy filings shall comply with chapter 431, article 14."

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

TESTIMONY OF HAWAII ASSOCIATION FOR JUSTICE (HAJ)
IN OPPOSITION TO S.B. NO. 2684 S.D. 1

Wednesday, March 16, 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 SB 2684 S.D.1, that exclude or permit exclusions of coverage in personal automobile insurance policies for Transportation Network Company (TNC) activities.

Substantive Change to the Insurance Law

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

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

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

The statute has no exclusions for either the rental car policy or the driver/renter’s policy. Instead, the order in which they should apply (primary/secondary) is mandated by the statute to keep the secondary policy in place as a safety net should the primary policy be cancelled, lapses, is exhausted or coverage is denied. This approach is also used for motor carriers that have additional insurance requirements with no statutory exclusions.

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

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

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

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

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

Practical Problems Created by this Measure

We think of Uber and Lyft, two multi-billion dollar operations, when think of Transportation Network Companies. UBER says there is nothing to worry about because it will provide the coverage. This may be true of UBER, but this statute applies generically to all TNCs whether existing now or to be created in the future. Enterprising individuals may start their own TNC operations – and fail. And who knows what will happen to Uber and Lyft five or ten years from now. Companies worth up to \$100 billion perish (Tower Records, Lehman Brothers, ENRON, Blockbuster, Compaq, Saab, etc.). If

Uber or Lyft are unable to pay their insurance premiums in the future, there could be an uninsured gap of many months before that is discovered. The prospect of failure (whether by UBER or a local startup) must be considered in the crafting of this measure; with the prudent course being to maintain auto insurance as a secondary coverage instead of excluding it entirely.

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

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

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

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

A retiree who drives for UBER part-time may have a house and an umbrella policy for protection. Under this bill, the umbrella policy will no longer provide protection so the retiree is a risk of losing their house. That would not be the case if UBER’s insurance was primary and other insurance was secondary to provide the added protection consumers think they have. Many people also buy higher liability limits to protect themselves – \$300,000 is not uncommon in Hawaii. Under this bill, they will

have only the \$100,000 provided by the TNC policy. If they seriously hurt someone they will be personally liable. Insurance companies will say that the driver could purchase special additional TNC coverage from their insurance company. But let's be realistic, no ordinary consumer is even going to realize that these loopholes exist, let alone know what to do to plug them.

This measure also allows a TNC company to waive or reject uninsured and underinsured motorist coverage applicable to the driver. Drivers will lose the ability to protect themselves and their families from the financial consequences of serious injuries or death because the TNC company will have the right to waive or reject these benefits applicable to the drivers – even if drivers want those benefits.

TNC companies will also be allowed by this measure to decide whether the TNC policy will include collision and comprehensive coverages. This means that when a TNC company decides NOT to include these coverages the drivers will have no insurance to cover the cost of repairs or the total loss of their cars damaged in accidents. With many cars costing \$25,000 to \$50,000 or more today that is a loss that will inflict extreme hardship on drivers.

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

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

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

truck. TNC driving can be included as an underwriting factor, if it is significant enough, so any additional risk can be borne by that car.

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

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

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

In addition, keep in mind that all of these TNC cars will have TNC policies so and TNC companies are required to provide the TNC coverage in the event that a policy is cancelled because a driver fails to pay premiums. So, the driver's policy will have to be cancelled or lapse, and a TNC's policy will have to be cancelled or lapse, before any personal policy will apply. The effect on the personal automobile insurance industry is negligible and simply not worth changing our entire system to accommodate.

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

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

We ask that all references to the exclusion of automobile coverage on the car be deleted and replaced by language requiring TNC policies to be Primary and personal 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.



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

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER

711 Kapiolani Blvd., Suite 300

■ Honolulu, HI 96813-5238

■ Email: tdayton@geico.com

Direct: (808) 593-1875

■ FAX (808) 593-1876

■ Cell: (808) 341-9252

HOUSE COMMITTEE ON TRANSPORTATION

Rep. Henry J.C. Aquino, Chair

Rep. Matthew S. LoPresti, Vice Chair

Wednesday, March 16, 2016 10:30 AM, Room 309

SB 2684 SD1 - RELATING TO Motor Vehicle Insurance.

Chair Aquino, Vice Chair LoPresti and Members of the Committee, my name is Tim Dayton and I am General Manager for GEICO, Hawaii's largest insurer of motor vehicles. **GEICO Supports SB 2684 SD1.** Hawaii Transportation Network Company drivers badly need structure and clarification of insurance requirements noted in this Bill. Several major national insurers including GEICO offer a product to ride share drivers insurance needs. If this Bill passes I will request the product for Hawaii.

Thank you for the opportunity to submit this testimony.

Timothy M. Dayton, CPCU

TESTIMONY OF TABATHA CHOW ON BEHALF OF UBER TECHNOLOGIES IN OPPOSITION
TO SB 2684 SD 1

March 16, 2016

Thank you Chair Aquino, Vice Chair LoPresti, and members of the Committee for the opportunity to provide testimony on SB 2684. As the Operations Manager of Uber Hawaii, I am testifying in opposition to the proposed draft of SB 2684.

To date, 29 states across the country have passed TNC legislation, and while there is some variation amongst those states, if passed SB 2684 would be out of step with the rest of country. For example, SB 2684 currently require one limit of insurance at all times. By requiring only one insurance limit, the insurance provisions of SB 2684 do not consider the fact that a transportation network company vehicle is fundamentally a personal vehicle with two distinct timeframes of activity ("Period One" and "Period Two") that occur when the Uber app is in use.

Period One is when a transportation network company (TNC) driver is logged on to the app and is available to receive transportation requests from potential riders, but has not been matched to a rider. Period Two begins when a TNC driver has accepted a ride request and continues until the last rider has exited the vehicle. Drivers are able to easily distinguish between the two periods as one is simply "app on" and the other is "on trip".

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

Last year, the Colorado Commissioner of Insurance conducted a study of Period One and found no actuarial justification for increasing the insurance limits from similar amounts in Colorado (\$50k/\$100k/\$30k) during the Period One timeframe. Moreover, these limits are 2.5 times the limits required of private passenger vehicles under Hawaii law (\$20K/\$40K/\$10K).

During Period Two, when a rider is matched with a driver, Uber supports primary coverage with a liability limit of \$1 million; an amount five times the limit required in SB 2684 and consistent with the coverage Uber now provides to TNC drivers in Hawaii and throughout the country.

The model insurance legislation developed by the National Conference of Insurance Legislators (NCOIL) encompasses these principles and accounts for the unique nature of the Uber app, and we urge the Committee to adopt this model. Not only do the liability limits in the NCOIL model

more appropriately address the risk presented, but the NCOIL model requires that all other compulsory coverages required by state law also be included. In Hawaii, this means that personal injury protection benefits -- \$10K per person -- will be required coverage from the time the app is turned on, to the time the app is turned off.

To date, of the 29 states that have passed TNC legislation, nearly every state's language reflects the principles expressed in the NCOIL model. Several of those states require personal injury protection benefits, such as Minnesota, Kansas, and Maryland. The NCOIL model language, therefore, can and does take those important public protections into account. SB 2684 in its current form, would be a significant departure from the NCOIL model.

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

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

The language in the bill following §431:10C-F is unnecessary and seeks to go beyond the scope of insurance, and we believe it should be excluded from the Bill. We do support the language following §431:10C-G, which achieves the goal to ensure insurance coverage will not be undermined by any other contract. Uber Technologies, Inc. rider terms of service state very explicitly that they "Do not purport to limit liability or alter your rights as a consumer that cannot be excluded under applicable law." This can be found in Section 5. This is stating our Terms of Service do not supercede or attempt to supercede any law to be passed, requiring insurance coverage or otherwise. It is not the intention of the terms of service to negate or override any law.

These terms are very similar to what is found in a host of other industries, particularly companies that similarly put individuals in touch with third parties who provide a service or product. For example, online marketplaces or auction houses generally disclaim liability for the conduct of third-party providers that deliver food or packages. This type of language used is standard in Hawaii from businesses across many industries--and is even used by the State itself.

Apps and websites that connect people with other people or services generally have very similar Terms of Service. Terms of Service from everything from dating apps to travel booking sites to even the State of Hawaii's own site, include very similar language. This may help provide better context to what is a very commonplace industry practice - and one that does not undermine the efforts of the Legislature to ensure every trip is insured from end to end.

Thank you for the opportunity to provide testimony on this matter and we look forward to working closely with the committee.



March 16, 2016

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION
ON SB 2684 SD1 RELATING TO MOTOR VEHICLE INSURANCE**

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

HTA supports the promulgation of regulations for TNCs, as it has always been our contention that “an entity that chooses to offer transportation services to the public must be regulated in the interest of that public . . . (such) an entity is regulated by the State Public Utilities Commission (PUC) or by the various county taxi administrators.

As such we have concerns regarding chapter “431:IOC-B Relation to other laws” on page 3 of this bill and respectively offers the following amendment:

431:IOC-B Relation to other laws. **Provided that neither the Public Utilities Commission nor respective county taxi administrator deems the entity in question to be under their jurisdiction,** 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.

The definition of “Transportation network company driver” on page 3 has an exclusion; “(2) Not a taxicab or for-hire vehicle . . .” Although that may be intended to prevent the exclusion of taxicab and PUC jurisdiction, we are unable to locate a definition of “for-hire vehicle” in the Hawaii Revised Statutes.

Thank you.

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

DATE: March 15, 2016

TO: Representative Henry Aquino
Chair, Committee on Transportation

Submitted Via TRNtestimony@capitol.hawaii.gov

RE: **S.B. 2684, S.D.1 – Relating to Motor Vehicle Insurance
Hearing Date: Wednesday, March 16, 2016, at 10:30 a.m.
Conference Room: 309**

Dear Chair Aquino and members of the Committee Transportation:

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

USAA **supports the intent** of S.B. 2684, S.D.1, which establishes motor vehicle insurance requirements for transportation network companies and persons who operate or serve as drivers for transportation network companies (“TNCs”).

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

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

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

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

999 Bishop Street, Suite 1400
Honolulu, HI 96813
(808) 539-0840

TESTIMONY OF ALISON UEOKA

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

Wednesday, March 16, 2016
10:30 a.m.

SB 2684, SD 1

Chair Aquino, Vice Chair LoPresti, and members of the Committee on Transportation, my name is Alison Ueoka, President 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** SB 2684, SD 1 as a fair, reasonable and workable solution to the insurance coverage issues presented by transportation network companies (TNCs) in Hawaii.

Insurance Issues

As Section 1 of the bill finds, “concerns have been raised about potential gaps in motor vehicle insurance coverage associated with transportation network companies.” Thus, by the end of 2015, at least 29 states had enacted legislation to establish insurance requirements. The purpose of SB 2684, SD 1 is to “close the insurance gaps associated with transportation network companies” in this State. Hawaii Insurers Council believes that SB 2684, SD 1 accomplishes its purpose.

The bill (§431:10C-D, paragraph (a)) requires TNCs to disclose in writing to transportation network company drivers (TNC drivers) the insurance coverage and limits

applicable during TNC activity. The bill also requires written disclosure of the fact that the TNC driver's own personal motor vehicle insurance policy might not apply during TNC activity. These requirements keep the TNC drivers well informed and avoid potential confusion.

Importantly, the bill (§431:10C-D, paragraph (b)) mandates primary motor vehicle insurance covering a TNC driver while the driver is engaged in TNC activity. The primary liability insurance coverages are equal to those required of motor carriers by State regulation and those required of taxis by county ordinance. These limits are \$100,000 per person/\$200,000 per accident for Bodily Injury Liability and \$50,000 per accident for Property Damage Liability. The bill also requires Uninsured and Underinsured Motorist coverages equal to the primary Bodily Injury Liability limits, but provides for written rejection and the option to "stack" in accordance with existing law. Consistent with existing law, the bill mandates Personal Injury Protection coverage and requires offers of other optional insurance coverages.

In addition, the bill (§431:10C-D, paragraph (g)) explicitly provides that personal motor vehicle insurance policies maintained by TNC drivers will not be required to provide primary or excess coverage during TNC activity. Thus, the bill appropriately and clearly places insurance coverage where it belongs, depending upon the activity in which the TNC driver is engaged. When the TNC driver is driving for purely personal reasons, the driver's personal motor vehicle insurance policy will still apply. But when the TNC driver is engaged in TNC activity, the motor vehicle insurance policy applicable to TNC activity will apply. This system makes common sense and draws a clear delineation: personal uses and activities would still be covered under the personal motor vehicle insurance policy, while TNC activities, which are commercial in nature, would be covered under the TNC policy.

At the same time, the bill does not stifle innovation opportunities for insurers. At its option, an insurer providing personal motor vehicle insurance coverage may elect to provide coverage during TNC activity.

The bill (§431:10C-G) also clarifies that it does not limit or affect the motor vehicle insurance coverage applicable to any pedestrian or passenger who may be injured during TNC activity. This provision protects the insurance coverages pedestrians and passengers choose to purchase on their own vehicles.

Hawaii Insurers Council believes that the insurance provisions in SB 2684, SD 1 (§431:10C-D) are reasonable, consistent and transparent; protects TNC drivers, their passengers and the public; and preserves the availability and affordability of personal motor vehicle insurance policies for all owners and drivers in the State.

Records

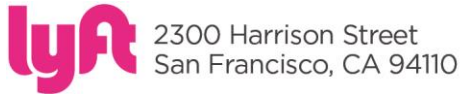
Hawaii Insurers Council Hawaii supports §431:10C-E of the bill, which would require TNCs to keep records for a period of five years and to turn over driver or other records within ten days of a written request. Hawaii is a Personal Injury Protection (PIP) state, so claims under PIP coverage must be paid within a prescribed period of time, and claims for Bodily Injury Liability, Uninsured Motorist, and Underinsured Motorist can be presented many years after an auto accident. Therefore, the recordkeeping and production requirements are necessary, fair and reasonable.

Disclaimers

The bill (§431:10C-F) expresses the State's public policy to invalidate any disclaimer of liability, pre-accident waiver, and indemnification or hold harmless "agreement" TNCs or TNC drivers seek to impose on their passengers. Hawaii Insurers Council supports this measure.

As always, Hawaii Insurers Council is committed to working with the Legislature and all interested parties on this bill.

Thank you for the opportunity to testify.



2300 Harrison Street
San Francisco, CA 94110

Lyft Testimony in Opposition to SB 2684 SD 1
Committee on Transportation
Wednesday 3/16/2016, 10:00AM Conf. Rm. 309

Chairman Aquino and Members of the House Committee on Transportation:

My name is Robert Grant, Director of Government Relations for Lyft testifying in opposition to SB 2684 SD 1. First, thank you to all of the legislators who have recognized the importance of ridesharing and who are seeking proactively to find solutions for the peer-to-peer ridesharing industry here in Hawaii.

SB 2684 SD 1 proposes an “insurance only” solution that we believe does not go far enough in protecting our riders. As with any new innovation or variance from traditional and long-standing practice, questions regarding liability and risk exposure have come up regarding companies such as ours. To address this, in March, 2015, transportation network companies (“TNC’s”) and large national insurance companies reached a nationwide agreement on a comprehensive insurance regime that clarifies responsibility and protects TNC drivers and passengers throughout all stages of a pre-arranged ride.

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

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

We urge this Committee to instead move more comprehensive legislation that includes the national compromise language, as 30 other states have already done. The national compromise language provides far more coverage than the primary insurance currently required by common carriers throughout Hawaii. The national policy, adopted by insurance and transportation network companies, is better for the general public while also permitting all Transportation Network Companies - regardless of size - to compete in Hawaii. We truly believe that implementing the insurance compromise framework as part of a larger regulatory solution will bring the state into the modern age of transportation and ensure that its citizens are not left behind.

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

For these reasons Lyft cannot support SB 2684 SD 1, as it is not the right legislative vehicle to deliver on that shared goal. Thank you for this opportunity to testify.



Advocacy. Leadership. Results.

To: The Honorable Henry Aquino, Chair
The Honorable Matthew LoPresti, Vice Chair
House Committee on Transportation

From: Mark Sektnan, Vice President

Re: SB 2684 SD1 Relating to Motor Vehicle Insurance
PCI Position: Request for Amendments

Date: Wednesday, March 16, 2016
10:30 AM, Conference room 309

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

The Property Casualty Insurers Association of America (PCI) supports the intent of **SB 2684 SD1** but would prefer if this bill is 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), with Hawaii's mandated coverages. **In addition, we would like to request the following amendment be added to §431:10C-D:**

“The insurance requirements of this section may be satisfied by insurance placed with an insurer licensed under part II, article 3 of chapter 431.”

This amendment addresses language currently in the SD1 which would restrict the insurance marketplace for the TNCs by limiting insurance to only those companies licensed and admitted to do business in Hawaii. This could have the unintended consequence of shutting down this new innovative market place because the TNCs would be unable to obtain insurance as it is not currently available in the “admitted” market. The surplus lines market operates as the “safety valve” for the insurance market. Due to greater flexibility, they write coverages for emerging markets like TNC's that are not being covered by admitted insurers.

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 to protect 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 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”).

CONCLUSION

PCI supports innovation that brings new products into the marketplace. The TNC laws and regulations that have been enacted in 29 states put an end to consumer confusion regarding insurance coverage, while also allowing for continued marketplace innovation. As new transportation ideas evolve to meet consumers’ needs and demands, insurers are developing new products to cover those ideas and provide peace of mind.

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

PCI respectfully requests that the committee consider amending **SB 2684 SD1** to reflect the NCOIL model law with Hawaii’s mandated coverages and the amendment to allow surplus lines insurers.

March 15th 2016

Representative Henry J. C. Aquino, Chair
Representative Matthew S. LoPresti, Vice Chair
Committee on Transportation
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: S.B. No. 2684, S.D.1 relating to Motor Vehicle Insurance.

Dear Chair Aquino, Vice-Chair LoPresti and Committee Members:

Charley's Taxi respectfully submits this testimony in support of Senate Bill No. 2684, Senate Draft 1, relating to motor vehicle insurance, which is to be heard by your Committee on Transportation on March 16, 2016, at 10:30 a.m., but respectfully requests that your Committee on Transportation consider certain amendments to meet the constitutional requirement that the scope of the bill be reflected in its title and clarify the intent of the Legislature regarding county preemption.

Charley's Taxi supports Senate Bill No. 2684, Senate Draft 1, because this bill recognizes that transportation network companies and their drivers are engaged in a commercial activity and should be required to maintain more than simply the personal motor vehicle insurance that all drivers are required to maintain. Requiring such additional insurance will insure that passengers, drivers and members of the public are protected in the case of accident, and that the costs for such coverage is not shifted to personal policy holders who are not engaging in such commercial activity.

However, Charley's Taxi has concerns that, as drafted, proposed HRS section 431:10C-B goes beyond the scope of the title of Senate Bill No. 2684, Senate Draft 1, which is "relating to motor vehicle insurance." Specifically, as drafted, the plain language of proposed HRS section 431:10C-B seems to state that transportation network companies and transportation network drivers may not be deemed to be common carriers, contract carriers or motor carriers under HRS chapter 271, or taxicabs or for-hire vehicle services for any purpose, not just motor vehicle insurance purposes.

Section 14, Article III of the Hawai'i Constitutions provides, in relevant part, that "[e]ach law shall embrace but one subject, which shall be expressed in its title." In the case of proposed HRS section 431:10C-B, to the extent that it seeks to regulate – or prevent regulation – of transportation network companies and transportation network drivers with respect to matters unrelated to motor vehicle insurance, such provision may be unconstitutional under Section 14.

Senate Bill No. 2684, Senate Draft 1, also is unclear as to whether the Legislature intends to preempt counties from requiring transportation network companies or transportation network drivers to maintain greater amounts or additional types of insurance coverages. From a

Representative Henry J. C. Aquino, Chair
Representative Matthew S. LoPresti, Vice Chair
Committee on Transportation
March 15, 2016
Page 2

consumer protection perspective, we respectfully submit that a county should not be preempted if it determines that more coverage should be required than what is mandated by Senate Bill No. 2684, Senate Draft 1.

Based on the foregoing, we respectfully request the Committee's consideration of the following amendments to proposed HRS section 431:10C-B:

§431:10C-B Relation to other laws. Solely for purposes of this article 10C, n[~~N~~] 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. **The motor vehicle insurance requirements under this article 10C shall supersede any motor vehicle insurance requirements that otherwise may apply to a transportation network company or a transportation network company driver under any rule, decision or order adopted by the commission under chapter 271. Nothing contained in this article 10C shall preclude a county from adopting motor vehicle insurance requirements for a transportation network company or a transportation network company driver that require more coverage than the requirements contained in this article 10C.**

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

The foregoing amendments would make it clear that proposed HRS section 431:10C-B is limited to motor vehicle insurance, expressly supersede any motor vehicle insurance requirements adopted by the Public Utilities Commission for consistency at the State level, and permit counties to adopt requirements for greater coverage.

Senate Bill No. 2684, Senate Draft 1, will protect passengers, drivers and the public, as well as personal motor vehicle insurance policy holders, from the risks arising from the transportation networks companies' commercial activities, and we support the bill, with the amendments described above.

Thank you for your consideration of our testimony.

Sincerely,

CHARLEY'S TAXI

By 

Dale Evans
Its President

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

Hawaii State Legislature
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

March 16, 2016

LATE

LATE

Filed via electronic testimony submission system

RE: SB 2684, SDI, TNC Insurance Requirements bill - NAMIC's Written Testimony in Support of Legislation for Committee Hearing

Dear Representative Henry J.C. Aquino, Chair; Representative Matthew S. 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 March 16, 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.

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.

Although NAMIC does support SB 2684, SD1, 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.

Additionally, NAMIC supports the following proposed amendment to §431:10C-D:

"The insurance requirements of this section may be satisfied by insurance placed with an insurer licensed under part II, article 3 of chapter 431."

This proposed amendment promotes business innovation and competition in the insurance marketplace, which benefits insurance consumers. The current language of the proposed legislation could result in limited insurance products available to address TNC insurance coverage requirements.

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