

SB2684

Measure Title:	RELATING TO MOTOR VEHICLE INSURANCE.
Report Title:	Motor Vehicle Insurance; Transportation Network Companies; Transportation Network Company Drivers; Insurance Requirements
Description:	Establishes motor vehicle insurance requirements for transportation network companies and transportation network company drivers.
Companion:	HB2469
Package:	None
Current Referral:	CPH
Introducer(s):	BAKER, KEITH-AGARAN, Dela Cruz, Espero, Gabbard, Kidani



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TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Friday, February 19, 2016
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2684 – RELATING TO MOTOR VEHICLE
INSURANCE.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

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

The Department requests that language in proposed section 431:10C-D on page 5, line 18, to page 6, line 12, mandating primary insurance policy requirements reflect the mandatory insurance requirements set forth in chapter 431:10C, Hawaii Revised Statutes ("HRS"). Section 431:10C-301, HRS, governs mandatory insurance requirements, including mandatory offers of uninsured and underinsured motorist coverage and written rejection of the same by the insured, as well as optional stacking of such coverages.

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

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

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

DATE: February 18, 2016

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

Submitted Via CPHtestimony@capitol.hawaii.gov

RE: **S.B. 2684 – Relating to Motor Vehicle Insurance**
Hearing Date: Friday, February 19, 2016, at 9:00 a.m.
Conference Room: 229

Dear Chair Baker and members of the Committee on Commerce, Consumer Protection, and Health:

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, 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

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

Friday, February 19, 2016

9:00 pm

Conf. Rm. 229

TO: Chair Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

This OPPOSITION is focused on the INSURANCE provisions of SB 2684, that exclude or permit exclusions of coverage in personal automobile insurance policies for Transportation Network Company (TNC) activities.

One of the consequences of this measure is that consumers who are **passengers will lose the ability to protect themselves**. Current law provides people the ability to protect themselves by purchasing uninsured (UM) and underinsured (UIM) motorist benefits in amounts they determine is appropriate for their situation. Section 431:10C-301 requires auto insurers to allow consumers to buy stacked UM and UIM benefits in higher limits up to the liability limits of the policy. All auto insurers must also offer wage loss and death benefits; and all major auto insurers offer high limit personal injury protection (PIP) benefits to cover medical expenses.

Someone with a family to support, mortgage to pay, school tuition and income to protect, can buy \$300,000 (or more) in liability, UM and UIM from most major auto insurers, plus wage loss, death benefits (life insurance) and additional PIP medical benefits. A family with two cars and the stacking option will have \$600,000 in UM and UIM benefits. This allows you to protect your family against the very real possibility that a car which collides into the TNC car you, or a family member, is riding will have only the minimum \$20,000 coverage or no insurance at all. Under current law, people are not left to the mercy of others to carry enough insurance – they are able to protect themselves through the purchase of optional benefits to fit their situation.

This measure eliminates your ability to protect yourself because it mandates: “Nothing in this section shall be construed to require a personal motor vehicle insurance policy to provide primary or excess coverage during transportation network company activity.” Insurance policies can provide primary (first) or excess (secondary) coverage, so if both are eliminated, the policy provides no insurance at all. You will have only the mandated UM or UIM limits of \$100,000. You will not have the benefit of the \$600,000 UM and UIM you purchased, nor will you have the benefit of your additional PIP, wage loss or death benefits.

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

ability to protect yourself and family by purchasing insurance that fits your needs. No public policy is advanced by denying people the ability to protect themselves.

At the very least, subsection (g), on page 7, lines 19-21, should be amended as follows:

(g) Nothing in this section shall be construed to require a transportation network company driver's or the vehicle owner's personal motor vehicle insurance policy to provide primary or excess coverage during transportation network company activity. Any other motor vehicle insurance policy applicable to a passenger, pedestrian or person, other than the transportation network company driver, shall continue to provide benefits.

The current exclusion in this measure is also broad enough to negate your policy benefits if a TNC car hits you while you are a pedestrian, collides into your car, or strikes your motorcycle. This simple amendment will preserve your ability to protect yourself and family against injury and losses caused by those who do not have sufficient insurance coverage.

Now consider the TNC driver. According to the TNC testimony most drivers are part-timers driving about 15 hours per week. These are apt to be people with other full-time jobs and retirees who work primarily on Friday and Saturday nights when surge pricing gives the highest pay. They may have optional higher limits on their own auto policy to protect themselves and their families. Under this measure, they will lose their optional benefits. Instead, the measure requires them to buy special commercial TNC coverage that insurers may, but are not required to, sell. It is unrealistic to think that the average person will perceive the loss of benefits; or be able to justify the increased cost for the pay of part-time work, assuming their insurance company will sell it. These people need and will benefit from their optional coverages. This can be accomplished by amending the first sentence in (g) to read as follows: “(g) Nothing in this section shall be construed to require a transportation network company driver's or the vehicle owner's personal motor vehicle insurance policy to provide primary or excess coverage during transportation network company activity; provided that any optional coverage for which an additional premium has been paid shall continue to apply.”

Substantive Change to the Insurance Law

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

insurance in the event that the TNC policy is cancelled, lapses, is exhausted or coverage is denied – as there is in the first approach.

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

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

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

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

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

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

Mandating the exclusion found in this measure would be bad public policy because it would create gaps in coverage where none currently exist. For example, if the TNC and driver fail to provide the required primary coverage (whether by oversight,

deliberate nonpayment or denial of coverage) and if the policy on the car excludes coverage, there would be no insurance to cover the TNC car.

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

We think of Uber and Lyft, two multi-billion dollar operations, when think of Transportation Network Companies. UBER says there is nothing to worry about because it will provide the coverage. This may be true of UBER, but this statute applies generically to all TNCs whether existing now or to be created in the future. Enterprising individuals may start their own TNC operations – and fail. And who knows what will happen to Uber and Lyft five or ten years from now. Companies worth up to \$100 billion perish (Tower Records, Lehman Brothers, ENRON, Blockbuster, Compaq, Saab, etc.). If Uber or Lyft are unable to pay their insurance premiums in the future, there could be an uninsured gap of many months before that is discovered. The prospect of failure (whether by UBER or a local startup) must be considered in the crafting of this measure; with the prudent course being to maintain auto insurance as a secondary coverage instead of excluding it entirely.

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

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

Where there is no insurance applicable an injured passenger may apply to the Hawaii Joint Underwriting Plan Assigned Risks Program – the State’s free insurance program. This program is not intended to provide free benefits in situations where there

is an actual auto policy in effect on car (but excluded by this measure). Yet this is another unintended consequence of this measure.

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

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

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

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

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

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

A retiree who drives for UBER part-time may have a house and an umbrella policy for protection. Under this bill, the umbrella policy will no longer provide protection so the retiree is at 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 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.

Seventh, what would be the rationale for allowing exclusions for TNC activities but not other business activities? Lots of people use their cars for occasional business related activities. If you buy lunch for the office and send a worker to pick-up it up that is technically a business use for which there may be no coverage under a business use exclusion. If you use your car for part-time work, such as to deliver papers for an hour or two in the morning, that is technically a business use for which there would be no insurance coverage. If you let your teenager deliver pizza after school for a few hours that would also technically be a business use that would have no coverage. If your teenager injured someone there may be no insurance for the injured person and no insurance to protect you when you and your teenager are sued. If a grandmother pays her grandchild \$20 to take her to the airport that is technically a ride for compensation. Once exclusions for this or that activity or business use are permitted the seamless comprehensive safety net of the current law will be riddled with gaps in coverage – an unintended but certainly foreseeable outcome.

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

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

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UNITED STATES ▼

Last Updated:

January 2, 2016

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You agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "*Disputes*") will be settled by binding arbitration between you and Uber, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and Uber are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding. Further, unless both you and Uber otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as

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TESTIMONY OF MICHAEL ONOFRIETTI

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair

Friday, February 19, 2016
9:00 a.m.

SB 2684

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

Hawaii Insurers Council **supports** Section 1 of SB2684 as an insurance solution to the coverage issues presented by Transportation Network Companies (TNCs). Hawaii Insurers Council takes no position on Section 2 of the bill, empowering the counties to regulate TNCs, TNC activities, and TNC drivers; and takes no position on Section 3 of the bill, exempting TNCs from oversight by the Public Utilities Commission under the motor carrier law.

Insurance Issues

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

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

supported that bill because the insurance structure was simple when compared to the other more complicated coverage schemes proposed. This structure is in SB2684.

SB2684 mandates limits of insurance coverage that are equal to those required under Hawaii's Motor Carrier Act and those required of taxis. These limits are \$100,000 per person/\$200,000 per accident for Bodily Injury Liability, \$50,000 for Property Damage Liability and \$10,000 in Personal Injury Protection benefits. SB2684 also mandates uninsured and underinsured motorist coverages,¹ as well as coverage to protect the TNC driver's vehicle.

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

Rather than provide coverage to protect TNC drivers' vehicles, TNCs tend to support a version of the NCOIL model, which instead requires a lienholder disclosure to TNC drivers. The state of Utah went beyond disclosure and required that TNCs or TNC drivers provide comprehensive and collision coverages, which is similar to the coverage provisions in SB2684.

There are several proposals to address the insurance, and more controversially the regulatory requirements, for TNCs pending before the Legislature. Hawaii Insurers Council believes that the insurance structure in SB2684 is a reasonable, consistent

¹ SB2684 appears to require uninsured and underinsured motorist coverages even for the property damage liability exposure. See page 5, at line 21 (requiring uninsured and underinsured motorist coverages "equal to the primary liability limits specified in paragraphs (1) and (2).") While paragraph (1) addresses bodily injury liability coverage (see page 5, lines 4-9), paragraph (2) addresses property damage liability coverage (see page 5, lines 10-17). Hawaii's Motor Vehicle Insurance Law does not require insurers to offer uninsured and underinsured motorist coverages for property damage. See HRS § 431:10C-301. Therefore, Hawaii Insurers Council requests that the reference to paragraph (2) be deleted from page 5, line 21 in SB2684.

approach to ensuring that appropriate insurance coverages are available to protect TNC drivers, their passengers and the public. Other insurers and some TNCs prefer the more complicated approach presented by the complete NCOIL model, which also includes higher coverage limits once a rider is matched to a TNC driver.

In hearings on other TNC measures, the Hawaii Association for Justice (HAJ) has objected to the personal motor vehicle insurers' ability to exclude coverage for TNC drivers while they are using a vehicle during TNC activity. This ability to exclude coverage during TNC activity, HAJ objects, would create a "gap" in insurance coverage and would be contrary to other present scenarios that require or present primary/excess insurance situations. Hawaii Insurers Council anticipates that HAJ will continue to raise the same or similar objections to SB2684.

SB2684 Does Not Create A Coverage "Gap": Contrary to HAJ's anticipated position, it is Hawaii Insurers Council's position that SB2684 would not create a coverage "gap." The reason there are legislative proposals being enacted countrywide, and so many bills introduced in this Legislature, regarding TNCs is exactly because there are coverage gaps today. Short of a law defining when the personal auto policy is effective and when the TNC policy is effective, legal disputes over insurance coverage and gaps are guaranteed. SB2684 actually closes the coverage gap, and likely will eliminate costly insurance coverage litigation, by specifying which policy applies at different times.

SB2684 Correctly Places Coverage Where It Belongs: The bill appropriately and clearly places insurance coverage where it belongs, depending upon the activity in which the TNC driver is engaged. When the TNC driver is driving for purely personal reasons, the driver's personal motor vehicle insurance policy will still apply. But when the TNC driver is engaging in TNC activity – *i.e.*, when the TNC driver is "open for business" – the insurance required by SB2684 (either the TNC's policy or a policy specifically providing coverage required by SB2684) will be primary. This system makes common sense and draws a clear delineation: personal uses and activities would still be covered under the

personal auto policy, while TNC activities, which are commercial in nature, would now be covered under the TNC policy.

SB2684 also wisely requires the TNCs to disclose to their TNC drivers in writing the insurance coverages and limits provided by the TNCs and that the TNC driver's own personal motor vehicle insurance policy might not provide coverage while the TNC driver uses a vehicle during TNC activity. This requirement reduces confusion on the part of TNC drivers and reinforces the delineation between TNC and personal uses of the vehicle.

HAI has argued that State statute does not allow personal motor vehicle insurance policies to exclude coverage for taxicabs, moving trucks and vans, and other commercial uses. However, no statutory exclusion is needed in those situations because the vehicles are insured under commercial auto policies, not under less expensive personal auto policies. The vehicles in those situations are being used to carry passengers or property for compensation, a clear commercial purpose. HAI itself has conceded that taxis and TNC drivers do virtually the same thing. That "same thing" is transportation of persons and property for a fee, a commercial activity that should be insured under a commercial auto policy, rates for which are set to reflect the greater exposure to accidents. However, because SB2684 does not require that TNC drivers purchase commercial motor vehicle insurance policies, like taxi drivers and commercial delivery companies do, statutory exclusions for TNC activities in personal auto policies are necessary to protect the affordability of personal auto policies.

TNC Activities Differ From Incidental Uses Of Personal Vehicles: HAI also points to other mixed activities involving personal auto policies, which do not require commercial motor vehicle insurance coverage. However, those examples (e.g., transporting a relative to the airport in exchange for \$20) are only incidental to the private, personal use of the vehicle. TNC activities, on the other hand, are intended to be commercial in nature and directly related to the business purpose of the driver – the transportation of passengers and/or property for a fee.

SB2684 Would Help Keep Personal Motor Vehicle Insurance Premiums Affordable: A law requiring the personal auto policy to apply, even if secondarily, while the TNC driver is using a vehicle in TNC activity would result in higher personal motor vehicle insurance premiums for the specific driver and could even drive up prices for all Hawaii drivers. In essence, a mandate that the personal motor vehicle insurance policy provide coverage, even if on a secondary basis, would force non-TNC drivers in Hawaii to subsidize those who choose to drive for TNCs.

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

In summary, Hawaii Insurers Council **supports** the insurance provisions in SB2684. It closes coverage “gaps,” clearly specifies insurance coverage limits, and appropriately delineates the insurance risks between “personal” uses and “commercial” TNC activities.

Recordkeeping Provision

Hawaii is a Personal Injury Protection (PIP) state, so claims under PIP coverage must be paid within a proscribed period of time. Claims for bodily injury liability, uninsured motorist, and underinsured motorist coverages can be presented many years after an auto accident. Therefore, Hawaii Insurers Council supports the provision for the TNC to turn over driver or other records within ten days of request and to keep records for a period of five years. These provisions are included in SB2684.

Hawaii Insurers Council is committed to working with the Legislature and all interested parties to craft a bill that is appropriate for the unique elements of Hawaii statutes, and the interpretation by our courts of those statutes. SB2684 is a good vehicle to continue to facilitate these discussions.

Thank you for the opportunity to testify.

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

February 12, 2016

Filed via electronic testimony submission system

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

Dear Senator Baker, Chair; Senator Kidani, Vice Chair; and honorable members of the Committee on Commerce, Consumer Protection, and Health:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 19, 2016, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

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

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

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

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

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

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

State Legislatures throughout the nation have been passing pro-consumer protection legislation to address this "insurance coverage gap", in a way that is pro-business innovation, pro-consumer-protection, and pro-business responsibility. State elected officials have focused their attention upon making sure that there is a clear demarcation

between commercial auto activities and private passenger auto activities, so that TNC activities don't become an unnecessary insurance rate cost-driver for private passenger auto insurance consumers.

NAMIC appreciates the fact that there are presently a number of TNC bills pending before the Hawaii State Legislature, and that these proposed bills offer different legislative and regulatory approaches to address the "insurance coverage gap" issue. Although NAMIC does support SB 2684, because it provides clarity as to when a driver is engaged in a TNC commercial transportation activity, spells out in a clear manner the TNC primary insurance coverage requirements, preserves the longstanding legal distinction between private passenger auto insurance coverage and commercial auto insurance coverage, and provides for a number of pro-consumer protection disclosures, NAMIC recommends that the bill be amended to conform to the National Conference of Insurance Legislators' (NCOIL's) TNC Model Act.

The NCOIL Model Act was created after extensive evaluation, thoughtful debate, and reasoned compromise by a broad cross-section of interested stakeholders, including representatives of the national insurance trades associations, multi-state insurance companies, the TNC industry, and consumer protection groups.

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

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

Respectfully,



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



To: The Honorable Rosalyn H. Baker, Chair
The Honorable Michelle N. Kidani, Vice Chair
Senate Committee on Commerce, Consumer Protection and Health

From: Mark Sektnan, Vice President

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

Date: Friday, February 19, 2016
9:00 a.m., Room 229

Aloha Chair Baker, Vice Chair Kidani and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) supports the intent of **SB 2684** 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). We understand that state law varies and therefore, individual state law needs to reflect Hawaii's mandated coverages.

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

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

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

PCI respectfully requests that the committee consider amending **SB 2684** to reflect the NCOIL model law with Hawaii’s mandated coverages.

UBER

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

February 19, 2016

Thank you Chair Baker, Vice Chair Kidani, 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 requires 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 occurs 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 with 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, as the app pushes demand to the closest TNC driver, a driver is incentivized to avoid driving around, as it would waste fuel 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 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.

We suggest the following amendments to SB 2684:

~~§431:10C-D Transportation network company and transportation network company driver; insurance requirements.~~

~~(b) A transportation network company and any transportation network company driver shall maintain a primary motor vehicle insurance policy that shall be in effect during transportation network company activity. The primary motor vehicle insurance required under this section shall include:~~

~~—— (1) Primary liability coverage of not less than \$100,000 per person, with an aggregate limit of \$200,000 per accident, for all damages arising out of accidental harm sustained as a result of any one accident and arising out of ownership, maintenance, use, loading, or unloading of a motor vehicle;~~

~~—— (2) Primary liability coverage of not less than \$50,000 for all damages arising out of damage to or destruction of property including motor vehicles and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading of the insured vehicle;~~

~~—— (3) Uninsured and underinsured motorist coverage for the transportation network company driver and passengers that shall be equal to the primary liability limits specified in paragraphs (1) and (2);~~

~~—— (4) Personal injury protection coverage in an amount that meets the requirements of section 431:10C-103.5 and shall be equal to or greater than the coverage limits for the personal motor vehicle insurance maintained by the vehicle's owner and reported to the transportation network company; and~~

~~—— (5) Collision and comprehensive coverage limits for the transportation network company driver's vehicle that shall be equal to or greater than the coverage limits for the personal motor vehicle insurance maintained by the vehicle's owner and reported to the transportation network company.~~

(b) A transportation network company driver or transportation network company on the driver's behalf shall maintain primary motor vehicle insurance that recognizes that the driver is a transportation network company driver or otherwise uses a vehicle to transport riders for compensation and covers the driver:

(1) While the driver is logged on to the transportation network company's digital network; or

(2) While the driver is engaged in a prearranged ride.

(c) The following motor vehicle insurance requirements shall apply while a participating transportation network company driver is logged on to the transportation network company's digital network and

is available to receive transportation] requests, but is not engaged in a prearranged ride:

(1) Primary motor vehicle liability insurance in the amount of at least:

- (A) \$50,000 for death and bodily injury per person;
- (B) \$100,000 for death and bodily injury per incident; and
- (C) \$25,000 for property damage; and

(2) Personal injury protection benefits that meets the minimum coverage amounts where required by HRS § 431:10C-103.5.

(3) Uninsured and underinsured motorist coverage to the extent required by HRS § 431:10C-301.

(d) The following automobile insurance requirements shall apply while a transportation network company driver is engaged in a prearranged ride:

(1) Primary motor vehicle liability insurance that provides at least \$1,000,000 for death, bodily injury, and property damage;

(2) Personal injury protection benefits that meets the minimum coverage amounts where required by HRS § 431:10C-103.5.

(3) Uninsured and underinsured motorist coverage to the extent required by HRS § 431:10C-301.

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.

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

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