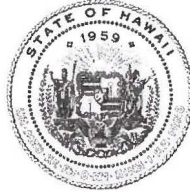


SB2777

RELATING TO CONSUMER
PROTECTION



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 SENATE COMMITTEES ON
TRANSPORTATION AND ENERGY,
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS AND
COMMERCE, CONSUMER PROTECTION, AND HEALTH
TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Thursday, February 11, 2016
2:50 p.m.

**TESTIMONY ON SENATE BILL NO. 2777 – RELATING TO CONSUMER
PROTECTION.**

TO THE HONORABLE LORRAINE R. INOUE, CLARENCE K. NISHIHARA, AND
ROSALYN H. BAKER, CHAIRS, AND MEMBERS OF THE COMMITTEES:

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 46-I in section 1, page 10, line 8, to page 11, line 18, mandating primary insurance policy requirements reflect the mandatory insurance requirements set forth in chapter 431:10C, Hawaii Revised Statutes ("HRS"). Section 431:10C-301, HRS, governs mandatory insurance requirements, including mandatory offers of uninsured and underinsured motorist coverage and written rejection of the same by the insured, as well as optional stacking of such coverages.

Section 4, page 36, lines 10 to 15 amends section 431:10C-107 to allow transportation network company ("TNC") drivers the option of providing an electronic

Senate Bill No. 2777
DCCA Testimony of Gordon Ito
Page 2

motor vehicle identification card. The Department would like to point out that there are some concerns with ensuring the authentication of electronic cards.

Further, the Department requests an insurer must submit policies covering 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 the Committees for the opportunity to present testimony on this matter.

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
SENATE COMMITTEES ON
TRANSPORTATION AND ENERGY,
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS,
&
COMMERCE, CONSUMER PROTECTION, AND HEALTH

February 11, 2016
2:50 PM

MEASURE: S.B. No. 2777

TITLE: RELATING TO CONSUMER PROTECTION

Chair Inouye, Chair Nishihara, Chair Baker, and Members of the Committees:

DESCRIPTION:

This measure requires the counties to regulate transportation network companies (“TNCs”) and TNC drivers. This measure also establishes certain requirements and minimum standards for TNCs and taxicab companies.

POSITION:

The Commission supports vesting oversight of TNCs with the counties and offers the following comments for the Committee’s consideration.

COMMENTS:

It appears that TNCs and their drivers provide identical services as “taxicabs” as currently defined under 271-5(3)(A), Hawaii Revised Statutes (“HRS”)¹ and 12-1.1, Revised

¹ Under HRS § 271-5(3)(A) a taxicab includes “[a]ny motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger’s destination.”

Ordinances of Honolulu (“ROH”)². The Commission notes that taxicab services are exempt from Commission regulation pursuant to HRS § 271-5(3) and are presently under the authority of the counties. Therefore, the Commission believes that oversight of TNCs appropriately lies with the counties.

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

² Under ROH § 12-1.1 taxicab means “a vehicle, operated by a taxicab driver, which is used in the movement of passengers on public highways and which is directed to a destination by the passenger for hire or on the passenger’s behalf and which operates on call or demand.”



Advocacy. Leadership. Results.

To: The Honorable Lorraine R. Inouye, Chair
 The Honorable Mike Gabbard, Vice Chair
 Senate Committee on Transportation and Energy

 The Honorable Clarence K. Nishihara, Chair
 The Honorable Will Espero, Vice Chair
 Senate Committee on Public Safety, Intergovernmental, and Military Affairs

 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 2777 – Relating to Consumer Protection**
 PCI Position: Request Amendments

Date: Thursday, February 11, 2106
 2:50 p.m., Room 229

Aloha Chairs Inouye, Nishihara, Baker and Members of the Committees:

The Property Casualty Insurers Association of America (PCI) would like to request that **SB 2777** be amended to reflect the model adopted by the National Conference of Insurance Legislators (NCOIL) which creates an insurance structure for the operation of transportation network companies (TNC).

In Hawaii, PCI member companies write approximately 42.7 percent of all property casualty insurance written in Hawaii. PCI member companies write 44 percent of all personal automobile insurance, 65.2 percent of all commercial automobile insurance and 75 percent of the workers' compensation insurance in Hawaii.

PCI Supports 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 California law and continuing through today. 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. This bill and the NCOIL model, closes insurance gaps. The reason is simple. A personal auto policy is not designed or priced to provide coverage for commercial activity, such as being a TNC driver. Therefore, no coverage exists under the personal auto policy.

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

Conclusion

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

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

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

PCI asks the committee to amend **SB 2777** to reflect the NCOIL model law.

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

DATE: February 10, 2016

TO: Senator Lorraine Inouye
Chair, Committee on Transportation and Energy

Senator Clarence Nishihara
Chair, Committee on Public Safety, Intergovernmental, and Military Affairs

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

Submitted Via TREtestimony@capitol.hawaii.gov

RE: **S.B. 2777 – Relating to Consumer Protection**
Hearing Date: Thursday, February 11, 2016, at 2:50 p.m.
Conference Room: 229

Dear Chair Inouye, Chair Nishihara, Chair Baker and members of the Joint Committees:

USAA **supports the intent** of S.B.2777, 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

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

February 8, 2016

Filed via electronic testimony submission system

RE: SB 2777, TNC County Regulation and Insurance Requirements bill - NAMIC's Written Testimony in Support of Legislation for Committee Hearing

COMMITTEE ON TRANSPORTATION AND ENERGY

Senator Lorraine R. Inouye, Chair
Senator Mike Gabbard, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair
Senator Will Espero, Vice Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 11, 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 2777, 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

TESTIMONY OF MICHAEL ONOFRIETTI

SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

Senator Lorraine R. Inouye, Chair
Senator Mike Gabbard, Vice Chair

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair
Senator Will Espero, Vice Chair

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair

Thursday, February 11, 2016
2:50 p.m.

SB 2777

Chair Inouye, Vice Chair Gabbard, and members of the Committee on Transportation and Energy; Chair Nishihara, Vice Chair Espero, and members of the Committee on Public Safety, Intergovernmental, and Military Affairs; and Chair Baker, Vice Chair Kidani, and members of the Committee on Commerce, Consumer Protection, and Health, my name is Michael Onofrietti, ACAS, MAAA, CPCU, 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** the insurance aspects of SB2777; takes no position on the bill's requirement that counties regulate Transportation Network Companies (TNCs) and TNC drivers; and commends the bill's efforts to establish driver qualification standards in order to protect the public safety, but takes no position on those standards.

In addition, Hawaii Insurers Council requests that newly proposed §46-Q, pertaining to “Records,” be amended as explained below.

Insurance Provisions

Hawaii Insurers Council supports the insurance solution to the coverage issues set forth in SB2777, specifically, newly proposed §46-I, entitled “Transportation network company and transportation network company driver; insurance requirements” (at pages 9-16 of the bill).

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 and their drivers during the 2015 session and settled upon the language in SB1280, SD2, HD2. HIC supported that bill because the insurance structure was simple when compared to the other more complicated coverage schemes proposed. This structure is in SB2777.

SB2777 mandates primary motor vehicle insurance covering a TNC driver while the driver is logged on to the TNC’s digital network or engaged in a prearranged ride. The primary 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; Uninsured and Underinsured Motorist coverages equal to the liability limits¹, Personal Injury Protection with coverage limits equal to or greater

¹ SB 2777 appears to require Uninsured and Underinsured Motorist coverages even for the property damage liability exposure. See page 11, at line 6 (requiring Uninsured and Underinsured Motorist coverages “equal to the primary liability limits specified in paragraphs (1) and (2).” While paragraph (1) addresses Bodily Injury Liability coverage, paragraph (2) addresses Property Damage Liability coverage. 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 11, line 6 in SB2777.

than the limits for the TNC driver's personal motor vehicle insurance (with a statutory minimum of \$10,000); and Collision and Comprehensive coverage limits, also equal to or greater than the limits for the TNC driver's personal motor vehicle insurance.

HIC believes that the insurance structure in SB2777 is a reasonable, consistent approach to ensuring that appropriate insurance coverages are available to protect TNC drivers, their passengers and the public.

In hearings on other TNC bills, the Hawaii Association for Justice (HAJ) has objected to the personal motor vehicle insurers' ability to exclude coverage for TNC drivers while they are logged on to the TNC's digital network or engaged in a prearranged ride. 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 raise the same or similar objections to SB2777.

SB2777 Does Not Create A Coverage "Gap": Contrary to HAJ's anticipated position, it is Hawaii Insurers Council's position that SB2777 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. SB2777 actually closes the coverage gap, and likely will eliminate costly insurance coverage litigation, by specifying which policy applies at different times.

SB2777 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 logged on to the TNC's digital network or engaged in a prearranged ride – *i.e.*, when the TNC driver is “open for business” – the insurance required by SB2777 (either the TNC's policy or a policy specifically providing coverage required by SB2777) 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.

Proposed §46-J, entitled “Disclosures,” of the bill 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 may not provide coverage while the TNC driver is logged on to the TNC digital network or engaged in a prearranged ride. 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 taxi cabs, 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 SB2777 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: HAJ 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. Indeed, Hawaii Insurers Council notes that proposed §46-E, at page 7, lines 20-21, to page 8, lines 1-2, of the bill would require a TNC driver to “register as a business entity with the business registration division of the department of commerce and consumer affairs.” This business registration requirement not only is consistent with the business activity engaged in by TNC drivers, but also comports with the insurance requirements set forth in the bill.

SB2777 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 logged on to the TNC digital network or engaged in a prearranged ride 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 SB2777. It closes coverage “gaps,” clearly specifies insurance coverage limits, and appropriately delineates the insurance risks between “personal” uses and “commercial” TNC activities.

Record Keeping

Hawaii is a Personal Injury Protection (PIP) state, so claims under PIP coverage must be paid within a prescribed period of time. Claims for Bodily Injury Liability, Uninsured Motorist, and Underinsured Motorist can be presented many years after an auto accident. Therefore, Hawaii Insurers Council supports an amendment to §46-Q, entitled “Records,” at page 24, lines 4-17 of the bill, that would require TNCs to turn over driver or other records within ten days of a request and to keep records for a period of five years.

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.

TESTIMONY OF HAWAII ASSOCIATION FOR JUSTICE (HAJ)
IN OPPOSITION TO S.B. NO. 2777

Thursday, February 11, 2016
2:50 pm
Conf. Rm. 229

TO: Chairs Lorraine Inouye, Clarence Nishihara, Rosalyn Baker and Members of the Senate Committees on Transportation and Energy; Public Safety, Intergovernmental, and Military Affairs; and Commerce, Consumer Protection, and Health:

This OPPOSITION is limited to the INSURANCE provisions of SB 2777 that exclude or permit exclusions of coverage in personal automobile insurance policies for vehicles used to carry Transportation Network Company (TNC) passengers.

HAI takes no position on the regulatory provisions of this measure.

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 have been used in different states. 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.

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

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

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.

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.

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, 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.

Sixth, 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.

Kaala Coleman

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 10, 2016 1:18 PM
To: TRE Testimony
Cc: bhughes@uber.com
Subject: Submitted testimony for SB2777 on Feb 11, 2016 14:50PM
Attachments: SB 2777 Uber Technologies Testimony.docx

SB2777

Submitted on: 2/10/2016

Testimony for TRE/PSM/CPH on Feb 11, 2016 14:50PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Hughes	Uber Technologies	Oppose	Yes

Comments:

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

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



- 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

Direct: (808) 593-1875

■ Honolulu, HI 96813-5238

■ FAX (808) 593-1876

■ Email: tdayton@geico.com

■ Cell: (808) 341-9252

COMMITTEE ON TRANSPORTATION AND ENERGY

Senator Lorraine R. Inouye, Chair

Senator Mike Gabbard, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY
AFFAIRS

Senator Clarence K. Nishihara, Chair

Senator Will Espero, Vice Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair

Senator Michelle N. Kidani, Vice Chair

Thursday February 11, 2016 2:50 p.m.

Conference Room 229

SB 2777 – Relating to Consumer Protection

Chair Inouye, Chair Nishihara, Chair Baker and Members of the Committees. My name is Tim Dayton and I am General Manager for GEICO, Hawaii's largest insurer of motor vehicles. **GEICO Supports SB 2777.** Hawaii Transportation Network Company drivers badly need structure and clarification of insurance requirements noted in this Bill. We do offer several technical comments for consideration by the Committees:

- The proposal is ambiguous in regards to the **stacking** of Uninsured Motorist Coverage and Underinsured Motorist Coverage.
- The Bill does not address a critical component which mandates the sharing of information between the TNC insurer and the personal

insurer. The NCOIL Model Legislation is a better Bill; information sharing is addressed. GEICO believes that the language is contained in HB 2504. If the NCOIL Model language was to be adopted it would need to address the unique Hawaii Coverages (Uninsured Motorists, Underinsured Motorists and PIP).

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

Thank you for the opportunity to submit this testimony.

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

Timothy M. Dayton, CPCU



Lyft Testimony in Opposition to HI SB2777
Committee on Transportation & Energy
Committee on Public Safety, Intergovernmental, and Military Affairs
Committee on Commerce, Consumer Protection, & Health
Thursday 2/11/2016, 2:50PM | Conf. Rm. 229

Chairperson Inouye, Chairperson Nishihara, Chairperson Baker, and members of the Senate's Committees on Transportation & Energy; Public Safety, Intergovernmental, and Military Affairs; and Commerce, Consumer Protection & Health:

My name is Annabel Chang, and I am the Director of Public Policy for Lyft. Thank you for the opportunity to share with you the benefits of peer-to-peer ridesharing and describe why Lyft believes that a state-wide regulatory framework, versus a piecemeal set of county by county regulations, is the best framework to promote innovation and growth in Hawaii.

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

Fundamentally, Lyft operates statewide by bringing riders between communities, and differing local regulations would make this model impossible. Twenty-five other states, including our nation's capital, have passed statewide comprehensive TNC legislation to combat the confusion and difficulties brought about by differing local mandates. When uniform rules are passed at the state level, businesses like Lyft are better positioned to grow with and invest in communities by providing comprehensive transparency and accountability across the state. When individual counties create separate rules at separate times, this collective growth opportunity is prevented.

Lyft is proud to provide equal access to ridesharing for *all* communities, not just some, and individualized local regulations would limit access to TNCs in some of the areas this platform could be most impactful. Lyft allows residents the opportunity to earn flexible, supplemental income by using their private vehicle to rideshare with their neighbors. 2/3 of Lyft drivers drive less than 15 hours a week--they're casual drivers who don't fall within the traditional livery or taxi framework. The Lyft community is made up of retirees, single moms, graduate students, folks trying to get around and families simply trying to make ends meet. With a patchwork localized regulations, many communities lose the opportunity to take part in this innovative model, as both drivers and riders.

Lyft's platform seeks to connect communities through innovation. The proposed legislation serves as a barrier for this opportunity to achieve its fullest potential. Uniformity in state regulation offers all communities in Hawaii the opportunity to have access to Lyft's innovative technology. We hope you will consider opposing SB2777 so that all visitors and residents can experience the benefits of ridesharing together.

Thank you for your time.