

DALE EVANS, CEO
Charley's Taxi, a licensed Taxicab Company
& Always Charley's, a licensed Transportation Network Company
TESTIMONY IN STRONG OPPOSITION TO HB1093, HD2, SD1
Being Heard on Wednesday, April 3, 2019 at 10:25a.m. in Room 211
By Senate Committee on Ways and Means

Good morning Chair Dela Cruz, Vice Chair Keith-Agaran and members of the Committee:

I strongly oppose HB1093, HD2, SD1 because this bill is fatally flawed and does not represent good law giving Uber and Lyft special favored treatment and economic advantages over all local certified Public Utilities Commission motor carriers and taxi operators.

I have attached a comparison sheet between Taxi and TNC regulation to show how the Bill would discriminate and be bias against Taxi Drivers.

Respectfully submitted,

Dale Evans, CEO, Chairman

DIFFERENCES BETWEEN TAXI & TNC REGULATIONS

Discrimination and Bias Against Taxi Drivers

In 2016, the Honolulu City Council downgraded consumer protections on drivers, vehicles and operating rules pursuant to Ord. 16-25 and Ord. 16-38, creating ROH12-6 Private Transportation Companies, Vehicles, and Drivers. Many of the laws and regulations on taxicabs continue to be imposed, creating economic and operating disadvantages to the taxicab operators.




VEHICLE INSURANCE

Victims and claimants are worth less or nothing under special legislation enacted by the Hawaii State Legislature in 2016, Act 163 to provide Uber and Lyft with "Gap" insurance coverage. Moreover, Uber users must agree to [contractual terms that further absolve Uber's liability](#)ⁱ:

From [Insurance Business Magazine](#):

"[The company] does not guarantee the quality, suitability, safety or ability of third-party providers (drivers)," Uber's terms say. "[Riders must 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," another part of the terms reads.

Liability Insurance Comparison

Liability Limits		 <small>MTData</small>	
Bodily Injury / Person	50,000 <small>Only if logged into App</small>	100,000 AT ALL TIMES	100,000 AT ALL TIMES
Bodily Injury / Accident	100,000 <small>Only if logged into App</small>	300,000 AT ALL TIMES	200,000 AT ALL TIMES
Property Damage / Accident	25,000 <small>Only if logged into App</small>	50,000 AT ALL TIMES	50,000 AT ALL TIMES
Excess Auto Coverage	1,000,000 <small>Only if passenger(s) on board</small>	1,000,000 AT ALL TIMES	NONE
Comp General	NONE	3,000,000	UNKNOWN

EVIDENCE OF FINANCIAL RESPONSIBILITY - in the form of Insurance Policy or Binder (Certificate of Insurance) from the owner and/or operator of a taxi.

ROH12-1.23	Act 163 (2016)
The Vehicle Identification Number (VIN) was shown on the policy or COI	Requires insurance different from personal auto insurance
The city was named as additional insured conditional upon 30-day advance notice of cancellation from the issuing insurance carrier.	Auto liability Coverage is half of the amount required for Taxicabs: \$50k/\$100k Auto liability, \$25k Property Damage
Auto Liability Coverage: \$100k/ person, \$200k/accident effective at all times	TNC driver's half-coverage applies on Driver's insurance policy if Driver is logged 'on' the App.
Property Damage: \$50k effective at all times	TNC company's \$1m coverage only applies if passenger is in the car

NOTE:

- Taxi drivers own and operate their own vehicles and work Full-time or Part-time. Taxi insurance coverage/premium does not change according to whether driver rents vehicle or works part-time, or when driver is 'logged on or off' App or when passenger is in the car.
- Taxi and TNC drivers are not required to name the City & County of Honolulu as additional named insured.
- DOT Airports Division does not require TNCs to provide list of vehicles and drivers, or to list Vehicle Identification Numbers on their policy, as required of all other PUC and Taxi Ground Transportation Pre-Arranged Permittees .
- TNC drivers are not required to submit COIs to name the DOT as Additional Named Insured, as required of all other PUC and Taxi Ground Transportation Pre-Arranged Permittees.

RATES: FARES & BAGGAGE CHARGES

ROH12-1.10	HB1093
City (CSD) supposed to set <u>maximum</u> rates as to Initial Charge, Mileage, Time Charges, Baggage and Fuel Charges.	No rate regulation
Operators allowed to charge less than maximum fares.	Can charge Surge Prices, Upfront Prices, any rate so long as passenger is advised prior to trip
If taxi company charges a lower fare, all Drivers in that taxi company must all charge same lower fare shown on taximeter.	
Rates to be reviewed and amended bi-annually according to Private Transportation Component of the Consumer Price Index. Despite bi-annual provision for rate increases, City typically raises fares every 5-7 years. Last rate increase was June 2013, no rate increases since while CPI increased 44%.	

RATES: PASSING TAXES AND FEES ON TO PASSENGERS

Taxis are prohibited from passing these taxes and fees on to customers, whereas Uber & Lyft are free of any rate regulation and allowed to pass on these charges:

- State General Excise Tax of 4.5%
- DOT Airport 7% pick-up fee or \$5 pick-up fee by On-Demand Taxis
- \$12 Aloha Stadium parking fee
- \$10 Diamond Head Lookout
- \$10 Nuuanu Pali fee
- \$3.50 Moanalua Gardens
- any and all parking fees are unauthorized to be passed on to passenger

All other transportation modes in Hawaii are allowed to pass on these taxes and fees to passengers.

TAXICAB RATE CARD – Posting of Fares and Charges

ROH 12-1.10 (c) (2)	HB1093
Printed in Bold fonts	No rate card required. Rate only shown to App subscriber on phone.
At least 3/16 th inch height	
Posted within 12 inches of the taximeter	
Readily visible to all passengers for hire	

TRIP ROUTE

ROH12-1.21	HB1093
Mandates taxi drivers to take the most direct (shortest) most economical (cheapest) route unless otherwise instructed by customer, to assure that customers are not cheated on fare.	TNC drivers free to take slow and long (scenic) route
	Encourages TNCs to set market rates (algorithm manipulated to extract higher fares from riders who can afford to pay more)
	Allows Surge Pricing and Upfront Pricing, where the TNCs purposely program the algorithm to charge “virtual prices” during peaks giving service to people who can afford to pay more. Upfront Prices algorithm is not programed to take most direct or economical route.

DRIVER CERTIFICATE: was issued by city. Now it’s issued by Private Transportation Company, aka ‘self-regulation’

ROH12-1.9	ROH12-6	HB1093
driver certification was administered by city (Customer Services Division aka CSD)	Certification now issued by city-licensed TNC/Taxi company and/or CSD Taxi Control	Requires DOT to license TNC required in Sec. 9 but not as to certain qualifications in ROH 12-6

DRIVER EXAMS to qualify for Taxi or TNC Driver Certificate

ROH 12-6.5 (d)	HB1093
PTC or designated vendor to 'determine' (but doesn't say 'test' or 'exam') 'sufficient understanding of English language,' knowledge of traffic laws, ordinances, locations of streets, roads, highways and landmarks	No driver exam required as to understanding English, traffic laws, TNC ordinance, streets, highways, landmarks

ANNUAL RENEWAL OF DRIVER CERTIFICATION

ROH12-1	ROH 12-6	HB1093
Required recertification every two (2) years	No recertification required after initial (first) certification	No driver recertification required after initial cert

RIGHT TO REVOKE OR SUSPEND TNC & TAXI CERTIFICATE

ROH 12-1.9 (e)	ROH 12-6.6	HB1093
	Suspension "by the director" (not by TNC/Taxi company??)	No suspension or revocation

DRIVER'S LICENSE & DRIVING ABSTRACT

ROH 12-1.9	ROH 12-6.6	HB1093
Requires Hawaii-issued Driver's License. The city's administrative rule for Driver's Certificate required annual Hawaii Driver's Abstract.	Does not require a Driving Abstract.	Does not require a Driving Abstract.

FINGERPRINTING & MORAL CHARACTER

ROH12-1.9 (c)(4)	ROH 12-6	HB1093
Fingerprinting was taken by Taxi Control on Driver's Application for Taxi Driver Certificate, HPD ran criminal background check based on fingerprint and driver's name.	Repealed fingerprinting for taxi drivers. Background checks are now based on name, which means aliases can be used to avoid criminal history.	Does not reinstate fingerprinting

DRIVER'S PHYSICAL FITNESS

ROH12-1.9 (c)(4)	ROH 12-6.5 (e)	HB1093
<p>“PUC Doctor’s Certificate” same as FMCSA Doctor’s Certificate was required every ___ years. A Hawaii-licensed M.D. did physical examination and lab tests to prove the driver’s physical fitness.</p>	<p>Now requires a medical clearance from a Hawaii licensed physician only if and after there are indications that the driver is or has become physically or mentally unfit to be a private transportation driver. Does not say whether the driver is disqualified after doctor’s exam.</p>	<p>No Driver’s Physical fitness certificate, no doctor’s exam, no lab test required.</p>

PROHIBITS DRIVER POSSESSING INTOXICATING LIQUIDS IN CAR

ROH12-1.4 (b)	HB1093
	<p>Ok for TNC driver to carry intoxicants in car</p>

VEHICLE CERTIFICATION

ROH12-1.15	ROH12-6.9	HB1093
<p>Was repealed by Ord. 16-38. Taxi Control’s CSD Administrative rules to obtain Taxicab License required</p>	<p>Vehicle Identification number</p>	<p>no vehicle certification</p>
<p>Hawaii annual safety check</p>	<p>Registered owner’s full legal name</p>	<p>No VIN</p>
<p>Insurance certificate</p>	<p>License plate number and expiration date</p>	<p>No registration of owner full legal name</p>
<p>Hawaii Vehicle Registration</p>	<p>Annual safety inspection date</p>	<p>No license plate number and expiration date</p>
	<p>Proof of insurance</p>	<p>No annual safety inspection</p>
	<p>Annual vehicle registration</p>	<p>No proof of insurance</p>
	<p>Certificate expires in 2 years</p>	<p>No Hawaii vehicle registration</p>

TRIP REFUSAL PROHIBITION

ROH 12-1	HB1093
Cannot refuse fare within 2 miles of taxi/passenger except:	Silent re trip refusal except to prohibit certain "discrimination"
If passenger is disorderly	Allows discrimination against non-App subscribers and cash customers or who don't have approved credit cards (App for wealthy)
If passenger refuses to sit on protective covering provided by driver	
For any item that doesn't fit in rear passenger compartment or trunk	

KICKBACKS PROHIBITION

ROH12-1.4 (e)	HB1093
No taxi driver, no hotel doorman or dispatcher can take or offer kickbacks	Allows TNC drivers to give kickbacks to hotel doorpersons or dispatchers, and OK for hotel doorpersons and dispatchers to solicit or receive kickbacks

FRAUDULENT CALL PROHIBITION

ROH 12-1(5)	HB1093
prohibits, but taxi driver not allowed to charge for no-show or waiting more than 5 minutes	OK for TNC to charge \$5 for no show and/or waiting more than 5 minutes

TAXIMETERS

ROH12-8 - taxi meter must	HB1093
Meet specifications by Weights & Measures Division	No W&M specs, no inspection, no rate regulated by city, no tariff required
Pass inspection for accuracy	
Show current city-approved meter rates	

TAXI SIGN (DOMES)

ROH12-1.16	HB1093
Sign to identify car as taxi on roof of car that shows:	No sign or identification on car required (App must display picture of driver and car license plate number, seen only by Phone App subscriber, not by other passengers.)
Name or person or company in front, optional to show in back of sign	
Name or phone number on rear of sign'	
The size, type, design, color and placement dictated by Taxi Control (CSD)	

VEHICLE IDENTIFICATION (Taxicab Certification Numbers)

ROH12-1.20	ROH12-6.3	HB1093
Taxi must be clearly identified and marked with adhesive decal displayed on front/rear bumpers with taxi certification number assigned (previously by the city), now by Taxi company. Not required on TNC vehicles.	TRADE DRESS, LOGO OR COMPANY IDENTIFIER – to be approved by CSD Director, but no specification as to type, size, design, color	No Vehicle ID required, no specification as to any identification. Phone App shows driver photo and vehicle license number visible only to Phone App subscriber.

NOTE: AIRPORT INFO

- DOT does not issue Airport Permittee Decals for each TNC vehicle, whereas every taxi and PUC permittee must be issued and display on rear bumper the adhesive Permittee Decal.
- DOT does not require Transponder on each TNC vehicle whereas every taxi and PUC permittee must be equipped with the Airport Transponder which sends data toDOT-A to verify trips/pick-ups from the airport.

TRIP RECORDS

ROH12-1.12	HB1093
Taxi driver must keep trip records on:	TNC nor drivers required to keep trip records
Trip date and time to the minute	
Number of passengers	
Odometer readings at boarding and destination points	
Records subject to inspection during regular business hours as ruled by director.	

YOU ACKNOWLEDGE THAT YOUR ABILITY TO OBTAIN TRANSPORTATION, LOGISTICS AND/OR DELIVERY SERVICES THROUGH THE USE OF THE SERVICES DOES NOT ESTABLISH UBER AS A PROVIDER OF TRANSPORTATION, LOGISTICS OR DELIVERY SERVICES OR AS A TRANSPORTATION CARRIER.

Arbitration Agreement:

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration, as set forth in this Arbitration Agreement. This will preclude you from bringing any class, collective, or representative action against Uber, and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against Uber by someone else.

Testimony of
Robert's Hawaii, Inc.
on
HB 1093, HD2, SD1
Relating to Transportation Network Companies
Committee on Ways and Means
Wednesday, April 3, 2019, 10:25 a.m., Room 211

My name is Roy Pfund, Vice President of Robert's Hawaii, Inc., and I am testifying in strong opposition to H.B. No. 1093, H.D.2, S. D. 1 which proposes to establish a statewide system of regulation of transportation network companies.

We need to step back and take a hard look at what this legislation is attempting to create for the TNC companies, namely Uber and Lyft. These 2 companies have an estimated combined initial public offering (IPO) market value in excess of \$150 billion. This would rank them with the top 50 largest companies in the country. These 2 TNC companies want to monopolize the taxi and ride sharing transportation market in Hawaii by passing legislation that effectively provides them with preferred privileges that the taxis and PUC regulated passenger carriers do not have.

What are these privileged benefits?

1. Operating outside of existing Motor Carrier Act definition of a contract carrier. The TNC drivers fall squarely under the legal definition of a contract carrier.
2. Operating with insurance coverage standards that are less than comparable public liability coverage for taxis and PUC regulated operators.
3. Ability to charge the public any fares and rates that can be extracted based on passenger demand at time of day or location. Rates and fares can fluctuate greatly within a given day, as opposed to the set fares structures that taxi and PUC regulated operators must follow and must seek approval to increase.
4. Ability to operate outside of the scope authority of the Consumer Advocate office.
5. Ability to operate outside the scope of any effective regulatory body that would ensure that the TNC contract drivers are paying their share of fees and taxes.

Let's look into the future. What do we think will happen once Uber and Lyft have completed their IPO's and are funded with many more billions of dollars? The money will be used to continue to squeeze the local taxi and PUC companies out of business with their unfair business advantages. How will Uber and Lyft pay back their investors? Clearly, this will come from the monopoly pricing and profits that they will be able to derive from markets like Hawaii that are considering passing legislation that is designed to unfairly benefit the TNC's at the expense of the local regulated companies.

Thank you for allowing me to submit testimony on this proposed legislation.

Testimony of
Hawaii Passenger and Property Carriers Association
on
H.B. No. 1093, H.D.2, S.D.1
Relating to Transportation Network Companies
Committee on Transportation
Committee on Ways and Means
Wednesday, April 3, 2019, 10:25 a.m.
Room 211

The Hawaii Passenger and Property Carriers Association strongly opposes H.B. No. 1093, H.D.2, S.D.1, which proposes to establish a statewide system of regulation of transportation network companies.

1. H.B. No. 1093, H.D.2, S.d.1, defines:

"Transportation network company driver" as having the same meaning as defined in section 431:10C-701, which is **"...an individual who operates a personal vehicle used to transport a passenger between points chosen by the passenger..."**

The Motor Carrier Act defines:

"Common carrier by motor vehicle" as **"any person that holds itself out to the general public to engage in the transportation by motor vehicle of passengers"**

Both a TNC driver and a common carrier by motor vehicle engage in the transportation of passengers by motor vehicle.

2. H.B. No. 1093, H.D. 2, S.D.1, provides that a "transportation network company driver" shall not be deemed to be a common carrier by motor vehicle, despite operating a vehicle to transport passengers in the State on public highways, and shall not be required to be registered as a commercial or for-hire vehicle.

The Motor Carrier Act requires any person engaging in the transportation of persons ...for compensation or hire, by motor vehicle, over any public highway ...[shall have] a certificate or permit issued by the [PUC]... Removing transportation network drivers from regulation by the PUC removes them from oversight by the Consumer Advocate, which was established to "represent, protect, and advance the interests of all consumers.

3. H.B. No. 1093, H.D. 2, S.D.1, provides that if a fare is collected from a rider the company shall disclose the fare or fare collection method to the rider on its website or an app before the prearranged ride. If the fare is not disclosed before the beginning of the ride, the rider shall have the option to receive an estimated fare before the beginning of the ride.

The Motor Carrier Act requires common carriers by motor vehicles to file with the PUC and keep open for public inspection the rates, fares and charges for transportation and all services connected with the transportation of passengers and property. ***It requires that 30 days notice be given of any proposed change in rates, fares, or charges.***

H.B. No. 1093, H.D.2, S.D.1, proposes to regulate transportation network companies and, particularly, ***transportation network company drivers*** separately from motor carriers of passengers, even though those drivers are providing transportation for passengers for compensation. The Motor Carrier Act was enacted to *“provide for fair and impartial regulation of such transportation in the interest of preserving for the public the full benefit and use of the highways consistent with the public safety and the needs of commerce; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation.”* H.B. No. 1093, H.D.2, S.D.1, exempts transportation network company driver from this oversight.

We ask that the Committee consider that what H.B. No. 1093, H.D.2, S.D.1, is proposing is special law.

“A law is a “special law” not a general law, if it operates upon and affects only a fraction of persons or a portion of the property encompassed by a classification, granting privileges to some and not others.” ...special legislation discriminates in favor of a person or entity by granting them a special or exclusive privilege. A statute relating to particular persons, places, or things is a special law, not a general law.” (AG Op. 2007-2)

A legislative act that applies only to particular individuals or things of a class is special legislation. ...Uniformity is required in order to prevent granting to any person, or class of persons, the privileges or immunities which do not belong to all persons. *Harman v. Marsh 237 Neb. 699 467 H.W.2d 836 (1991)*

By declaring that a transportation network company or transportation network company driver is not a common carrier by motor vehicle, contract carrier by motor vehicle, a motor carrier, creates a particular class by special legislation that is exempted from the motor carrier law.

With these comments, we strongly oppose H.B. No. 1093, H.D.2, S.D.1.

Thank you for the opportunity to provide these comments.



Testimony of Tabatha Chow, on behalf of Uber Technologies, Inc., in support of HB1093 HD2 SD1

April 3, 2019

To: Chair Donovan Dela Cruz, Vice Chair Gilbert Keith-Agaran, and Members of the Senate Committee on Ways and Means:

My name is Tabatha Chow and I am the Senior Operations Manager for Uber Technologies, Inc. (“Uber”) in Hawaii. I am submitting this testimony on behalf of Uber in support of HB1093 HD2 SD1 relating to Transportation Network Companies.

The Uber app facilitates Transportation Network Company (TNC) services. This provides flexible work opportunities for thousands of small business owners across Oahu, Maui, Big Island, and Kauai. Our technology platform connects local, independent drivers, with Hawaii residents and visitors. These independent drivers complete millions of trips every year throughout Hawaii, via the Uber platform.

HB1093 HD2 SD1 would provide uniform regulations for TNC operations throughout all of Hawaii. **TNC driver screening and other operating requirements are currently only mandated for Honolulu county**, under ROH Chapter 12. TNC insurance regulations are mandated by HRS 431:10C-703 and TNC airport operations are subject to HAR Title 19, Chapter 20.1. HB1093 HD2 SD1 would ensure TNC driver screening and other operating

requirements are mandated for all islands throughout Hawaii, not just the City and County of Honolulu.

The provisions of HB1093 HD2 SD1 are very similar to the current requirements of Honolulu ROH Chapter 12 and mandate background screenings for all drivers. These screenings include criminal background checks on all potential drivers. These checks must search federal, state, and local databases as well as the Sex Offender Public Registry Website. Driver Motor Vehicle Record (MVR) checks are also included. Various other TNC operating requirements are also addressed, including: operating permits, fare transparency, driver and vehicle identification, receipt requirements, non-discrimination and accessibility policies, record retention, and audit provisions.

We thank the Committee for the opportunity to provide this testimony and look forward to working together.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tabatha Chow', with a stylized, wavy flourish at the end.

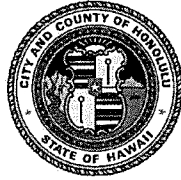
Tabatha Chow
Senior Operations Manager
Uber Hawaii

DEPARTMENT OF TRANSPORTATION SERVICES
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LATE

KIRK CALDWELL
MAYOR



WES FRYSZTACKI
DIRECTOR

JON Y. NOUCHI
DEPUTY DIRECTOR

April 3, 2019

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S. C. Keith-Agaran, Vice Chair
and Members of the Senate
Committee on Ways and Means
State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:


SUBJECT: Testimony on House Bill 1093 - Relating to Transportation Network Companies

The Department of Transportation Services provides the following comments on this measure.

Our agency is responsible for providing a multimodal transportation system for the City and County of Honolulu. For the past few years, this system has included Transportation Network Companies. We understand the value and efficiency of a single statewide regulatory framework for these service providers, however, the City and County of Honolulu desires to reserve its right to oversee and charge appropriate fees to these companies within the parameters of the statewide framework.

Thank you for the opportunity to submit these comments.

Very truly yours,


Wes Frysztacki
Director



**WRITTEN TESTIMONY OF TRACI LEE OF LYFT
COMMITTEE ON WAYS AND MEANS
APRIL 3, 2019**

LATE

Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members,

My name is Traci Lee, and I am a Senior Public Policy Manager for Lyft, responsible for Lyft's policy and government relations in Hawai'i. This testimony is to express Lyft's support for House Bill 1093, HD2, SD1, which creates a statewide regulatory structure for ridesharing that will allow Lyft to expand throughout Hawai'i.

First, Lyft would like to thank the Committee for your consideration of this important comprehensive statewide bill that would allow Transportation Network Companies (TNCs) such as Lyft to operate across the state of Hawai'i to provide both locals and visitors an affordable, reliable, and convenient transportation option on the islands.

Lyft was founded in 2012 to improve people's lives with the world's best transportation and make our cities more livable. Lyft is an online ride-sharing application that connects people with efficient, friendly and safe drivers in their community. At a basic level, Lyft was created as an alternative to personal car ownership, and we make it easier for people to offer their neighbors a ride and help people carpool more efficiently.

In Hawai'i, Lyft has been a transportation option on Oahu since June 2014, and available on Big Island, Maui, and Kauai since March 2017. Lyft service enhances transportation options for locals and tourists alike while also acting as a complement to existing transportation infrastructure investments. In addition to providing safe rides home for those who want to responsibly enjoy a night on the town, we have partnered with different transportation agencies and municipalities throughout the U.S. to make it easier for people to use public transit by serving as first-mile and last-mile connectors, or by being a guaranteed ride home from work thereby incentivizing carpooling and use of public transit in at least one direction.

More than anything, Lyft is about giving people choices. As of this year, 45 states across the country have passed statewide legislation, like HB 1093, HD 2, SD 1, that regulates Lyft in a safe and comprehensive manner. We hope that Hawai'i can join that effort and allow consumers to have the ability of choosing Lyft in cities across this great state.

Statewide legislation is a path towards providing consumers, drivers and visitors a consistent experience with Lyft. Lyft acknowledges and appreciates the amendments that have been made to the bill, and we urge this committee to continue on the path of establishing a clear, workable regulatory framework that can be applied to all ridesharing companies regardless of size and cities of operation to ensure that safe, reliable and affordable rides are available for all in Hawai'i.



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NO THANKS

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