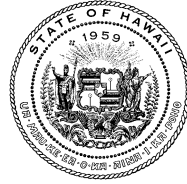


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To: The Honorable Lorraine R. Inouye, Chair;
The Honorable Breene Harimoto, Vice Chair;
and Members of the Senate Committee on Transportation

The Honorable Rosalyn H. Baker, Chair;
The Honorable Stanley Chang, Vice Chair;
and Members of the Senate Committee on Commerce, Consumer Protection, and Health

From: Rona M. Suzuki, Director
Department of Taxation

Re: H.B. 1833, H.D. 2, Relating to Peer-to-Peer Car-Sharing

Date: Monday, March 16, 2020

Time: 10:00 A.M.

Place: Conference Room 229, State Capitol

The Department of Taxation (Department) appreciates the intent of the tax provisions in H.B. 1833, H.D. 2, and provides the following comments. H.B. 1833, H.D. 2 has a defective effective date of July 1, 2050.

Section 1 of this measure is based on model legislation proposed by the National Council of Insurance Legislators. Section 2 amends the Rental Motor Vehicle Surcharge Tax (RVST) by adding new definitions for "car-sharing program agreement," "peer-to-peer car-sharing program" and "shared car" and a new section levying a peer-to-peer car-sharing surcharge tax of an unspecified amount per day on any day or portion of a day a "shared car" is shared and specifying that the tax shall be collected and paid over by the peer-to-peer program.

Section 2, establishing a "peer-to-peer car-sharing surcharge tax," is *not* included in the model legislation. The Department appreciates the intent of Section 2 of this measure because it believes collection of RVST from one source is the most efficient way to collect the tax.

However, "shared cars" are already subject to the RVST under current law. As written, H.B. 1833, H.D. 2: (1) imposes the RVST on shared car transactions twice and (2) requires both peer-to-peer car-sharing programs and shared car owners to register for RVST licenses. To correct this, shared car owners engaging in shared car transactions would need to be specifically exempted from the RVST and the owners would need to be exempted from the requirement to register for an RVST license if they are engaging exclusively in shared car rental transaction. If adopted as proposed, the Department requests an appropriation or fee to be included in the tax rate to enable it to design, set up, and manage this new tax.

Instead, the Department offers an approach similar to the approach taken in H.B. 2368 or

S.B. 2924, our Administration bill, to address the imposition of RVST. In H.B. 2368 and S.B. 2924, the Department is **offering an amendment to clarify that the RVST marketplace facilitator is *not* the lessor of the vehicle.** The renting of shared cars by individuals is substantively no different than the renting of cars by a company. As such, the Department does not believe that a separate imposition as proposed by this measure is appropriate or necessary. The suggestion below takes the same approach as Act 2, Session Laws of Hawaii 2019, with respect to marketplace facilitators and general excise tax.

The Department recommends **replacing Section 2 of this bill with the following two sections instead:**

SECTION 1. Chapter 251, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§251- Rental motor vehicle marketplace facilitators. (a) A rental motor vehicle marketplace facilitator, as defined under section 251-1, shall be subject to the tax levied under section 251-2(a) for rental motor vehicles rented or leased by rental motor vehicle lessors through its forum.

(b) Any person other than a rental motor vehicle marketplace facilitator who provides a forum, whether physical or electronic, in which rental motor vehicle lessors list or advertise rental motor vehicles for lease and takes or processes lease orders shall:

(1) Post a conspicuous notice on its forum that informs rental motor vehicle lessors intending to lease rental motor vehicles in this State that the rental motor vehicle lessor is required to pay the rental motor

vehicle and tour vehicle surcharge tax under section 251-2; and

(2) No later than the twentieth day of the fourth month following the close of the taxable year, submit a report to the department that includes, with respect to each rental motor vehicle lessor, the following:

(A) The rental motor vehicle lessor's name, billing address, and mailing address;

(B) The address in this State at which the rental motor vehicle was delivered to the lessee; and

(C) The aggregate dollar amount of the lessee's leases from the lessor;

provided that the person, in lieu of complying with the notice and reporting requirements in this subsection, may elect to be deemed the rental motor vehicle lessor as provided in subsection (a).

(c) Any person who fails to comply with subsection (b) and has not elected to be deemed the rental motor vehicle lessor, unless it is shown that the failure is due to reasonable cause and not due to neglect, shall be assessed a penalty of \$1,000 if the failure is for not more than one month, with an additional \$1,000 for each additional month or fraction thereof during which the failure continues, not to exceed \$12,000 in the aggregate.

(d) Notwithstanding subsections (a) and (b), this section shall not apply to transactions involving rental motor vehicles leased by a lessor, who in any single month in the past twelve months, has leased one or more rental motor vehicles for thirty or more days or portions of days in the aggregate. For purposes of this subsection, the term "lessor" does not include a rental motor vehicle marketplace facilitator."

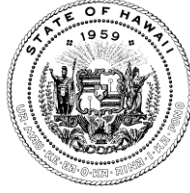
SECTION 2. Section 251-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Rental motor vehicle marketplace facilitator" means any person, other than a rental motor vehicle lessor, who assists in the lease of rental motor vehicles on behalf of a rental motor vehicle lessor by:

- (1) Providing a forum, whether physical or electronic, in which lessors list or advertise the lease of rental motor vehicles; and
- (2) Collecting payment from the rental motor vehicle lessee, either directly or indirectly through an agreement with a third party."

Finally, the Department requests an effective date no earlier than January 1, 2021 to allow time to update its forms and computer system, provided that the foregoing sections are adopted as the Department suggested.

Thank you for the opportunity to provide comments.



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**Testimony of the Department of Commerce and Consumer Affairs
(Amended)**

**Before the
Senate Committee on Transportation
and
Senate Committee on Commerce, Consumer Protection, and Health**

**Monday, March 16, 2020
10:00 am
State Capitol, Conference Room 229**

**On the following measure:
H.B. 1833, H.D. 2, RELATING TO PEER-TO-PEER CAR-SHARING**

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

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' Office of Consumer Protection (OCP). The Department appreciates the intent of and offers comments on this bill.

The purpose of this bill is to regulate the peer-to-peer car sharing industry by: prohibiting vehicle owners from renting a vehicle subject to a manufacturer's recall on a peer-to-peer car-sharing program until the vehicle has undergone safety recall repairs; defining terms relating to peer-to-peer car sharing; and establishing insurance coverage requirements during the car-sharing period.

The business model of peer-to-peer car rental differs markedly from that of the existing traditional car rental, which Hawaii Revised Statutes chapter 437D currently

regulates. Consequently, the Department believes that the creation of a new chapter governing peer-to-peer car sharing in Hawaii is a sensible legal adaptation to address this new business model.

While attempts to provide a semblance of regulation of the peer-to-peer industry, the Department believes that it does so inadequately. In this regard, the Department offers several amendments in the enclosed proposed S.D. 1, which it believes will better protect consumers.

Insurance Coverage

The Department believes that to ensure consumers are adequately protected in the event of an accident, the peer-to-peer industry should be required to secure sufficient insurance to protect consumers. This is accomplished by requiring peer-to-peer car-sharing programs to provide primary insurance coverage for each shared car vehicle used in the program. In this regard, the insurance coverage requirements in section -2 beginning on page 6, line 3 to page 8, line 8 have been amended to include this critical consumer protection.

Disclosures

The Department also believes that clear and conspicuous disclosures related to the terms and conditions associated with the car sharing agreement must be conspicuously disclosed to consumers. Consequently, all required taxes and fees, charges, insurance costs, as well as the total price to rent the vehicle, should be clearly disclosed to the consumer. Therefore, the Department's proposed amendments require disclosure of all the terms and conditions and all costs to be charged prior to the execution of the car-sharing program agreement.

Record Keeping

Consumer access to complete and accurate data is critically important when there is a disputed claim resulting from an event involving a consumer, such as an accident resulting in damage to a vehicle. The Department's proposed amendments strengthen the record keeping provision of H.D. 2 by requiring peer-to-peer car-sharing programs to collect more complete information, such as insurance policy numbers, coverage amounts, and the names and contact information of car share driver and car

share owners, and to provide the data upon request to facilitate a claim coverage investigation.

Motor Vehicle Recalls

A strong provision governing vehicle recalls must be a vital component of any regulatory scheme governing the peer-to-peer industry. It is axiomatic that consumer safety is of paramount importance in renting a vehicle to a consumer. Consequently, requiring peer-to-peer car sharing companies to abide by the recall provisions of the National Highway Traffic Safety Administration is a critical component of this bill. Simply stated, if a vehicle is under recall, it should not be made available to a consumer through a platform hosted by a peer-to-peer company. The average completion rate for newer passenger vehicle recalls is only 75%, and this percentage drops to 44% for vehicles 5 to 10 years old. The recall provision will help to protect consumers who rent vehicles from a peer-to-peer car-sharing program by removing potentially unsafe vehicles from the road, such as those with defective Takata airbags.

Current federal law already requires conventional car rental companies to remove vehicles subject to recall from their rental fleets. Therefore, it only makes sense to have this same restriction apply to the peer-to-peer car-sharing industry.

Surcharge Tax

Finally, to remove any ambiguity in H.D. 2, the proposed amendments to the surcharge tax provision clarify that surcharge tax is to be assessed against the peer-to-peer car-sharing program.

Thank you for the opportunity to testify on this bill.

The Department offers a proposed S.D. 1 on the following pages for the Committees' consideration.

H.B. NO. 1833

Proposed S.D. 1

A BILL FOR AN ACT

RELATING TO PEER-TO-PEER CAR-SHARING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 15 to be appropriately designated
3 and to read as follows:

4 **"CHAPTER**

5 **PEER-TO-PEER CAR-SHARING**

6 § -1 **Definitions.** As used in this chapter:

7 "Car-sharing delivery period" means the period of time
8 during which a shared car is being delivered to the location of
9 the car-sharing start time, if applicable, as documented by the
10 governing car-sharing program agreement.

11 "Car-sharing period" means the period of time that
12 commences with the car-sharing delivery period or, if there is
13 no delivery period, that commences with the car-sharing start
14 time and, in either case, ends at the car-sharing termination
15 time.

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Proposed S.D. 1

1 "Car-sharing program agreement" means the terms and
2 conditions applicable to a shared car owner, ~~and~~ a shared car
3 driver and a peer-to-peer car-sharing platform that govern the
4 use of a shared car through a peer-to-peer car-sharing
5 program. [~~"Car-sharing program agreement" shall not mean a~~
6 ~~"rental agreement" as defined in section 437D-3.~~]

7 "Car-sharing start time" means the time [~~when the shared~~
8 ~~car becomes subject to the control of~~] the shared car driver [~~at~~
9 ~~or after the time the reservation of a shared car is scheduled~~
10 ~~to begin as documented in the records of~~] obtains control of a
11 shared car through a peer-to-peer car-sharing program.

12 "Car-sharing termination time" means the earliest of the
13 following events:

- 14 (1) The expiration of the agreed upon period of time
15 established for the use of a shared car according to
16 the terms of the car-sharing program agreement if the
17 shared car is delivered to the location agreed upon in
18 the car-sharing program agreement;
- 19 (2) When the shared car is returned to a location as
20 alternatively agreed upon by the shared car owner and

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1 shared car driver as communicated through a peer-to-
2 peer car-sharing program; ~~or~~

3 (3) When a shared car, during the car-sharing period,
4 cannot safely or legally be operated and the shared
5 car driver notifies the peer-to-peer car-sharing
6 program that the shared car is inoperable and
7 identifies the location of the shared car;

8 (4) When the shared car is returned to the location agreed
9 upon in the car-sharing agreement or alternatively
10 agreed upon by the shared car owner and the shared car
11 driver upon the shared car driver receiving notice of
12 a safety recall affecting the shared car; or

13 [~~(3)~~] (5) When the shared car owner or the shared car
14 owner's authorized designee takes possession and
15 control of the shared car.

16 "Peer-to-peer car-sharing" means the authorized ~~[use]~~
17 control and operation of a vehicle by an individual other than
18 the vehicle's owner through a peer-to-peer car-sharing program.

19 ~~["Peer-to-peer car-sharing"]~~ For the purposes of assessing a
20 vehicle surcharge tax, "peer-to-peer car-sharing" shall not mean
21 the "business of providing rental motor vehicles to the public"

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1 as the phrase is used in section 251-3 [~~or the business of a~~
2 ~~"lessor" as defined in section 437D-3~~].

3 "Peer-to-peer car-sharing program" means [~~a business~~
4 ~~platform~~] any person that connects vehicle owners with drivers
5 to enable the sharing of vehicles for financial
6 consideration. "Peer-to-peer car-sharing program" shall not
7 include [~~"lessor" as defined in section 437D-3 or~~] a "car-
8 sharing organization" as defined in section 251-1.

9 "Peer-to-peer car-sharing program" does not include a
10 "transportation network company" as defined in section 431:1C-
11 701. "Peer-to-peer car-sharing program" does not include any
12 person registered and acting as a travel agency pursuant to
13 chapter 468L or any person registered and acting as an activity
14 desk pursuant to chapter 468M.

15 "Shared car" means a motor vehicle that is registered
16 pursuant to chapter 286 and is not owned, controlled, operated,
17 or managed by or registered to the peer-to-peer car-sharing
18 program and is available for sharing through a peer-to-peer car-
19 sharing program. [~~"Shared car" shall not include a "rental~~
20 ~~motor vehicle" or "vehicle" as defined in section 437D-3.~~]

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1 "Shared car driver" means an individual who has been
2 authorized to drive the shared car by the shared car owner under
3 a car-sharing program agreement. [~~"Shared car driver" shall not~~
4 ~~mean "lessee" as defined in section 437D-3.~~]

5 "Shared car owner" means the registered owner [~~, or a person~~
6 ~~or entity designated by the registered owner,~~] of a [vehicle
7 ~~made available for sharing to shared car drivers through a peer-~~
8 ~~to-peer car-sharing program]. [~~"Shared car owner" shall not~~
9 ~~include a "lessor" as defined in section 437D-3.~~]~~

10 § -2 Insurance coverage during car-sharing period. (a)

11 [~~A peer-to-peer car sharing program shall assume liability,~~
12 ~~except as provided in subsection (b), of a shared car owner for~~
13 ~~bodily injury or property damage to third parties or uninsured~~
14 ~~and underinsured motorist or personal injury protection losses~~
15 ~~during the car sharing period in an amount stated in the peer-~~
16 ~~to-peer car-sharing program agreement, which amount may not be~~
17 ~~less than those set forth in section 431:10C-301.~~

18 (b) ~~Notwithstanding the definition of "car-sharing~~
19 ~~termination time" as set forth in section 1, the assumption~~
20 ~~of liability under subsection (a) shall not apply to any shared~~
21 ~~car owner when:~~

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1 ~~(1) A shared car owner makes an intentional or fraudulent~~
2 ~~material misrepresentation or omission to the peer-to-~~
3 ~~peer car-sharing program before the car-sharing period~~
4 ~~in which the loss occurred; or~~

5 ~~(2) Acting in concert with a shared car driver who fails~~
6 ~~to return the shared car pursuant to the terms of car-~~
7 ~~sharing program agreement.~~

8 ~~(c) Notwithstanding the definition of "car-sharing~~
9 ~~termination time" in section 431:10C-1, the assumption of liability~~
10 ~~under subsection (a) shall apply to bodily injury, property~~
11 ~~damage, uninsured and underinsured motorist or personal injury~~
12 ~~protection losses suffered by third parties as required by~~
13 ~~section 431:10C-301.~~

14 ~~(d)] A peer-to-peer car-sharing program shall ensure that,~~
15 ~~during each car-sharing period, the shared car owner and the~~
16 ~~shared car driver shall be insured under a motor vehicle~~
17 ~~insurance policy that provides insurance coverage in amounts no~~
18 ~~less than the minimum amounts required under section 431:10C-301~~
19 ~~and:~~

20 ~~(1) [Recognizes that] Insurance to pay on behalf of~~
21 ~~the shared car owner and the shared car driver while~~

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1 the shared ~~vehiele~~ car insured under the respective
2 [policy] policies is made available and used through a
3 peer-to-peer car-sharing program; ~~[or]~~ and

4 (2) Does not exclude use of a shared car by a shared car
5 driver.

6 (b) A peer-to-peer car-sharing program shall be insured
7 under a policy that provides primary insurance coverage for each
8 shared car available and used through a peer-to-peer car-sharing
9 program in amounts no less than the minimum amounts required for
10 a transportation network driver or a transportation network
11 company under 431:10C-703.

12 (c) In addition to the insurance coverage required by this
13 section, insurance offered by or through a peer-to-peer car-
14 sharing program shall comply with chapter 431.

15 ~~[(e) The insurance described under subsection (d) may be~~
16 ~~satisfied by the motor vehicle insurance maintained by:~~

17 ~~(1) A shared car owner;~~

18 ~~(2) A shared car driver;~~

19 ~~(3) A peer to peer car sharing program; or~~

20 ~~(4) A combination of the shared car owner and shared car~~

21 ~~driver coverage, and peer to peer car sharing program.~~

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1 ~~(f) Insurance described in subsection (e) that satisfies~~
2 ~~the insurance requirement of subsection (d) shall be primary~~
3 ~~during each car sharing period.~~

4 ~~(g) If the peer-to-peer car sharing program, in whole or~~
5 ~~in part, provides the insurance required under subsections (d)~~
6 ~~and (e), it shall assume primary liability for a claim when:~~

7 ~~(1) A dispute exists as to who was in control of the~~
8 ~~shared car at the time of the loss; and~~

9 ~~(2) The peer-to-peer car sharing program does not have~~
10 ~~available, did not retain, or fails to provide the~~
11 ~~information required by section 5.~~

12 ~~The shared car's insurer shall indemnify the peer-to-peer~~
13 ~~car sharing program to the extent of its obligation under, if~~
14 ~~any, the applicable insurance policy, if it is determined that~~
15 ~~the shared car owner was in control of the shared car at the~~
16 ~~time of the loss.~~

17 ~~(h) If insurance maintained by a shared car owner or~~
18 ~~shared car driver in accordance with subsection (e) has lapsed~~
19 ~~or does not provide the required coverage, insurance maintained~~
20 ~~by a peer-to-peer car sharing program shall provide the coverage~~
21 ~~required by subsection (d) beginning with the first dollar of a~~

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1 ~~claim and have the duty to defend the claim except under~~
2 ~~circumstances as set forth in subsection (b).~~

3 ~~(i) Coverage under a motor vehicle insurance policy~~
4 ~~maintained by the peer-to-peer car-sharing program shall not be~~
5 ~~dependent upon another motor vehicle insurer first denying a~~
6 ~~claim nor shall another motor vehicle insurance policy be~~
7 ~~required to first deny a claim.~~

8 ~~(j) Nothing in this chapter:~~

9 ~~(1) Limits the liability of the peer-to-peer car-sharing~~
10 ~~program for any act or omission of the peer-to-peer car-sharing~~
11 ~~program itself that results in injury to any person as a result~~
12 ~~of the use of a shared car through a peer-to-peer car-sharing~~
13 ~~program; or~~

14 ~~(2) Limits the ability of the peer-to-peer car-sharing~~
15 ~~program to seek, by contract, indemnification from the shared~~
16 ~~car owner or the shared car driver for economic loss sustained~~
17 ~~by the peer-to-peer car-sharing program resulting from a breach~~
18 ~~of the terms and conditions of the car-sharing program~~
19 ~~agreement.]~~

20 **§ -3 Notification of implications of lien.** When a car
21 owner registers as a shared car owner on a peer-to-peer car-

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1 sharing program and prior to when the shared car owner makes a
2 shared car available for car-sharing on the peer-to-peer car-
3 sharing program, the peer-to-peer car-sharing program shall
4 notify the shared car owner that, if the shared car has a lien
5 against it, the use of the shared car through a peer-to-peer
6 car-sharing program, including use without physical damage
7 coverage, may violate the terms of the contract with the
8 lienholder.

9 **§ -4 Exclusions in motor vehicle insurance**

10 **policies.** (a) An authorized insurer that writes motor vehicle
11 insurance in the State may exclude any and all coverage and the
12 duty to defend or indemnify any claim afforded under a shared
13 car owner's or shared car driver's motor vehicle insurance
14 policy, including:

- 15 (1) Liability coverage for bodily injury and property
16 damage;
- 17 (2) Personal injury protection coverage as set forth in
18 section 431:10C-304;
- 19 (3) Uninsured and underinsured motorist coverage;
- 20 (4) Medical payments coverage;
- 21 (5) Comprehensive physical damage coverage; and

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1 (6) Collision physical damage coverage.

2 (b) Nothing in this chapter shall invalidate or limit an
3 exclusion contained in a motor vehicle insurance policy,
4 including any insurance policy in use or approved for use that
5 excludes coverage for motor vehicles made available for rent,
6 sharing, or hire or for any business use.

7 (c) No peer-to-peer car-sharing program shall make
8 available through its business platform any shared car when the
9 shared car owner's motor vehicle insurance policy excludes any
10 coverage required under this chapter.

11 (d) No peer-to-peer car-sharing program shall make
12 available through its business platform any shared car to a
13 shared car driver when the shared car driver's motor vehicle
14 insurance policy excludes any coverage required under this
15 chapter.

16 **§ -5 Recordkeeping; use of vehicle in car-sharing.** A
17 peer-to-peer car-sharing program shall collect and verify
18 records pertaining to the use of a shared car for each car-
19 sharing program agreement, including dates and times [used] of
20 the car-sharing start time and the car-sharing termination time
21 in the car-sharing program agreement, dates and times of the

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1 actual car-sharing start time and car-sharing termination time,
2 itemized descriptions and amounts of all fees and costs charged
3 to the share car driver, itemized descriptions and amounts of
4 all, fees and costs paid by the shared car driver, and [revenues
5 ~~received by]~~ itemized descriptions and amounts of all fees and
6 costs paid to the shared car owner, the name, and contact
7 information of the shared car owner and the shared car driver,
8 the insurance policy number, effective date, coverage and
9 coverage amounts of the insurance policies of the peer-to-peer
10 car-sharing program, shared car owner and shared car driver [and
11 ~~provide that information upon request to the shared car owner,~~
12 ~~the shared car owner's insurer, or the shared car driver's~~
13 ~~insurer to facilitate a claim coverage investigation.]~~ The
14 peer-to-peer car-sharing program shall retain the records for a
15 time period not less than the six-year statute of limitations
16 period set forth under section 657-1(4). The peer-to-peer car-
17 sharing program shall provide upon request the information
18 required in this section, and any information relating to the
19 peer-to-peer program agreement in its possession and control, to
20 the shared car owner, the shared car owner's insurer, the shared

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1 car driver or the shared car driver's insurer to facilitate a
2 claim coverage investigation.

3 **§ -6 Contribution against indemnification.** A motor
4 vehicle insurer that defends or indemnifies a claim against a
5 shared car that is excluded under the terms of its policy shall
6 have the right to seek contribution against the motor vehicle
7 insurer of the peer-to-peer car-sharing program if the claim is:

8 (1) Made against the shared car owner or the shared car
9 driver for loss or injury that occurs during the car-sharing
10 period; and

11 (2) Excluded under the terms of its policy.

12 **§ -7 Insurable interest.** (a) Notwithstanding any other
13 law, statute, or rule to the contrary, a peer-to-peer car-
14 sharing program shall have an insurable interest in a shared car
15 during the car-sharing period.

16 (b) In addition to the insurance coverage mandated by
17 section -2, [A] a peer-to-peer car-sharing program may own and
18 maintain as the named insured one or more policies of motor
19 vehicle insurance that provides coverage for:

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- 1 (1) Liabilities assumed by the peer-to-peer car-sharing
2 program under a peer-to-peer car-sharing program
3 agreement;
- 4 (2) Any liability of the shared car owner; or
- 5 (3) Damage or loss to the shared car or any liability of
6 the shared car driver.

7 **§ -8 Required disclosures and notices.** For each shared
8 car participating in a car-sharing program agreement on its
9 platform, a peer-to-peer car-sharing program shall:

- 10 (1) Provide, prior to the execution of a car-sharing
11 program agreement, the shared car owner and shared car
12 driver with the terms and conditions of the car-
13 sharing program agreement;
- 14 (2) Disclose to the shared car driver, prior to the
15 execution of a car-sharing program agreement, [~~any~~]
16 all costs or fees that are to be charged to the shared
17 car driver under the car-sharing program agreement,
18 including all costs or fees for mandatory insurance
19 coverage charged by the peer-to-peer car-sharing
20 program;

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- 1 (3) Disclose to the shared car owner, prior to the
2 execution of a car-sharing program agreement, [~~any~~]
3 all costs or fees that are to be charged to the shared
4 car owner under the car-sharing program agreement,
5 including fees or costs for mandatory insurance
6 coverage charged by the peer-to-peer car-sharing
7 program;
- 8 (4) Provide [~~an~~] twenty-four hour emergency telephone
9 number for a person capable of facilitating roadside
10 assistance [~~to~~] for the shared car driver;
- 11 (5) Disclose any right of the peer-to-peer car-sharing
12 program to seek indemnification from the shared car
13 owner or the shared car driver for economic loss
14 sustained by the car-sharing program caused by a
15 breach of the car-sharing program agreement; The peer-
16 to-peer car-sharing program shall require the shared
17 car owner and the shared car driver to specifically
18 and separately acknowledge notice of the disclosure
19 prior to execution of a car-sharing program agreement;
- 20 (6) Disclose that a motor vehicle insurance policy issued
21 to the shared car owner for the shared car or to the

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1 shared car driver does not provide a defense or
2 indemnification for any claim asserted by the peer-to-
3 peer car-sharing program; The peer-to-peer car-sharing
4 program shall require the shared car owner and the
5 shared car driver to specifically and separately
6 acknowledge notice of the disclosure prior to
7 execution of a car-sharing program agreement;

8 (7) Disclose that the peer-to-peer car-sharing program's
9 insurance coverage on the shared car owner and the
10 shared car driver is in effect only during each
11 sharing period and that the shared car may not have
12 insurance coverage for use of the shared car by the
13 shared car driver after the sharing termination time;
14 The peer-to-peer car-sharing program shall require the
15 shared car owner and the shared car driver to
16 specifically and separately acknowledge notice of the
17 disclosure prior to execution of a car-sharing program
18 agreement;

19 (8) Disclose any insurance or protection package costs
20 that are charged to the shared car owner or the shared
21 car driver; The peer-to-peer car-sharing program shall

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1 require the shared car owner and the shared car driver
2 to specifically and separately acknowledge notice of
3 the disclosure prior to execution of a car-sharing
4 program agreement;

5 (9) Disclose that if the shared car owner's or shared car
6 driver's motor vehicle insurance policy ~~may~~ does not
7 provide or excludes coverage for a shared car then the
8 shared car owner and the shared car driver are
9 prohibited from participating in the peer-to-peer car-
10 sharing program; [~~and~~]

11 (10) Disclose to the shared car driver any conditions in
12 which the shared car driver is required to maintain a
13 motor vehicle insurance policy as the primary coverage
14 for the shared car in order to drive a shared car[~~-~~];
15 and

16 (11) Disclose that a shard car owner shall be permitted to
17 obtain insurance that provides coverage for loss of
18 use of a shared car.

19 § -9 Driver's license verification and data

20 **retention.** (a) A peer-to-peer car-sharing program shall not

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1 enter into a car-sharing program agreement with a shared car
2 driver unless the shared car driver:

3 (1) Holds a valid driver's license issued under section
4 286-102 that authorizes the shared car driver to
5 operate motor vehicles of the class of the shared car;

6 (2) Is a nonresident who:

7 (A) Has a valid driver's license issued by the state
8 or country of the driver's residence that
9 authorizes the shared car driver in that state or
10 country to drive motor vehicles of the class of
11 the shared car; provided that the foreign
12 driver's license is accepted by the State; and

13 (B) Is at least the same age as that required of a
14 resident to drive; or

15 (3) Otherwise is specifically authorized to drive vehicles
16 of the class of the shared car~~[]~~; and

17 (4) Has obtained insurance required by section -2.

18 (b) A peer-to-peer car-sharing program shall record:

19 (1) The name and address of the shared car driver; and

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1 (2) The place of issuance and number of the driver's
2 license of the shared car driver and each other
3 person, if any, who will operate the shared car.

4 § -10 **Responsibility for equipment and shared**

5 **car.** (a) A peer-to-peer car-sharing program shall have sole
6 responsibility for any equipment, such as a global positioning
7 system or other special equipment that is put in or on the
8 shared car to monitor or facilitate the car-sharing transaction,
9 and shall agree to indemnify and hold harmless the shared car
10 owner or shared car driver for any damage to or theft of the
11 equipment during the car-sharing period [~~not caused by the~~
12 ~~shared car owner or shared car driver. The peer-to-peer car-~~
13 ~~sharing program shall have the right to seek indemnity from the~~
14 ~~shared car driver for any loss or damage to the equipment that~~
15 ~~occurs during the sharing period].~~

16 (b) A shared car owner has the right to seek indemnity
17 from the peer-to-peer car-sharing program for any loss or damage
18 to a shared car that occurs as a result of any equipment, such
19 as a global positioning system or other special equipment, that
20 is put in or on a vehicle to monitor or facilitate the car
21 sharing;

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1 (c) A shared car driver has the right to seek indemnity
2 from the peer-to-peer car-sharing program for any loss or damage
3 that occurs as a result of any equipment, such as a global
4 positioning system or other special equipment, that is put in or
5 on a vehicle to monitor or facilitate the car sharing; and

6 [~~(b)~~] (d) No peer-to-peer car-sharing program or shared
7 car owner shall require a shared car driver to make an advance
8 deposit in any form, including an advance charge against the
9 credit card of a shared car driver, for damages to a shared car
10 occurring during the car-sharing period. No peer-to-peer car-
11 sharing program or shared car owner shall require any payment
12 for damages to a shared car occurring during the car-sharing
13 period until after the cost to repair shared car damages and
14 liability therefor is agreed to by the shared car driver or is
15 determined pursuant to law.

16 (e) No peer-to-peer car-sharing program or shared car
17 owner shall charge a shared car driver more than the cost of the
18 parts and labor necessary to repair damages to a shared car
19 occurring during the car-sharing period, if the vehicle is
20 repaired; The costs to repair the damages to the shared car

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1 shall be in accordance with standard practice in the motor
2 vehicle industry in the community;

3 (f) No peer-to-peer car-sharing program or shared car
4 owner shall charge a shared car driver more than the actual cash
5 value of a vehicle determined in accordance with standard
6 practice in the motor vehicle insurance industry, if the share
7 car damaged during the car-sharing period is declared a total
8 loss.

9 **§ -11 Motor vehicle safety recalls.** (a) [~~At the time~~
10 ~~when a vehicle owner registers as a shared car owner on a peer-~~
11 ~~to-peer car-sharing program and prior to the time when the~~
12 ~~shared car owner makes a shared car available for car-sharing on~~
13 ~~the peer-to-peer car-sharing program, the] A peer-to-peer car-
14 sharing program shall:~~

15 (1) Verify that no safety recalls exist for [~~the make and~~
16 ~~model of the] each shared car [~~for which repairs have~~
17 ~~not been made] available for peer-to-peer car-sharing
18 through the peer-to-peer car-sharing program;~~~~

19 (2) [~~Notify the shared car owner of the requirements under~~
20 ~~subsection (b)] Verify that all repairs of the safety~~

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1 recall have been completed for each shared car before
2 each car-sharing start time; [and]

3 (3) [~~Verify every seventy-two hours that any vehicle~~
4 ~~available for use through a peer-to-peer car-sharing~~
5 ~~program is not subject to an open safety recall for~~
6 ~~which repairs have not been made.] Shall immediately
7 notify the shared car driver of any safety recall
8 affecting the shared car so that the shared car may be
9 removed from use until the shared car owner effects
10 the necessary safety recall repair. Continued use of
11 the shared car by the shared car driver pursuant to
12 the car-sharing program agreement shall not indemnify
13 the peer-to-peer sharing program or share car owner
14 from loss arising out of such use of the shared car by
15 the shared car driver;~~

16 (4) Make no vehicle available for car-sharing that is
17 subject to a safety recall and the safety recall
18 repair has not been completed; and

19 (5) Prior to each car-sharing period, notify the shared
20 car owner of the requirements under subsection (b).

21 (b) A shared car owner shall:

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- 1 (1) Not make the shared car available for use through a
2 peer-to-peer car-sharing program if the shared car
3 owner has received notice of a safety recall on the
4 shared car, until the safety repair has been ~~made~~
5 completed;
- 6 (2) Remove any vehicle listed for use through a peer-to-
7 peer car-sharing program upon receipt of notice of a
8 safety recall as soon as practicably possible but no
9 longer than forty-eight hours after receipt of notice
10 of a safety recall; and
- 11 (3) Notify the peer-to-peer car-sharing program of a
12 safety recall within forty-eight hours of receipt of a
13 safety recall when the vehicle is in the possession of
14 a shared car driver [~~so that the peer-to-peer car-~~
15 ~~sharing program may notify the shared car driver and~~
16 ~~the shared car may be removed from use until the~~
17 ~~shared car owner effects the necessary safety recall~~
18 ~~repair~~].

19 § ~~-12-Relation to other laws.~~ Chapter 437D shall not
20 apply to ~~peer-to-peer car-sharing.~~

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1 ~~§ 13~~ **Department of transportation; airports division;**
2 **contract or agreement; rules.** A peer-to-peer car-sharing
3 program shall enter into a contract or other agreement with the
4 airports division of the department of transportation pursuant
5 to section 261-7(a) prior to operating at any airport in the
6 State. A peer-to-peer car-sharing program shall comply with all
7 rules of the airports division of the department of
8 transportation.

9 § ~~143~~ **Additional mandatory charges prohibited.** (a)
10 [The] Prior to the execution of a car-sharing agreement, the
11 peer-to-peer car-sharing program shall disclose to the shared
12 car driver the total [daily and periodic] cost to be charged to
13 the shared car driver that shall include the total cost as well
14 as itemized descriptions of the amount of each charge that is
15 required as a condition to the peer-to-peer car-sharing program
16 agreement. The peer-to-peer car-sharing program shall disclose
17 as part of any quotations of price, including all quotations
18 contained in advertising or through online quotations, ~~and~~ all
19 ~~[payments]~~ costs that a shared car driver is required to ~~[make]~~
20 pay, as part of the car-sharing program agreement.

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1 (b) A peer-to-peer car-sharing program shall separately
2 disclose the cost of any insurance offered to a shared car owner
3 or shared car driver by or through the peer-to-peer car-sharing
4 program. The cost of insurance shall be included in the total
5 cost to be disclosed to a shared car driver required by (a).

6 (c) A peer-to-peer car-sharing program and shared car
7 owner shall not visibly pass on any costs or expenses incurred
8 by the peer-to-peer car-sharing program or shared car owner
9 relating to ownership, maintenance or operation of the shared
10 car or participation in or operation of the peer-to-peer car-
11 sharing program.

12 **§ -154 Civil penalties.** Any person who violates ~~or~~
13 ~~attempts to violate~~ any provision of this chapter shall be
14 deemed to have engaged in an unfair or deceptive act or practice
15 in the conduct of trade or commerce within the meaning of
16 section 480-2."

17 SECTION 2. Chapter 251, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§251- Peer-to-peer car-sharing surcharge
21 tax. (a) There is levied, assessed, and collected each month a

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1 peer-to-peer car-sharing surcharge tax of \$ _____ per day,
2 or any portion of a day that a shared car is shared pursuant to
3 a car-sharing program agreement.

4 (b) The peer-to-peer car-sharing program shall be
5 responsible for [~~collecting and~~] remitting the surcharge tax to
6 the department, which shall deposit all of the moneys from the
7 surcharge tax into the state highway fund established by section
8 248-8.

9 (c) For purposes of this section:

10 "Car-sharing program agreement" has the same meaning as in
11 section -1.

12 "Peer-to-peer car-sharing program" has the same meaning as
13 in section -1.

14 "Shared car" has the same meaning as in section -1."

15 SECTION 3. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2050.

17

18 INTRODUCED BY: _____

19 BY REQUEST

____.B. NO. _____

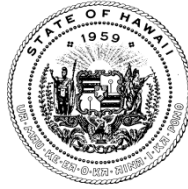
Report Title:

Peer-to-Peer Car-Sharing; Authorized; Department of
Transportation; Surcharge Tax; State Highway Fund

Description:

Authorizes and regulates peer-to-peer car-sharing. Effective
7/1/2050. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 16, 2020
10:00 A.M.
State Capitol, Room 229

H.B. 1833, H.D. 2
RELATING TO PEER-TO-PEER CAR-SHARING

Senate Committee(s) on Transportation, and Commerce, Consumer Protection, and Health

The Department of Transportation (DOT) **supports** H.B.1833, H.D. 2 which will regulate peer-to-peer car-sharing and deposit the peer-to-peer surcharge tax to the State Highway Fund. Car sharing has become more noticeable and prevalent at our airports, including parking lots.

The Airports Division charges a fee for various types of pre-arranged ground transportation services at public airports under Hawaii Administrative Rules 19-20.1, Subchapter 9, in consideration of using state airport facilities for conducting business.

We agree as noted in the proposed language that peer-to-peer car sharing businesses obtain an agreement such as an airport permit and comply with all rules of the Airport Division. In addition, another category must be added under Hawaii Administrative Rule 19-20.1-56 for peer-to-peer car sharing services.

Currently, peer-to-peer car sharing businesses operate under the radar and are not reporting any fees to the Airport Division which is a concerning issue of fairness and level playing fields.

Thank you for the opportunity to provide testimony.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: RENTAL MOTOR VEHICLE SURCHARGE, Add RVST Tax for Peer-to-Peer Rentals

BILL NUMBER: HB 1833, HD-2

INTRODUCED BY: House Committee on Transportation

EXECUTIVE SUMMARY: Authorizes and regulates peer-to-peer car-sharing.

SYNOPSIS: Adds a new chapter to the HRS that regulates peer-to-peer car sharing.

Amends section 237D-6.5, HRS, to change the earmark from the special land and development fund to HTA, and to change the amount from \$3 million to \$5 million.

Adds a new section to chapter 251, HRS, to impose a car-sharing surcharge tax of \$___ per day or portion of a day that a shared car is shared pursuant to a car-sharing program agreement.

EFFECTIVE DATE: July 1, 2050.

STAFF COMMENTS: The proposed measure would add another tax increase and would perpetuate the earmarking of rental motor vehicle and tour vehicle surcharge tax revenues. (This tax is earmarked for the highway fund.) Yes, our highways and bridges need work, and the fuel tax that now feeds the highway fund has proven to be less stable as more and more consumers start using alternative fuel vehicles, electric vehicles, and hybrids. But does that justify bypassing the normal appropriation and budgeting process that also considers sweltering primary schools, underfunded state pensions, or the unique costs of intercollegiate athletics?

Rather than the continual earmarking of revenues, a direct appropriation of general funds to HDOT would be preferable. Earmarking revenues from any tax type for a particular purpose decreases transparency and accountability.

Next, it should be remembered that revenues diverted for a special purpose, in this case to fund highways and bridges, will not be counted against the state's spending ceiling or debt limit and will obscure the state's true financial condition.

The tax is currently an unspecified amount. We would understand if the tax is the same as the rate of Rental Motor Vehicle and Tour Vehicle Surcharge Tax (RVST) that is now imposed upon car rentals. If the tax is a different amount, we would be concerned about how the difference is justified.

Digested 2/21/2020



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: March 15, 2020

TO: Senator Lorraine R. Inouye
Chair, Committee on Transportation
Senator Rosalyn H. Baker
Chair, Committee on Commerce, Consumer Protection, and Health
Submitted Via Capitol Website

FROM: Matt Tsujimura

RE: **H.B. 1833, H.D.2 Relating to Peer-to-Peer Car-Sharing**
Hearing Date: Monday, March 16, 2020 at 10:00 a.m.
Conference Room: 229

Dear Chair Inouye, Chair Baker, and Members of the Senate Committee on Transportation and Senate Committee on Commerce, Consumer Protection, and Health:

We submit this testimony on behalf of Enterprise Holdings, which includes Enterprise Rent-A-Car, Alamo Rent-A-Car, National Car Rental, Enterprise CarShare and Enterprise Commute (Van Pool).

Enterprise **supports** H.B. 1833, H.D.2 which authorizes and regulates peer-to-peer car-sharing in the State. H.B. 1833, H.D.2 creates a new chapter in the Hawaii Revised Statutes to regulate peer-to-peer vehicle sharing in Hawaii.

The evolution of the rental car industry has created new and innovative ways to rent a car. Enterprise supports the evolution of the industry so long as consumer safety and accountability remain the priority. The emergence of the peer-to-peer car-sharing model is a beneficial and innovative model that should be embraced with appropriate rules to allow it to grow in Hawaii. Providing the right structure through legislation will give greater choice to consumers; create more competition within the industry; and allow local car owners to earn extra income – all while creating a fair and equal competitive market for the companies.

H.B. 1833, H.D.2 is a comprehensive bill that includes language regarding consumer safety, insurance and indemnification, airport operations, and taxes and fees. We thank the House Committees on Transportation and Consumer Protection and Commerce for their work on H.B. 1833, H.D.2.

We strongly support the passage of H.B. 1833, H.D.2, to continue the discussion of how best to regulate this innovative new way of providing transportation.

Thank you for the opportunity to submit testimony on this bill.



March 16, 2020

Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Comments on House Bill 1833 HD2

Dear Chair Baker and Chair Inouye,

Thank you for the opportunity to submit comments on House Bill 1833 HD2 Relating to Peer-to-Peer Carsharing.

Getaround is a peer-to-peer carsharing marketplace platform that empowers members to safely share their vehicles with others by the hour and the day. Getaround operates in over three hundred cities globally, and while not currently in Hawaii, we certainly would like to be in the future. Our proprietary connected car technology helps users find, book and unlock nearby vehicles on-demand using their smartphones. Getaround's platform connects people whose cars are sitting unused with people who need to use a car -- giving people access to a pool of shared vehicles. It's the modern equivalent of borrowing a friend or family member's car.

Getaround feels strongly about the importance of creating a legislative framework that creates consumer protections and ensures platforms are held accountable, while also allowing car owners to share their personal vehicles. We feel that the existing Peer-to-Peer Car Sharing Model Act put together by The National Council of Insurance Legislators (NCOIL) through extensive stakeholder participation offers robust measures for consumer safety, transparent pricing, insurance coverage and roadside assistance for every peer-to-peer car sharing user.

The Peer-to-Peer Car Sharing Model Act served as the foundation for HB 1833, which HB 1833 HD2 is based on. However, we believe that the current version of HB 1833 HD2 is not properly aligned with the Model Act and creates additional burdens on car owning residents of Hawaii that seek to share their cars. As an example, Section 4(c) states that that no cars may be shared on a car sharing platform when the shared car owner's motor vehicle insurance policy excludes any coverage required under the chapter. Section 2(d) in HB 1833 HD2 already ensures that the shared car owner and shared car driver are provided adequate coverage during a peer-to-peer car sharing transaction. The language in Section 4(c) ultimately hurts Hawaii residents who own and share their personal motor vehicles by putting the insurance company in charge of deciding whether vehicles can be shared or not. We are respectfully asking for the removal of this section.

Furthermore, HB 1833 HD2 excludes language exempting a peer-to-peer car-sharing program and a shared car owner from vicarious liability. We ask that this language be included in HB 1833 HD2. The language was included in HB 1833 and is also included in the Peer-to-Peer Car Sharing Model Act. This language is consistent with other provisions that are provided to other shared mobility and transportation providers, including rental motor vehicles and should be included in HB 1833 HD2 for parity and fairness.

Getaround is appreciative of the legislature's intent to establish vehicle recall provisions that ensure that our community is safe and protected. We recommend that a peer-to-peer car-sharing program check for vehicle recalls upon initial listing of a vehicle for sharing and then every 15 days in order to align closely with the Peer-to-Peer Car Sharing Program Model Act.

The growth of carsharing nationwide shows consumers want to add carsharing to their transportation options. But it is still a young and emerging industry and a series of regulations that is unbalanced, inflexible, or misaligned with the carsharing model will do far more harm than good.

Getaround supports the adoption of a robust regulatory framework in Hawaii that aligns with the existing Peer-to-Peer Car Sharing Model Act. We appreciate the legislature's interest in this issue and thank you for the opportunity to provide comments on HB 1833 HD2.

Best regards,

A handwritten signature in black ink that reads "Andrew Byrnes". The signature is fluid and cursive, with the first name "Andrew" being larger and more prominent than the last name "Byrnes".

Andrew Byrnes
Deputy General Counsel and Global Head of Public Policy
Getaround, Inc.
andrew.byrnes@getaround.com



Testimony of
 Charles Melton – Senior Public Policy Manager
 Turo Inc., San Francisco, CA

Comments on HB 1833 HD2

March 15, 2020

Chair Baker and Vice Chair Chang of the Senate Committee on Commerce, Consumer Protection, and Health and Chair Inouye and Vice Chair Harimoto of the Senate Committee on Transportation, I respectfully **submit comments** on HB 1833 HD2 on behalf of Turo, an internet-based, peer-to-peer car sharing platform.

Turo is a peer-to-peer car sharing platform that connects personal car owners with those in need of a mobility solution. Through the Turo online marketplace, anyone with the need of a mobility option can obtain the freedom a vehicle can provide. In Hawai'i, our community of car owners share their vehicle with mothers, fathers, neighbors and community members while earning a little extra income to help recover the cost of car ownership.

The foundation of this legislation is HB 1833, which is based on the Peer-to-Peer Car Sharing Program Model Act. The Model Act is supported by the National Council of Insurance Legislators and was agreed upon through extensive stakeholder participation and ensures there are robust measures for consumer safety, transparent pricing, insurance coverage and roadside assistance for every peer-to-peer car sharing user.

HB 1833 HD2 includes language that reaches beyond the agreed upon Peer-to-Peer Car Sharing Model Act. We believe that the current version of HB 1833 HD2 is not properly aligned with the Model Act, and furthermore, in its current version, the legislation includes contradictory language, creates additional burdens on car owning residents of Hawai'i, and creates a new version of legislation that does not align with the Peer-to-Peer Car Sharing Program Model Act laws that have already been adopted in other states, like Colorado and Indiana, among others.

Turo is committed to working with the legislature on this legislation to ensure that it maintains its original intent: creating a legislative framework that aligns with the existing Peer-to-Peer Car Sharing Program Model Act which creates consumer protections, ensures platforms are held accountable, while also allowing car owners to share their personal vehicle, without being restrictive or applying regulations meant other industries onto the new peer-to-peer car sharing industry. We respectfully submit the amendments included below and ask that HB 1833 HD2 be amended in the following sections.

- Removal of Section 4(c) – Exclusions in motor vehicle insurance policies.

§ - 4 Exclusions in motor vehicle insurance policies.

~~(c) No peer-to-peer car-sharing program shall make available through its business platform any shared car when the shared car owner's motor vehicle insurance policy excludes any coverage required under this chapter.~~

This language is problematic as it makes the insurer the sole decider on if a personal vehicle can be shared and leaves the shared car owner, the individual who actually owns the vehicle, at the will of their insurance provider. If this language remains in place, for example, a Hawai`i resident of Kona, who wants to share their vehicle a few days a month to help with their monthly car payments, would not have the right or ability to share their personal vehicle, if their motor vehicle insurance provider excludes coverage for peer-to-peer car sharing. Section 2(D) in HB 1833 HD2 already ensures that the shared car owner and shared car driver are provided coverage for a during a peer-to-peer car sharing transaction (“car-sharing period”). The language in Section 4(c) ultimately hurts Hawai`i residents who own and share their personal motor vehicle and we are respectfully asking for its removal.

- Addition of the provision below:

§ - ___ Consistent with 49 U.S.C. section 30106, a peer-to-peer car-sharing program and a shared car owner shall be exempt from vicarious liability under any state or local law that imposes liability solely based upon motor vehicle ownership.

The language included above was included in HB 1833 and is also included in the Peer-to-Peer Car Sharing Program Model Act. For consistency of state legislative efforts to regulate peer-to-peer car sharing, we are respectfully asking for this language to be added back into HB 1833 HD2. This language should be included for parity and fairness and is consistent with other provisions that are provided to other shared mobility and transportation providers, including the motor vehicle rental industry.

- Removal of the language indicated below regarding the responsibility for equipment:

§ - **10 Responsibility for equipment and shared car.** (a) A peer-to-peer car-sharing program shall have sole responsibility for any equipment, such as a global positioning system or other special equipment that is put in or on the shared car to monitor or facilitate the car-sharing transaction, and shall agree to indemnify and hold harmless the shared car owner ~~or shared car driver~~ for any damage to or theft of the equipment during the car-sharing period not caused by the shared car owner ~~or shared ear driver~~. The peer-to-peer car-sharing program shall have the right to seek indemnity from the shared car driver for any loss or damage to the equipment that occurs during the sharing period.

~~———— (b) No peer-to-peer car-sharing program or shared car owner shall require a shared car driver to make an advance deposit in any form, including an advance charge against the credit card of a shared car driver, for damages to a shared car occurring during the car-sharing period. No peer-to-peer car-sharing program or shared car owner shall require any payment for damages to a shared car occurring during the car-sharing period until after the cost to repair shared car damages and liability therefor is agreed to by the shared car driver or is determined pursuant to law.~~

The language added into Section 10 of HB 1833 HD2 regarding the responsibility for equipment and shared car is contradictory and muddles the original intent of this legislation. In HB 1833 HD2 Section 10(a), there contains contradictory language stating that a shared car driver is held harmless for any damage to a shared car, but also in the same section, a shared car driver can be sought to indemnify for damage caused by the shared car driver. We respectfully ask to maintain the original language of HB 1833 in Section 10.

Further, in Section 10(b) of HB 1833 HD2, language was added that prohibits the collection of an advance deposit from a shared car driver. The language included in Section 10(b) is derived from HB 2036 (L 1988, c 251, pt of §2) which was comprehensive legislation to regulate the Motor Vehicle Rental Industry and the legislation was enacted because, the legislature found that “Existing laws have proven to be ineffective in reducing the potential and existing harm to consumers resulting from current industry practice”. To apply regulations that were created to curtail the abuses of the Motor Vehicle Rental Industry on a completely separate industry inhibits and restricts new entrants.

- Amendment on motor vehicle safety recalls

§ -11 Motor vehicle safety recalls. (a) At the time when a vehicle owner registers as a shared car owner on a peer-to-peer car-sharing program and prior to the time when the shared car owner makes a shared car available for car-sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program shall:

(1) Verify that no safety recalls exist for the make and model of the shared car for which repairs have not been made;

(2) Notify the shared car owner of the requirements under subsection (b); and

(3) Verify every fifteen days that a vehicle available for use through a peer-to-peer car-sharing program is not subject to an open safety recall for which repairs have not been made.

(b) A shared car owner shall:

(1) Not make the shared car available for use through a peer-to-peer car-sharing program if the shared car owner has received notice of a safety recall on the shared car, until the safety repair has been made;

(2) Remove any vehicle listed for use through a peer-to-peer car-sharing program upon receipt of notice of a safety recall as soon as practicably possible but no longer than seventy-two hours after receipt of notice of a safety recall; and

(3) Notify the peer-to-peer car-sharing program of a safety recall within seventy-two hours of receipt of a safety recall when the vehicle is in the possession of a shared car driver so that the peer-to-peer car-sharing program may notify the shared car driver and the shared car may be removed from use until the shared car owner effects the necessary safety recall repair.

Turo and our peer-to-peer car sharing community *accept the language* above related to vehicle safety recalls including the checking for vehicle recalls every 15 days. The current 72 hours provision for continuous safety recall checks in the legislation is too restrictive, and we believe the Office of Consumer Protection (OCP) will agree with that, but in the spirit of compromise, we believe 15 days is fair and reasonable. We are appreciative of the legislature's intent to establish vehicle recall provisions that ensure that our community is safe and protected while also having language that closely aligns with the model Peer-to-Peer Car Sharing Program Model Act.

- Removal of Section 14 – Additional mandatory charges prohibited.

~~§ 14 Additional mandatory charges prohibited.~~ The daily and periodic cost to the shared car driver shall include the amount of each charge that is required as a condition to the peer-to-peer car sharing program agreement. The peer-to-peer car sharing program shall disclose any quotations of price, including all quotations contained in advertising or through online quotations and all payments that a shared car driver is required to make, as part of the car sharing program agreement. The language included in Section 14 is derived from HB 2036 (L 1988, c 251, pt of §2) which was comprehensive legislation to regulate the Motor Vehicle Rental Industry and the legislation was enacted because, the legislature found that “Existing laws have proven to be ineffective in reducing the potential and existing harm to consumers resulting from current industry practice”. Again, to apply regulations that were created to curtail the abuses of the motor vehicle rental industry on a completely separate industry inhibits and restricts new entrants.

One of the greatest benefits of peer-to-peer car sharing for consumers is clarity in pricing. Fees are transparent and outlined in advance of confirming (and remitting payment for) a reservation. All associated costs for peer-to-peer transactions are negotiated between Hosts and Guests in advance of the reservation. Guests are wholly aware of the daily rate as set by the Host, applicable sharing fees and protection package charges, and the associated cost(s) of selected extra options (if any) offered by the Host. The peer-to-peer car sharing community agrees with the need for transparency and disclosure of fees for every transaction.

In the original text of HB 1833, and it remains intact in HB 1833 HD2, Section 8, there is the inclusion of language regarding required disclosures and notices including: “Provide the shared car owner and shared car driver with the terms and conditions of the car-sharing agreement; disclose to the shared car driver any costs or fees that are charged to the shared car driver under the car-sharing agreement; disclose to the shared car owner any costs or fees that are charged to the shared car owner under the peer-to-peer car-sharing agreement.” HB 1833 HD2 and the Peer-to-Peer Car Sharing Model Act already includes language to ensure there is price transparency and protections for consumers. The language included in Section 14 is duplicative of other provisions in HB 1833 HD2 and we are respectfully asking for its removal.

- Removal of Section 15 – Civil penalties.

~~§ 15 Civil penalties.~~ Any person who violates or attempts to violate any provision of this chapter shall be deemed to have

~~engaged in an unfair or deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.~~

The language included in Section 15 is derived from HB 2036 (L 1988, c 251, pt of §2) which was comprehensive legislation to regulate the Motor Vehicle Rental Industry and the legislation was enacted because, the legislature found that “Existing laws have proven to be ineffective in reducing the potential and existing harm to consumers resulting from current industry practice”. Once again, to apply regulations that were created to curtail the abuses of the Motor Vehicle Rental Industry on a completely separate industry inhibits and restricts new entrants.

Furthermore, in the creation of the Peer-to-Peer Car Sharing Program Model Act, there was a negotiated process with the National Council of Insurance Legislators. Through this negotiated process, there were discussions about adding Unfair Trade Practice language into the Model Act. Ultimately, NCOIL, which included the participation of the motor vehicle rental industry, decided not to add any provisions regarding unfair trade practices. Currently, the Hawaii Revised Statutes already contain provisions related to unfair trade practices under HRS 480 to anyone doing commercial activity in the state. Peer-to-peer car sharing programs recognize and acknowledge that these provisions are already established in statute and apply to peer-to-peer car sharing programs. We respectfully ask for the language to be removed as there is already existing law, under HRS 480, that applies to commercial activity in the state, including to peer-to-peer car sharing programs.

- Adjustment of language related to the peer-to-peer car-sharing surcharge.

Turo supports the language below establishing a clear and transparent manner for the collection and the remittance of the peer-to-peer car-sharing surcharge. We are putting forward this language, so that it addresses both the concerns of the peer-to-peer car sharing industry and amendatory language proposal put forward by the Hawaii Department of Taxation in previous testimony on this legislation. We present this language, in the spirit of compromise, between the peer-to-peer car sharing industry and the Hawaii Department of Taxation on the peer-to-peer car-sharing surcharge.

SECTION 3. Chapter 251, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§251- Peer-to-peer car-sharing surcharge tax. (a) There is levied, assessed, and collected each month a peer-to-peer car-sharing surcharge tax of \$ _____ per day, or any portion of a day that a shared car is shared pursuant to a car-sharing program agreement.

(b) The peer-to-peer car-sharing program shall be responsible for collecting and remitting the surcharge tax to the department, which shall deposit all of the moneys from the surcharge tax into the state highway fund established by section 248-8.

(c) Any car-sharing program agreement to which the surcharge provided for in this Section [_____] for which a peer-to-peer car sharing program collects and remits the surcharge tax in accordance with subsection (b) of this section is not subject to

and the peer-to-peer car sharing program shall not be liable for either the tax levied under 251-2(a) for rental motor vehicles rented or leased by rental motor vehicle lessors or the tax provided for pursuant to Section 251-2.5 on car sharing organizations.

(d) A peer-to-peer car sharing program shall provide the Department of Taxation no case more frequently than monthly information regarding peer-to-peer car sharing activity only as provided for in this Section. In no case shall a peer-to-peer car sharing program be required to provide any data or information pursuant to its obligations under this Section in any manner that would contravene any obligations that it has under any applicable national law, state or local law rule or regulation or any provision of any contractual obligation in existence on the date on which this Act becomes law. Any data of the peer-to-peer car sharing program will be anonymized and otherwise de-identified and will include only the following to the extent available: (1) the number of days or portions of days during which a shared vehicle was shared during the preceding month or other period if the Department requires reporting less frequently than on a monthly basis; (2) the total amount of proceeds from the surcharge paid by the shared vehicle driver and collected and remitted by the peer to peer car sharing program with respect to each car sharing period.

For purposes of this section:

"Car-sharing program agreement" has the same meaning as in section -1.

"Peer-to-peer car-sharing program" has the same meaning as in section -1.

"Shared car" has the same meaning as in section -1."

- HB 1833 HD2 contains language pertaining to operating at any airport in the State. Turo is willing to work with the legislature on this language to ensure that this provision is practical for both the Airports Division of the Department of Transportation and also Hawai'i residents who share their personal vehicle.

- There has been a previously proposed amendment to call for peer-to-peer car sharing platforms to maintain insurance in an amount in-line with coverage required of Transportation Network Companies (TNCs). There are substantial differences between peer-to-peer car sharing platforms and TNCs, the most relevant of which relates to insurance. TNCs are never held to be deemed the owner of the vehicle used in a TNC transaction, whereas peer-to-peer platforms assume the liability of the vehicle owner throughout the car sharing period. In fact, TNCs are only required to provide this level of coverage while a passenger is in the vehicle. Without a passenger, TNCs are required to maintain the same statutory minimums as every other driver in Hawaii. Furthermore, such a provision is beyond the agreed to legislation of the Peer-to-Peer

Car Sharing Program Model Act that was established by the National Council of Insurance Legislators. We do not support applying standards for a completely separate industry onto peer-to-peer car sharing, and are willing to work with the legislature to discuss this issue.

Turo and our community of Hawai'i peer-to-peer car sharing residents are appreciative of the legislature's interest in protecting consumers while also establishing a comprehensive regulatory framework for peer-to-peer car sharing that supports Hawai'i residents who share their personal vehicles. Thank you for the opportunity to provide comments on HB 1833 HD2.

LATE



March 16, 2020

Chairwoman Lorraine Inouye
Senate Committee on Transportation
Chairwoman Rosalyn Baker
Senate Committee on Commerce, Consumer Protection and Health
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

Re: H.B. 1833 HD2 – Peer-to-Peer Car Sharing

Aloha Chairwomen Inouye and Baker:

Avail is a peer-to-peer car sharing company that is backed by Allstate. It allows car-owners to share their cars with drivers in need of convenient, affordable transit options. Peer-to-peer car sharing is a way for individual car owners to earn extra income and for individuals to access a new transit option. Car sharing gives Hawaii residents a new solution to longstanding mobility needs, including offering transportation where public transit is not an option and consumer friendly alternatives to traditional car rental companies. By using existing personal vehicles, car sharing has been shown to reduce traffic congestion as well.

We write today to discuss H.B. 1833 HD2 on peer-to-peer car sharing, which is set to be heard by the Senate Committees on Transportation and Commerce, Consumer Protection and Health. We are very appreciative of your interest in this pro-consumer and innovative business platform, however we believe that the bill as currently amended creates numerous inappropriate regulations and overly burdensome requirements that will prevent Hawaii residents from benefiting from this innovative and economically beneficial transportation alternative. We support enacting appropriate regulation of the peer-to-peer car sharing industry such as the National Council of Insurance Legislators (NCOIL) model bill which has been endorsed by a range of stakeholders including the peer-to-peer car sharing industry, insurance industry and car rental companies.

In its current form H.B. 1833 HD2 diverges from many of the core components of the NCOIL model including industry agreed upon insurance regulations and consumer protections. The following areas are problematic, and we urge the committees and legislature to amend as needed to more closely follow the NCOIL model.

Vehicle Recalls

The section relating to recalls would require platforms like Avail to check our entire inventory for active recall notices every seventy-two hours. We are committed to ensuring all shared vehicles are safe, but this requirement is nearly impossible to comply with given the number of vehicles we would have to check every three days and the fact that the NHTSA database on recalls requires inputting each vehicle separately – a task that is overly cumbersome and time consuming. We recommend following the appropriate recall standards set forth by the NCOIL model law.

Insurance and Liability

The NCOIL model specifically states that an insurer has the right to not cover claims related to sharing of a personal vehicle, which is why the model also makes sure that the platform provides primary coverage during these activities. The bill as drafted would prevent vehicle owners from sharing their vehicle if their insurer does not provide coverage. This is both unnecessary and anti-competitive. An insurer has the right not to cover this activity, but we are committed to ensuring vehicle owners and vehicle drivers are protected through a number of different policy options. We highly recommend eliminating this language and follow the liability requirements under the NCOIL model.

Additionally, we recommend reinserting the provision from the initial draft of H.B. 1833 protecting our industry from vicarious liability. This is also a provision found in the NCOIL model and we believe is necessary to establish fairness as exemption from vicarious liability is afforded to other transportation industries including the rental car companies.

Deceptive Practices

We urge the committees to remove the unnecessary language that would expose the peer-to-peer car sharing industry to large civil penalties by applying unfair and deceptive trade practice laws to our activities. Current state laws related to unfair and deceptive practices already apply thus adding the language in Section 15 is redundant and potentially confusing.

Additional Mandatory Charges Prohibited

The NCOIL model provides appropriate regulation pertaining to the information peer-to-peer car sharing platforms must disclose to our customers and we believe that language should be the prevailing regulatory framework. The bill as drafted would create additional disclosure requirements as well as apply language prohibiting additional charges that was designed for rental car companies. Our customers are shown clear and concise cost breakdowns up front thus placing such requirements is unnecessary and not applicable to our industry.

Deposit Prohibitions

We urge the committees to consider removing the provision in Section 10 that prohibits peer-to-peer car sharing platforms from collecting an advanced deposit when customers use a shared vehicle. Placing a pending charge at the time of confirming the borrowing of vehicle is standard practice that allows the platform and the shared vehicle owner to be protected from fraud and potential unforeseen damages. These provisions were originally enacted to combat abuses by the car rental industry and should not be applied to our emerging business model.

Taxes

The car sharing industry understands that our activities will need to be taxed at some level, but we respectfully urge the committees to consider the differences in how a peer-to-peer car sharing operation works as compared to traditional rental car activities. Our business model is a three-party activity involving the vehicle owner, vehicle driver and the platform. People sharing their vehicles have already paid sales tax on the purchase of their vehicles, registration and titles fees and will be required



to pay state and federal income tax on any money generated from sharing their vehicle. By contrast the car rental companies do not pay sales tax on the purchase of their vehicles, are able to pass their taxes and fees onto the consumer and enjoy corporate tax breaks that are not available to individuals. We believe recognizing these differences and not taxing peer-to-peer car sharing similarly to car rental companies is essential in creating a level playing field, fostering innovation and providing much needed transportation alternatives.

Extreme Liability Levels

During previous discussions related to peer-to-peer car sharing legislation some have argued that our industry should be subject to the same liability limits currently imposed on the transportation network companies. We strongly disagree with this presumption as their activity is strictly commercial in nature and thus dramatically different than the activities of sharing and borrowing a shared vehicle. The NCOIL model provides the appropriate liability structure for the peer-to-peer car sharing industry and enjoys the support of the insurance industry. We are committed to protecting all parties involved in these sharing activities but applying commercial level liability limits is not only inappropriate but would also create a competitive disadvantage with the car rental companies who do not have to carry limits that even remotely resemble those which we are agreeing to.

Thank you again for considering our comments and we look forward to working with you as this bill continues through the legislative process.

Mahalo,

Danielle Lenth

Danielle Lenth
Director of External Relations
Avail/Allstate

**TESTIMONY OF NAHELANI WEBSTER FOR THE HAWAII ASSOCIATION
FOR JUSTICE (HAJ) IN OPOSITION TO H.B. 1833 HD2**

Monday March 16, 2020
10:00 AM
Room 229

To: Chair Inouye, Chair Baker and Members of the Senate Committees on
Transportation, Commerce, Consumer Protection, and Health:

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. 1833 HD2, Relating to Peer-to-Peer Car Sharing. We appreciate the efforts to legislate in this important area and offer our testimony in opposition to the significant gaps in insurance coverage, which this bill would create in addition to placing the State under an unnecessary additional burden to financially cover those without insurance.

The rise of peer-to-peer car sharing presents unnecessary risks for our residents and visitors that must be addressed. When the peer-to-peer company does not adequately provide insurance coverage, then the State may be liable for picking up the medical expenses for those injured in a car accident while using a peer-to-peer program. A peer-to-peer company should be defined and held to the same standards as other technology platforms currently in statute, such as Transportation Network Companies (TNCs), who are currently mandated to provide million-dollar coverage.

The current definition of a “peer-to-peer car-sharing platform” is so broad that it could encompass: car rental companies, postings on craigslist, and/or Facebook, as well as newspaper advertisements, which are all facilitating a peer-to-peer car-sharing program. Passing this legislation as currently drafted would lessen the insurance

requirements for car rental companies and others, placing our everyday consumers, residents, and tourists at far greater risk and potential financial burden than they realize. Where coverage is not available, the State is then on the hook. This is not something we want our taxpayer's to be unnecessarily paying.

There is also the questions of the exemption in place on page 9, lines 11-15, for "business use". If your personal policy holds an exemption for "business use" and you use a peer-to-peer car-sharing program for the use of a vehicle from the airport to your office, then that could be considered a business use and you would not be insured. This creates a huge gap in coverage and an area of grey whereby the consumer needing coverage is unsure, or finds out later that they were not covered.

It should be the responsibility of the peer-to-peer company to carry adequate insurance coverage, the same way Transportation Network Companies are mandated to provide coverage. Therefore, we propose adding the following language:

"In addition to any other insurance coverage required by this chapter, a peer-to-peer car sharing program shall maintain insurance in an amount of at least one million dollars that provides coverage for the program's liability for an act or omission of the program that is the proximate cause of death, bodily injury, or property damage to any person in any one accident because of the operation of a shared vehicle through the program."

H.B. 1833 HD2 only requires the car sharing company to ensure a policy is available that meets the statutory minimum and does not exclude car sharing. That is certainly no guarantee of coverage to persons that may be injured. The statutory minimum coverage reflects a compromise between the needs of accident victims and the

financial difficulties faced by cash-strapped families. There is no reason for companies deriving substantial profit to be subject to the same modest requirements. For these national companies, the low rate of insurance coverage that would be required from this bill amounts to a windfall at the expense of residents and visitors who may sustain injury.

Requiring private entities to carry adequate insurance coverage for residents and visitors is in the public interest and supports the tourism and other industries in the State. H.B. 1833 HD2 in its present form does not provide that.

Thank you for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.