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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 9, 2020

TO: Representative Roy M. Takumi
Chair, Committee on Consumer Protection & Commerce
Submitted Via Capitol Website

FROM: Mihoko Ito

RE: **H.B. 2002, HD 1 - Relating to Transportation Network Companies**
Hearing Date: Monday, January 10, 2020 at 2:00 p.m.
Conference Room: 329

Dear Chair Takumi and Members of the Committee:

We offer this testimony on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is the international trade association that represents more than 100 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment screening, tenant screening and collection services.

CDIA **submits comments** on H.B. 2002, HD1, Relating to Transportation Network Companies. CDIA supports the amendment made in the H.D.1 version of this bill to eliminate reference to trade association tied to the background check requirement. The prior language was problematic because it limits the availability to do background checks to a specific trade association which is not a regulatory body. All background screeners are governed by the Fair Credit Reporting Act (FCRA) and must be compliant with the FCRA.

For these reasons, we respectfully support the bill in its current form. Thank you very much for the opportunity to testify on this measure.

Testimony of
Roberts Hawaii, Inc
on
H.B. No. 2002, H.D.1
Relating to Transportation Network Companies
Committee on Consumer Protection & Commerce
Monday, February 10, 2020, 2:00 p.m.
Room 329

My name is Roy Pfund, President of Roberts Hawaii and I am testifying in opposition to H.B. No. 2002, H.D.1, which proposes to establish a statewide permitting process for transportation network companies.

We need to step back and take a comprehensive look at what this legislation is attempting to create for the TNC companies, namely Uber and Lyft. These two TNC companies want to monopolize the taxi and ride sharing transportation market in Hawaii by passing legislation that effectively provides them with privileged operating advantages that the taxis and PUC regulated passenger carriers do not have.

What are these privileged operating advantages?

1. The ability to operate outside of existing Motor Carrier Act definition of a contract carrier. The TNC drivers fall squarely under the legal definition of a contract carrier thus should be regulated by the PUC.
2. The ability to operate with insurance coverage standards that are less than comparable public liability coverage for taxis and PUC regulated operators
3. The ability to charge the public any fare amount 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 fare structures that taxi and PUC regulated operators must follow and must seek approval to increase.
4. The ability to operate outside of the scope authority of the Consumer Advocate, the State Tax Office and the Department of Transportation regulatory bodies that would help to ensure that the TNC contract drivers are paying comparable fees and taxes that the taxi and PUC companies must pay.

Uber and Lyft's IPO's have provided them with billions of dollars to further expand their hold on Hawaii's transportation market. This money will be used to continual squeeze the local taxi and PUC companies out of business with the proposed unfair privileged operating 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 once they have driven the local companies out of business. We need to prevent TNC's from gaining privileged operating advantages by opposing this bill.

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

Testimony of
Hawaii Passenger and Property Carriers Association
on
H.B. No. 2002, H.D.1
Relating to Transportation Network Companies
Committee on Consumer Protection & Commerce
Monday, February 10, 2020, 2:00 p.m.
Room 329

My name is Deems Narimatsu, representing the Hawaii Passenger and Property Carriers Association (HIPPCA), testifying in support of H.B. No. 2002, H.D.1, with suggested amendments. H.B. No. 2202, H.D. proposes to establish a regulatory structure for transportation network companies (TNC). However, that regulatory structure needs clarification and revision for the protection of consumers.

Like motor carriers and taxis, TNCs engage in the transportation by motor vehicle of passengers for compensation. H.B. No. 2002, H.D.1, declares that a transportation network company and the transportation network company drivers as independent contractors” do not have an employer-employee relationship and establishes the requirements for the regulation of TNCs and TNC drivers.

HIPPCA requests that the following amendments be made to H.B. No. 2202, H.D.1, to clarify ambiguities that the bill creates and to strengthen the regulatory requirements.

1. Section -3 declares that: *“Solely for the purposes of this chapter, neither a transportation network company nor a transportation network company driver shall be deemed to be a common carrier by motor vehicle, a contract carrier by motor vehicle, a motor carrier as defined in section 271-4, a taxicab, or a for-hire vehicle service.”*

However, under the Motor Carrier Law (Chapter 271), a "contract carrier by motor vehicle" means any person that engages in transportation by motor vehicle of passengers... for compensation ...under continuing contracts with one person or a limited number of persons either: for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served..." H.B. No. 2002, H.D.1 declares that a TNC driver is *“an independent contractor, and not an employee of a transportation network company”* As an independent contractor, the driver would be considered *“contract carrier by motor vehicle”* under the Motor Carrier Law and is required to have a general excise tax license and be regulated by the PUC.

Section -3 should be deleted or it and Chapter 271 revised to remove any ambiguities.

2. Add to the requirements for a TNC driver listed in H.B. No. 2002, H.D.1:

- A copy of the applicant's current general excise tax license;
 - The individual's certified abstract from the traffic violations bureau; and
 - A certificate from a physician who is selected by the individual which attests that the individual is free of any known medical condition that would put a passenger at risk.
3. Require a TNC to conduct a criminal history background check of each driver applicant in accordance with section 846-2.7, which provides for the performance of criminal history background checks by the Hawaii Criminal Justice Data Center, and allows the TNC to pass on the cost of the criminal history record checks to the applicant. Section 846-2.7 requires the TNS to notify the driver applicant that the applicant is subject to a criminal history record check, which includes retention of fingerprints by the criminal justice data center and submission to the Federal Bureau of Investigation for national criminal history record check. (Consider inserting § -14 of H.B. No. 2463)

With these amendments, we support H.B. No. 2002.

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

HB 2002: WRITTEN TESTIMONY OF TRACI LEE OF LYFT
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Feb. 10, 2020 2:00PM in House conference room 329.

Chair Takumi, Vice Chair Ichiyama, 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. Lyft **supports, if amended**, House Bill 2002 HD1, which creates a statewide regulatory structure for ridesharing that will allow Lyft to expand throughout Hawai'i.

Lyft was founded in 2012 with the mission of reconnecting communities through better transportation and making 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. We currently operate at six airports across the four islands, as well as at Honolulu Harbor. Lyft service enhances transportation options for locals and tourists alike provides people another transportation choice. As of this year, 46 states across the country have passed statewide rideshare legislation, like HB 2002 HD1, that regulates Lyft in a safe and comprehensive manner. Most recently, Vermont and Louisiana were the 45th and 46th states, respectively, to pass such legislation regulating transportation network companies ("TNCs"). We hope that Hawai'i can join other states in allowing consumers to have the ability of choosing Lyft across the islands.

We believe it is valuable that students at UH Manoa or Kapiolani Community College, or any of the many universities on the islands can get safe rides home, that seniors can continue to have the freedom that they once had when they were able to drive themselves around, with the same level of service and regulatory requirements from Waikiki to Kapolei, from Hilo to Kona, or any of the more than 350 major cities across the nation where they can open the app and request a ride. Lyft provides a transportation option for communities that are traditionally underserved by other forms of transit, as demonstrated by the fact that 51% of rides in Hawai'i start in low-income areas. People like the service because they know they are going to get seamless, affordable, and reliable transportation.

In fact, at Lyft, safety is our top priority. Our goal is to make every ride safe, comfortable, and reliable. Our riders use Lyft because they feel safe with drivers, which is a product of this commitment.

Before drivers can accept rides on the Lyft platform they must undergo a mandatory local, state, and national background check conducted by Checkr, which is the leading provider of background checks across the country. Checkr is accredited by the National Association of Professional Background Screeners, which requires a rigorous audit of its procedures and policies by an independent auditor appointed by the Background Screen Credentialing Council (BSCC). Once drivers pass the initial screenings and are approved to drive on the Lyft platform, they are then subject to annual background and driving record checks. Our standards for annual checks are the same as the initial checks, and are performed at least once a year. Throughout the year, Lyft also conducts continuous criminal monitoring and continuous driving record checks that provide Lyft with immediate notification of any disqualifying criminal convictions or driving offenses. These continuous checks allow Lyft to identify unsafe drivers and remove them from the platform as soon as a violation of Lyft's safety standards is detected. Any driver who does not pass the initial, annual and continuous screenings is barred from our platform.

Lyft also contributes to safer streets by significantly reducing the instances of impaired driving. In Hawai'i, 56% of Lyft passengers are less likely to drive substance impaired to the availability of Lyft.

But what really distinguishes Lyft is how we utilize technology to serve as a transportation planning partner. Across North America, we recognize that first- and last-mile connections to transit, late-night service and suburban circulator services are among the most challenging services for agencies to efficiently operate. To help address these needs, Lyft has partnered with 70+ cities and transit agencies to deliver innovative on-demand mobility programs that are closing first/last-mile gaps to regional transit, extending transit coverage, and improving access. From late-night jobs access service in Washington, DC to suburban transit connection services in Monrovia, CA, Lyft has worked with civic partners to build programs that improve access to transit and tackle transportation equity barriers head-on.

We are proud that Lyft is more than just a ridesharing application-- it is also a unique and flexible economic opportunity that allows anyone with a car to be an entrepreneur who can set a schedule according to their terms. In fact, almost 94% percent of Lyft drivers in Hawai'i drive less than 20 hours per week. The Lyft driver community is made up of retirees, single parents, students, folks trying to get around, and families looking to earn extra income. In Hawai'i, Lyft drivers span a diverse cross-section of the community-- 21% of drivers are veterans, 26% are over the age of 50, 22% are female, and 13% are students.

Along with these community and economic benefits, we believe that Lyft is contributing to a more sustainable Hawai'i. Indeed, over 80% of cars on the road have only one occupant. 25% of Lyft take public transit at least once a week, and 66% of non-car owners say that Lyft has impacted their decision not to own or lease a personal vehicle. By getting a Lyft instead of driving their cars, Hawaiians are not just saving time, they

are reducing congestion, freeing up parking, making more efficient use of existing roads, and with this bill, supporting sustainable transportation infrastructure.

Since 2018, all Lyft rides have been carbon neutral, and Lyft is now a fully carbon neutral company. We not only acknowledge the immediacy of climate change, but also embrace our role in combating climate change by accelerating the transition to a shared, multi-modal, and electric future. The largest impact we can have environmentally is to shift the cars driving on our platform to electric vehicles. In Seattle, Portland, and Atlanta, we recently launched Green Mode in our app in , which gives riders the ability to choose clean vehicles. These efforts will create financial savings opportunities for our driver community and a cleaner transportation solution for everyone on the platform. We are continuing to work with key stakeholders in cities throughout the country to break through barriers to electric vehicle adoption.

Statewide legislation is a path towards providing consumers, drivers and visitors a consistent experience with Lyft. Through HB 2002 HD1, we urge this committee to support establishing the 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.

Lyft does have some amendments that are respectfully requested to HB 2002 HD1, which are attached to this testimony. Thank you for your consideration of Lyft's testimony in support, if amended, of HB 2002 HD1.

Lyft Suggested Amendments to HB 2002 HD1

Lyft offers the following suggestions for changes to HB 2002 HD1:

- In Section 2, Lyft suggests amendments to remove language that would be duplicative of that covered in the audit provision in Section 14.

§2 Director of transportation; authority.

The director shall have full authority to:

(1) Enforce this chapter and any rules relating to transportation network companies and transportation network drivers;

(2) Investigate the actions of any person or organization acting in the capacity of a transportation network company driver; and

~~*(3) Inspect the records of a transportation network company to verify that the company complies with the requirements of this chapter.*~~

- In Section 5, Lyft suggests amendments to remove language that is duplicative. The director already has the power to enforce the entire chapter under Section 2.

§5 Fare transparency.

(a) If a fare is collected from a rider, the transportation network company shall disclose the fare or fare calculation method to the rider on its website or within the online-enabled technology application service before the beginning of the prearranged ride. If the fare is not disclosed to the rider before the beginning of the prearranged ride, the rider shall have the option to receive an estimated fare before the beginning of the prearranged ride.

~~*(b) The director shall have full authority to implement this section.*~~

- In Section 7, Lyft suggests amendments to clarify language used regarding TNC collection of vehicle information. The term “certified” is a legal term and would require TNCs to attest to the truth of the information, under penalty of perjury. Instead, the required collection of such information should be deemed sufficient to verify vehicle eligibility.

§7 Transportation network company vehicles; certification.

*(a) No vehicle may be used by **on** a transportation network company's digital*

network unless the company has collected the following information certified, for each vehicle:

- (1) The vehicle identification number;*
- (2) The registered owner's full legal name;*
- (3) Proof of registration for the motor vehicle in the name of the driver;*
- (4) The license plate number and expiration date;*
- (5) A copy of the Proof of current Hawaii vehicle safety inspection certificate and date of the annual inspection for the motor vehicle; and*
- (6) Proof of insurance.*

(b) Annually, a transportation network company shall request updated information to ensure that each vehicle used on the company's digital network has current proof of registration and a current Hawaii vehicle inspection certificate the driver has renewed the vehicle's annual registration and passed the annual safety inspection. The A transportation network company shall suspend a driver's access to its digital network or software application service upon discovery that the vehicle a driver is utilizing on the digital network does not meet the requirement of this paragraph. of a driver's failure to renew the vehicle's annual registration or vehicle safety inspection. Access to its digital network or software application service may be restored upon the driver's submission of documents confirming the renewal of the vehicle's annual registration and passing the current Hawaii vehicle inspection certificate annual safety inspection.

(c) No vehicle may be recertified unless all outstanding penalties assessed against the driver operating the vehicle being recertified are paid in full to the director.

(d) A transportation network company shall suspend the private transportation driver's access to its digital network or dispatch system upon discovery of a private transportation driver's failure to timely renew the annual registration or pass the annual motor vehicle safety inspection.

(e) The director shall have full authority to implement this section.

- In Section 11(d), Lyft suggests a minor technical amendment.

§11 Transportation network company driver requirements.

(d) A transportation network company shall not be deemed to control, direct, or manage the transportation network company vehicles or transportation network company drivers that connect to its digital network, unless a written contract expressly provides otherwise

- In Section 12, Lyft suggests an amendment to capture bad faith misrepresentations. Additionally, Lyft is already subject to section 480-2, so we removed paragraph (b) as an individual can bring suit under that act. Further, paragraph (c) is duplicative of Section 2, above.

§12 Unlawful operation; revocation or suspension or registration; suits by persons injured.

(a) ~~The director may revoke or suspend the registration of a transportation network company upon determining that the company has:~~

~~(1) Engaged in unfair or deceptive business practices prohibited by section 480-2;~~

~~(2) Engaged in any dishonest, fraudulent, or deceitful act;~~

~~(3) Intentionally misrepresented any material fact in obtaining registration; or (3)(4) Violated any of the provisions of this chapter.~~

~~(b) Any person who is injured by any unfair or deceptive act or practice prohibited by section 480-2 or by any provision of this chapter may bring proceedings to enjoin the unlawful practices and shall be awarded reasonable attorney's fees together with the costs of suit.~~

~~(c) The director shall have full authority to implement this section.~~

- In Section 15, Lyft suggests an amending and striking certain language to streamline authority in accordance with Hawaii's Administrative procedures Act for administrative hearings.

§15 Complaints; investigation and examination.

~~(a) Any person having reason to believe that this chapter or the rules adopted pursuant thereto have been violated, or that the registration of a transportation network company under this chapter should be suspended or revoked, may file a written complaint with the director setting forth the details of the alleged violation or the grounds for suspension or revocation.~~

~~(b) In investigating any specific complaints against a transportation network company the director shall have full authority to conduct any investigations, examinations, and hearings conducted in accordance with Chapter 91 of any violations or complaints arising from the operations of transportation network companies or a specific complaint against a transportation network company driver. The director may:~~

~~(1) Direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about the operations of a transportation network company or complaint against a driver;~~

~~(2) Direct, subpoena, or order the production of books, accounts, files, and other documents the director deems relevant to the inquiry;~~

~~(3) Interview the officers, directors, employees, drivers, independent contractors, agents, and customers of the company subject to this chapter; and~~

~~(4) Hold hearings.~~

~~(c) To carry out the purposes of this section, the director shall have full authority to:~~

~~(1) Retain attorneys, accountants, or other professionals and specialists;~~

~~who may be exempt from chapter 76, as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations; and~~

~~(2) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the company or person subject to this chapter.~~

~~(d) The director shall have full authority to charge an examination or investigation fee, as established by rule, based upon the cost per hour per examiner for all transportation network companies and persons subject to this chapter who are examined or investigated by the director.~~

~~(e) Unless otherwise provided by chapter 92F, the government records of any investigation or examination arising from a complaint of a violation of this chapter shall be made public only after a hearing.~~

- In Section 16, Lyft suggests the following amendments to the effective date of certain sections.

§ 16 Uniform statewide regulation.

(a) This chapter shall apply uniformly throughout the State and in all political subdivisions of the State.

(b) This chapter shall supersede any ordinance or other rule adopted by a political subdivision that specifically governs transportation network companies, transportation network company drivers, or transportation network company vehicles, including those adopted before the effective date of this chapter."

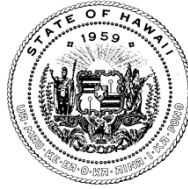
SECTION 3. Act 236, Session Laws of Hawaii 2016, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect upon its approval; provided that section 2 of this Act shall take effect on September 1, 2016[~~;~~ provided further that this Act shall be repealed on September 1, 2021]."

SECTION 4. Statutory material to be repealed is bracketed and stricken.

SECTION 5. This Act shall take effect ~~upon its approval~~ July 1, 2050.

DAVID Y. IGE
GOVERNOR



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

February 10, 2020
2:00 P.M.
State Capitol, Room 329

H. B. 2002, H.D. 1
RELATING TO TRANSPORTATION NETWORK COMPANIES

House Committee on Consumer Protection & Commerce

The Department of Transportation (DOT) **supports** H.B. 2002 H.D. 1 which establishes requirements and permitting procedures for transportation network companies operating in the State.

The DOT believes transportation options are a good thing for the communities we serve, and that the demand is apparent. The DOT also believes the regulations the bill provides will ensure the public is safe using these options.

The DOT currently runs statewide motor vehicle enforcement programs and is confident it can manage an oversight program on transportation network companies, which is similar to other State's that issue permits and conduct audits that ensure proper documentation and passenger safety.

Thank you for the opportunity to provide testimony.



Testimony of Tabatha Chow, on behalf of Uber Technologies, Inc., regarding HB 2002, HD 1

February 10, 2020

To: Chairman Roy Takumi and Members of the House Committee on Consumer Protection and Commerce:

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 regarding HB 2002 HD 1 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.

HB 2002 HD 1 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. HB 2002 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 the initial HB 2002 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.

This version of the initial HB 2002 bill is very similar to the bill that is currently in conference committee; namely, HB 1093, HD 2, SD 1. However, this bill also contains some changes that were discussed during the interim last year with both TNCs and the Department of Transportation (DOT). The primary roles of the DOT are to issue permits and to do an annual audit.

However, the Committee on Transportation made some amendments reflected in the HD 1 which Uber is in the process of analyzing and cannot at this time wholeheartedly support these amendments until the analysis is completed.

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, flowing script.

Tabatha Chow
Senior Operations Manager
Uber Hawaii