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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Judiciary
and
Senate Committee on Ways and Means**

**Tuesday, April 6, 2021
9:55 a.m.
Via Videoconference**

**On the following measure:
H.B. 333, H.D. 3, S.D. 1, RELATING TO PEER-TO-PEER CAR-SHARING**

WRITTEN TESTIMONY ONLY

Chair Rhoads, Chair Dela Cruz, and Members of the Committees:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (DCCA) Office of Consumer Protection (OCP).

The OCP appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) authorize peer-to-peer car-sharing; and (2) establish the peer-to-peer car-sharing surcharge tax.

The business model of peer-to-peer car rental differs markedly from that of the existing traditional car rental, which Hawaii Revised Statutes (HRS) chapter 437D currently regulates. Consequently, the OCP believes that creating a new chapter governing peer-to-peer car sharing in Hawaii is a sensible legal adaptation to address this new business model.

While S.D. 1 attempts to regulate the peer-to-peer industry, the OCP believes that it does so inadequately. In this regard, the OCP offers several amendments in the enclosed proposed S.D. 2, which it believes will better protect consumers.

Insurance Coverage

Page 4, lines 8 through 13 of S.D. 1 requires peer-to-peer car-sharing programs to ensure that during each car-sharing period, the shared car is insured under a motor vehicle policy that provides “primary insurance coverage for each shared car available.” This inadequately protects consumers and innocent bystanders in the event of an accident because it does not require the insurer to be authorized (i.e., hold a valid certificate of authority under HRS section 431:3-203 to transact insurance in this State). If a peer-to-peer driver happens to be a nonresident of Hawaii and have an insurance policy from an unauthorized insurer, any Hawaii resident injured by the nonresident driver would lack the basic protections provided by Hawaii insurance law. To avoid this outcome and to allow the DCCA’s Insurance Division to have regulatory oversight of the insurer, proposed S.D. 2 expressly requires that a peer-to-peer car-sharing program purchase insurance from an insurer authorized to transact insurance in Hawaii.

Page 5, lines 10 and 11 of S.D. 1 allows insurers to “exclude any and all coverage” for peer-to-peer car-sharing activity. This significantly reduces coverage that HRS section 431:10C-301 currently requires and undermines the coverage that the Legislature contemplated more than 30 years ago when it enacted 431:10C-301 to protect Hawaii residents and visitors from catastrophic loss caused by a motor vehicle accident. Accordingly, section -4(a) of proposed S.D. 2 clarifies that insurers can exclude coverage only “during the car sharing period,” provided the exclusion “does not apply to any insurance coverage required during the car-sharing period in section -2(a).”

Proposed S.D. 2 retains the provision from S.D. 1 that the insurance coverage amounts of shared cars are no less than those required for a transportation network driver or a transportation network company under HRS section 431:10C-703(d).

Vicarious Liability

The OCP recommends removing section -6 (Exemption; vicarious liability) in its entirety from S.D. 1 because it duplicates existing federal law.

Disclosures

Disclosures related to the terms and conditions associated with the car sharing agreement must be clearly and 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 obvious to the consumer. To achieve this, proposed S.D. 2 requires clear disclosure of all terms and conditions and all costs to be charged prior to execution of the car-sharing program agreement.

Record Keeping

Consumer access to complete and accurate data is critically important when a disputed claim results from an event involving a consumer, such as an accident resulting in vehicle damage. Proposed S.D. 2 strengthens the record keeping provision of S.D. 1 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.

Motor Vehicle Recalls

A vehicle under recall 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. Proposed S.D. 2's recall provision, as derived from the National Highway Traffic Safety Administration, will protect consumers and innocent bystanders of a peer-to-peer car-sharing program by removing potentially unsafe vehicles from the road, such as those with defective Takata airbags.

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 this bill, proposed S.D. 2 amends the surcharge tax provision to clarify that the surcharge tax should be assessed against the peer-to-peer car-sharing program.

Thank you for the opportunity to testify on this bill.

H.B. NO. 333
Proposed S.D. 2

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.

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, if applicable,
4 that govern the use of a shared car through a peer-to-peer car-
5 sharing program. "Car-sharing program agreement" does not
6 ~~[mean]~~ include a "rental agreement" as defined in section 437D-
7 3.

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

14 "Car-sharing termination time" means the earliest of the
15 following events:

16 (1) The expiration of the agreed upon period of time
17 established for the use of a shared car according to the terms
18 of the car-sharing program agreement if the shared car is
19 delivered to the location agreed upon in the car-sharing program
20 agreement;

21 (2) When the shared car is returned to a location as
22 alternatively agreed upon by the shared car owner and shared car

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

3 (3) When a shared car is returned to the location agreed
4 upon in the car-sharing agreement or alternatively
5 agreed upon by the shared car owner and the shared car
6 driver, as communicated through a peer-to-peer car-
7 sharing program, before the expiration of the period
8 of time established for the use of a shared car
9 according to the terms of the car-sharing program
10 agreement, and the shared car driver notifies the
11 peer-to-peer car-sharing program of the location of
12 the shared car;

13 (4) When a shared car, during the car-sharing period,
14 cannot safely or legally be operated and the shared
15 car driver notifies the peer-to-peer car-sharing
16 program that the shared car is inoperable and
17 identifies the location of the shared car;

18 (5) When the shared car driver receives notice of a safety
19 recall affecting the shared car and the shared car
20 driver returns the shared car to the location agreed
21 upon in the car-sharing agreement, or alternatively
22 agreed upon by the shared car owner and the shared car
23 driver, and the shared car driver notifies the peer-

1 to-peer car-sharing program of the location of the
2 shared car; or

3 [~~3~~] (6) When the shared car owner or the shared car
4 owner's authorized designee takes possession and
5 control of the shared [~~vehicle~~] car.

6 "Insurer" means an insurer holding a valid certificate of
7 authority under section 431:3-203 to transact insurance in this
8 State.

9 "Peer-to-peer car-sharing" means the authorized operation,
10 use, or control, of a vehicle by an individual other than the
11 vehicle's owner through a peer-to-peer car-sharing program. For
12 the purposes of assessing a vehicle surcharge tax, "[Peer] peer-
13 to-peer car-sharing" [does] shall not mean the "business of
14 providing rental motor vehicles to the public" as the phrase is
15 used in section 251-3 [or the business of a "lessor" as defined
16 in section 437D-3].

17 "Peer-to-peer car-sharing program" [~~means a business~~
18 ~~platform that connects vehicle owners with drivers to enable the~~
19 ~~sharing of vehicles for financial consideration.] means:~~

- 20 (1) Any person who enables a shared car driver to
21 identify, reserve, or use a shared car owned by a
22 shared car owner; or

1 (2) Any person who enables a shared car owner to describe,
2 list, or make available a shared car for
3 identification, reservation, or use by a shared car
4 driver.

5 [~~"Peer-to-peer car-sharing program" does not mean "lessor" as~~
6 ~~defined in section 437D-3.] "Peer-to-peer car-sharing program"~~
7 [~~is not a "car-sharing organization" as defined in section 251-~~
8 ~~4] does not include:~~

9 (1) A "transportation network company" as defined in
10 section 431:1C-701;

11 (2) A "car-sharing organization" as defined in section
12 251-1;

13 (3) Any person registered and acting as a travel agency
14 pursuant to chapter 468L; or

15 (4) Any person registered and acting as an activity desk
16 pursuant to chapter 468M.

17 "Peer-to-peer car sharing platform" means any person or
18 business that owns or operates a car-sharing program.

19 "Shared car" means a motor vehicle that is registered
20 pursuant to chapter 286 and is not owned, controlled, operated,
21 maintained, or managed by or registered, directly or indirectly
22 through an affiliate, to the peer-to-peer car-sharing program
23 and is available for sharing through a peer-to-peer car-sharing

1 program. "Shared car" ~~[does]~~ shall not ~~[mean]~~ include a "rental
2 motor vehicle" or "vehicle" as defined in section 437D-3.

3 "Shared car driver" means an individual who has been
4 authorized to drive the shared car by the shared car owner under
5 a car-sharing program agreement. "Shared car driver" does not
6 include "lessee" as defined in section 437D-3.

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

12 **§ -2 Insurance coverage during car-sharing period. (a)**

13 A shared car owner, peer-to-peer car-sharing program, and peer-
14 to-peer car-sharing platform shall ensure that during each car-
15 sharing period, the shared car shall be insured under a motor
16 vehicle insurance policy that provides primary insurance
17 coverage for each shared car available and used through a peer-
18 to-peer car-sharing program in amounts no less than the minimum
19 amounts required for a transportation network driver or a
20 transportation network company under 431:10C-703(d).

21 ~~(b) In addition to the insurance coverage required by this~~
22 ~~section, insurers offering insurance through a peer-to-peer car-~~
23 ~~sharing program shall be subject to chapter 431.~~

1 (b) A motor vehicle group insurance policy purchased by a
2 peer-to-peer car-sharing program for coverages in this chapter
3 shall be from an insurer as defined in section -1.

4 **§ -3 Notification of implications of lien.** When a car
5 owner registers as a shared car owner on a peer-to-peer car-
6 sharing program and prior to when the shared car owner makes a
7 shared car available for car-sharing on the peer-to-peer car-
8 sharing program, the peer-to-peer car-sharing program shall
9 notify the shared car owner that, if the shared car has a lien
10 against it, the use of the shared car through a peer-to-peer
11 car-sharing program, including use without physical damage
12 coverage, may violate the terms of the contract with the
13 lienholder.

14 **§ -4 Exclusions in motor vehicle insurance**
15 **policies.** (a) An authorized insurer that writes motor vehicle
16 insurance in the State may exclude any and all coverage and the
17 duty to defend or indemnify any claim afforded under a shared
18 car owner's motor vehicle insurance policy during the car-
19 sharing period, including:

20 (1) Liability coverage for bodily injury and property
21 damage;

22 (2) Personal injury protection coverage as set forth in
23 section 431:10C-304;

- 1 (3) Uninsured and underinsured motorist coverage;
- 2 (4) Medical payments coverage;
- 3 (5) Comprehensive physical damage coverage; and
- 4 (6) Collision physical damage coverage.

5 Provided that the exclusions allowed in this subsection does not
6 apply to any insurance coverage required during the car-sharing
7 period in section -2(a).

8 (b) Except as required in section -2(a), [N]nothing in
9 this chapter shall invalidate or limit an exclusion contained in
10 a motor vehicle insurance policy, including any insurance policy
11 in use or approved for use that excludes coverage for motor
12 vehicles used in a car-sharing program during a car-sharing
13 period.

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

19 **§ -5 Recordkeeping; use of vehicle in car-sharing.** A
20 peer-to-peer car-sharing program shall collect and verify
21 records pertaining to the use of a [~~vehicle, including~~] shared
22 car for each car-sharing program agreement, including:

- 1 (1) Dates and times [used] of the car-sharing start time
2 and the car-sharing termination time in the car-
3 sharing program agreement;
- 4 (2) Dates and times of the actual car-sharing start time
5 and car-sharing termination time;
- 6 (3) Itemized descriptions and amounts of all fees and
7 costs charged to the share car driver;
- 8 (4) Itemized descriptions and amounts of all fees and
9 costs paid by the shared car [driver, and revenues
10 received by] driver;
- 11 (5) Itemized descriptions and amounts of all fees and
12 costs paid to the shared car [owner,] owner;
- 13 (6) The name and contact information of the shared car
14 owner and the shared car driver; and
- 15 (7) The insurance policy number, effective date, coverage,
16 and coverage amounts of each insurance policy that
17 identifies the peer-to-peer car-sharing program,
18 shared car owner, and shared car driver as the insured
19 [and provide that information upon request to the
20 shared car owner, the shared car owner's insurer, or
21 the shared car driver's insurer to facilitate a claim
22 coverage investigation].

1 The peer-to-peer car-sharing program shall retain the records
2 for a time period not less than the six-years ~~statute of~~
3 ~~limitations period set forth under section 657-1(4).~~ Upon
4 request, the peer-to-peer car-sharing program shall provide the
5 information required in this section, and any information
6 relating to the peer-to-peer program agreement in its possession
7 and control, to the shared car owner, the shared car owner's
8 insurer, the shared car driver, the shared car driver's insurer,
9 persons who have sustained injury or property damage involving a
10 shared car, police and other governmental entities to facilitate
11 accident or claim coverage investigation.

12 [~~§ 6 Exemption; vicarious liability.~~ Consistent with
13 ~~title 49 United States Code section 30106, a peer-to-peer car-~~
14 ~~sharing program and a shared car owner shall be exempt from~~
15 ~~vicarious liability under any state or local law that imposes~~
16 ~~liability solely based upon motor vehicle ownership.]~~

17 § -[7]6 **Contribution against indemnification.** A motor
18 vehicle insurer that defends or indemnifies a claim against a
19 shared car that is excluded under the terms of its policy shall
20 have the right to seek contribution against the motor vehicle
21 insurer of the peer-to-peer car-sharing program if the claim is:

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

4 (2) Excluded under the terms of [~~its policy.~~] the shared
5 car owner's or shared car driver's insurance policy.

6 § ~~-[8]~~7 **Insurable interest.** (a) Notwithstanding any
7 other law, statute, or rule to the contrary, a peer-to-peer car-
8 sharing program shall have an insurable interest in a shared car
9 during the car-sharing period.

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

14 (1) Liabilities assumed by the peer-to-peer car-sharing
15 program under a peer-to-peer car-sharing program
16 agreement;

17 (2) Any liability of the shared car owner; or

18 (3) Damage or loss to the shared car or any liability of
19 the shared car driver.

20 § ~~-[9]~~8 **Required disclosures and notices.** For each
21 shared car participating in a car-sharing agreement on its
22 platform, a peer-to-peer car-sharing program shall:

- 1 (1) Provide, prior to the execution of a car-sharing
2 program agreement, the shared car owner and shared car driver
3 with the terms and conditions of the car-sharing agreement;
- 4 (2) Disclose to the shared car driver, prior to the
5 execution of a car-sharing program agreement, [~~any~~]
6 all costs or fees that are charged to the shared car
7 driver under the car-sharing [~~agreement;~~] agreement,
8 including all costs or fees for mandatory insurance
9 coverage charged by the peer-to-peer car-sharing
10 program;
- 11 (3) Disclose to the shared car owner, prior to the
12 execution of a car-sharing program agreement, [~~any~~]
13 costs or fees that are charged to the shared car owner
14 under the peer-to-peer car-sharing [~~agreement;~~]
15 agreement, including fees or costs for mandatory
16 insurance coverage charged by the peer-to-peer car-
17 sharing program;
- 18 (4) Provide [~~an~~] a twenty-four-hour emergency telephone
19 number for a person capable of facilitating roadside assistance
20 [~~to~~] for the shared car driver;
- 21 (5) Disclose any right of the peer-to-peer car-sharing
22 program to seek indemnification from the shared car
23 owner or the shared car driver for economic loss

1 sustained by the car-sharing program caused by a
2 breach of the car-sharing program [~~agreement;~~
3 agreement, and the peer-to-peer car-sharing program
4 shall require the shared car owner and the shared car
5 driver to specifically and separately acknowledge
6 notice of the disclosure prior to execution of a car-
7 sharing program agreement;

8 (6) Disclose that a motor vehicle insurance policy issued
9 to the shared car owner for the shared car or to the
10 shared car driver [~~does~~] may not provide a defense or
11 indemnification for any claim asserted by the peer-to-
12 peer car-sharing [~~program;~~] program, and the peer-to-
13 peer car-sharing program shall require the shared car
14 owner and the shared car driver to specifically and
15 separately acknowledge notice of the disclosure prior
16 to execution of a car-sharing program agreement;

17 (7) Disclose that the peer-to-peer car-sharing program's
18 insurance coverage on the shared car owner and the
19 shared car driver is in effect only during each
20 sharing period and that the shared car may not have
21 insurance coverage for use of the shared car by the
22 shared car driver after the sharing termination
23 [~~time;~~] time, and the peer-to-peer car-sharing program

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

5 (8) Disclose any insurance or protection package costs
6 that are charged to the shared car owner or the shared
7 car [~~driver;~~] driver, and the peer-to-peer car-sharing
8 program shall require the shared car owner and the
9 shared car driver to specifically and separately
10 acknowledge notice of the disclosure prior to
11 execution of a car-sharing program agreement;

12 (9) Disclose that if the shared car owner's or shared car
13 driver's motor vehicle insurance policy [~~may~~] does not
14 provide or excludes coverage for a shared [~~car;~~] car,
15 the shared car owner and the shared car driver are
16 prohibited from participating in the peer-to-peer car-
17 sharing program; [~~and~~]

18 (10) Disclose to the shared car driver any conditions in
19 which the shared car driver is required to maintain a
20 motor vehicle insurance policy as the primary coverage
21 for the shared car in order to drive a shared [~~car.~~]
22 car; and

1 (11) Disclose that a shared car owner shall be permitted to
2 obtain insurance that provides coverage for loss of use of a
3 shared car.

4 **§ -[10]9 Driver's license verification and data**

5 **retention.** (a) A peer-to-peer car-sharing program shall not
6 enter into a car-sharing program agreement with a shared car
7 driver unless the shared car driver:

8 (1) Holds a driver's license issued under section 286-102
9 that authorizes the shared car driver to operate vehicles of the
10 class of the shared car;

11 (2) Is a nonresident who:

12 (A) Has a driver's license issued by the state or
13 country of the driver's residence that authorizes the shared car
14 driver in that state or country to drive vehicles of the class
15 of the shared car; and

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

18 (3) Otherwise is specifically authorized to drive vehicles
19 of the class of the shared car[-];

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

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

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

4 § ~~11~~10 **Responsibility for equipment.** (a) A peer-to-
5 peer car-sharing program shall have sole responsibility for any
6 equipment, such as a global positioning system or other special
7 equipment that is put in or on the shared car to monitor or
8 facilitate the car-sharing transaction, and shall agree to
9 indemnify and hold harmless the shared car owner or shared car
10 driver for any damage to or theft of the equipment during the
11 [~~sharing~~] car-sharing period [~~not caused by the shared car~~
12 ~~owner. The peer-to-peer car-sharing program has the right to~~
13 ~~seek indemnity from the shared car driver for any loss or damage~~
14 ~~to the equipment that occurs during the sharing period)].~~

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

21 (c) A shared car driver has the right to seek indemnity
22 from the peer-to-peer car-sharing program for any loss or damage
23 that occurs as a result of any equipment, such as a global

1 positioning system or other special equipment, that is put in or
2 on a vehicle to monitor or facilitate the car sharing.

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

13 (e) No peer-to-peer car-sharing program or shared car
14 owner shall charge a shared car driver more than the cost of the
15 parts and labor necessary to repair damages to a shared car that
16 occur during the car-sharing period, if the vehicle is repaired.
17 The costs to repair the damages to the shared car shall be in
18 accordance with standard practice in the motor vehicle industry
19 in the community.

20 (f) No peer-to-peer car-sharing program or shared car
21 owner shall charge a shared car driver more than the actual cash
22 value of a vehicle determined in accordance with standard
23 practice in the motor vehicle insurance industry, if the share

1 car damaged during the car-sharing period is declared a total
2 loss.

3 § ~~-[12]~~11 **Motor vehicle safety recalls.** (a) [~~At the~~
4 ~~time when a vehicle owner registers as a shared car owner on a~~
5 ~~peer-to-peer car-sharing program and prior to the time when the~~
6 ~~shared car owner makes a shared car available for car-sharing on~~
7 ~~the peer-to-peer car-sharing program, the]~~ A peer-to-peer car-
8 sharing program shall:

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

13 (2) [~~Notify the shared car owner of the requirements under~~
14 ~~subsection (b).~~] Verify that all repairs of the
15 safety recall have been completed for each shared car
16 before each car-sharing start time;

17 (3) Shall immediately notify the shared car driver of any
18 safety recall affecting the shared car, so that the
19 shared car may be removed from use until the shared
20 car owner effects the necessary safety recall repair.
21 Continued use of the shared car by the shared car
22 driver, pursuant to the car-sharing program agreement,
23 shall not indemnify the peer-to-peer sharing program

1 or shared car owner from loss arising out of use of
2 the shared car by the shared car driver;

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

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

8 (b) A shared car owner shall:

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

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

18 (3) Notify the peer-to-peer car-sharing program of a
19 safety recall within ~~seventy-two~~ forty-eight hours of receipt
20 of a safety recall when the vehicle is in the possession of a
21 shared car driver ~~[so that the peer-to-peer car-sharing program~~
22 ~~may notify the shared car driver and the shared car may be~~

1 ~~removed from use until the shared car owner effects the~~
2 ~~necessary safety recall repair].~~

3 **§ -12 Department of transportation; airports division;**
4 **contract or agreement; rules.** A peer-to-peer car-sharing
5 program shall enter into a contract or other agreement with the
6 airports division of the department of transportation pursuant
7 to section 261-7(a) prior to operating at any airport in the
8 State. A peer-to-peer car-sharing program shall comply with all
9 rules of the airports division of the department of
10 transportation.

11 ~~[§ -13 Relation to other laws. Chapter 437D shall not~~
12 ~~apply to peer-to-peer car sharing.]~~

13 **§ -13 Additional mandatory charges prohibited.** (a)
14 Prior to the execution of a car-sharing agreement, the peer-to-
15 peer car-sharing program shall disclose to the shared car driver
16 the total cost to be charged to the shared car driver that shall
17 include the total cost, as well as itemized descriptions of the
18 amount of each charge, that is required as a condition to the
19 peer-to-peer car-sharing program agreement. As part of any
20 quotations of price, the peer-to-peer car-sharing program shall
21 disclose, including all quotations contained in advertising or
22 through online quotations, all costs that a shared car driver is
23 required to pay as part of the car-sharing program agreement.

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 as required by
6 subsection (a).

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

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

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

22 "§251- Peer-to-peer car-sharing surcharge tax. (a)
23 There is levied, assessed, and collected each month a peer-to-

1 peer car-sharing tax of \$ per day, or any portion of a day,
2 that a shared vehicle is shared pursuant to a car-sharing
3 program agreement. [~~Notwithstanding any law to the contrary,~~
4 ~~neither the tax levied pursuant to section 251-2(a) for rental~~
5 ~~motor vehicles rented or leased by rental motor vehicle lessors,~~
6 ~~nor the tax provided for pursuant to section 251-2.5 on car-~~
7 ~~sharing organizations is applicable to peer-to-peer car~~
8 ~~sharing.]~~

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

13 [~~(b)~~] (c) For purposes of this section:

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

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

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

19 SECTION 3. New statutory material is underscored.

20 SECTION 4. This Act shall take effect upon its approval.

21



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Judiciary
and
Senate Committee on Ways and Means**

**Tuesday, April 6, 2021
9:55 a.m.
Via Videoconference**

**On the following measure:
H.B. 333, H.D. 3, S.D. 1, RELATING TO PEER-TO-PEER CAR-SHARING**

WRITTEN TESTIMONY ONLY

Chair Rhoads, Chair Dela Cruz, and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (DCCA) Insurance Division (INS). The INS offers comments on this bill.

The purposes of this bill are to: (1) authorize peer-to-peer car-sharing; and (2) establish the peer-to-peer car-sharing surcharge tax on the operator of the peer-to-peer program.

The INS has had an opportunity to confer with the Department of Commerce and Consumer Affairs' Office of Consumer Protection (OCP) regarding proposed revisions to this bill as it relates to the Insurance Code. The INS firmly believes that only insurance purchased from a Hawaii licensed insurer by the proposed peer-to-peer car-

sharing program would be acceptable to cover the peer-to-peer driver. Allowing insurance coverages by unlicensed insurers or surplus lines carriers in the proposed peer-to-peer car-sharing program would not be in the best interests of Hawaii's citizens, especially when prompt processing of personal injury protection claims for injuries resulting from motor vehicle accidents are paramount to claimants' recoveries.

In some circumstances, unlicensed insurers or surplus lines carriers provide insurance coverages for various activities. The INS does not have regulatory authority over these insurers and cannot impose state statutory requirements upon them. Therefore, citizens making claims under these types of coverages may have to resolve their disputes in the insurers' home domiciles. These processes are time-consuming, lengthy, and often expensive.

The Legislature addressed unlicensed insurers and motor vehicle insurance coverages in Hawaii by passing Hawaii Revised Statutes (HRS) section 431:10C-120, which mandates that "[n]o insurer shall issue or offer to issue any policy which the insurer represents is a motor vehicle insurance policy unless such insurer meets the requirements of this article." The Legislature further defined "insurer" in HRS section 431:10C-103 as being "every person holding a valid certificate of authority to engage in the business of making contracts of motor vehicle insurance in this State" (emphasis added).

Hawaii-licensed insurers must comply with state statutes that mandate both adherence to standards regarding their companies' financial stability and viability and prompt processing and payment of personal injury protection claims. Treatments of injuries resulting from motor vehicle accidents are of utmost importance to those injured. Should Hawaii-licensed insurers violate the Insurance Code, the INS would have regulatory authority to bring actions against those insurers and curb their infractions.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Chair;
and Members of the Senate Committee on Judiciary

The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: April 6, 2021

Time: 9:55 A.M.

Place: Via Video Conference, State Capitol

Re: H.B. 333, H.D. 3, S.D. 1, Relating to Peer-to-Peer Car-Sharing

The Department of Taxation (Department) offers the following comments regarding H.B. 333, H.D. 3, S.D. 1, for your consideration.

With respect to taxation, H.B. 333, H.D. 3, S.D. 1, creates a new peer-to-peer car-sharing surcharge tax in chapter 251, Hawaii Revised Statutes (HRS), imposed in lieu of the existing rental motor vehicle surcharge tax (RVST) under section 251-2, HRS. S.D. 1 has a defective effective date of July 1, 2050.

The Department first notes that it recently promulgated temporary administrative rules related to peer-to-peer car-sharing.¹ Those temporary rules deem a peer-to-peer car-sharing marketplace facilitator to be the "lessor" for purposes of the RVST. Thus, the tax this bill intends to capture is already being captured under existing administrative rules.

Notwithstanding the foregoing, the Department requests that the new tax imposed by this measure be made effective no earlier than January 1, 2022. This will provide the Department sufficient time to make the necessary form, instructions, and computer system modifications to administer this new tax.

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

1

https://files.hawaii.gov/tax/legal/har_temp/RVST_marketplace_temporary_STANDARD_eff_20210209.pdf

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: HB 333, SD1

INTRODUCED BY: Senate Committee on Transportation

EXECUTIVE SUMMARY: Authorizes peer to peer-to-peer car sharing. Establishes the peer-to-peer car sharing surcharge tax on the operator of the peer-to-peer program.

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

Adds a new section to chapter 251, HRS, to impose a peer-to-peer 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. The peer-to-peer car-sharing surcharge tax shall be levied upon the operator of the peer-to-peer car-sharing program. Provides that this tax is in lieu of any tax under section 251-2(a) (for motor vehicles rented or leased by rental motor vehicle lessors) or 251-2.5 (for car-sharing organizations).

EFFECTIVE DATE: 7/1/2050.

STAFF COMMENTS: Effective February 9, 2021, the Department adopted temporary rules under the authority of section 231-10.7, HRS, interpreting the existing RVST rules to apply to the peer-to-peer car-sharing industry.¹ At a minimum, the proposed measure should be compared against the temporary rules to evaluate secondary consequences of both the rules and this proposed measure.

The tax is currently an unspecified amount. We note that if the rate ultimately decided on is less than the current RVST rate imposed under the temporary rules, then section 9901 of the American Rescue Plan Act of 2021, signed into law on March 12, 2021, may require recapture of Federal aid provided, or to be provided, to the State.

Digested 4/2/2021

¹ https://files.hawaii.gov/tax/legal/har_temp/RVST_marketplace_temporary_STANDARD_eff_20210209.pdf



Testimony of
Tami Bui – Senior Government Affairs Manager
Turo Inc., San Francisco, CA
Comments on HB 333, HD 3, SD 1
April 6, 2021

Chair Rhoads, Chair Dela Cruz and Members of the Senate Committee on Judiciary and Ways & Means, I respectfully submit comments on **HB 333, HD 3, SD 1** on behalf of Turo.

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 car can provide. In Hawai`i, our community of car owners share their car with mothers, fathers, neighbors and community members while earning a little extra income to help recover the high cost of car ownership or who are facing economic hardship.

Over the difficult past year, the Hawai`i peer-to-peer car sharing community has been there to support one another. In our community, there are stories of car owners sharing their car with an essential worker who needed a mobility option when public transportation was reduced, to a resident getting a car from a neighbor to get to their job because the DMV was not open and they could not update their own vehicle's registration, to Hawai`i residents making the choice to put money in the hands of other residents through utilizing peer-to-peer car sharing; Hawai`i residents have been there to support one another through these challenging and hard times.

We are excited about what HB 333, HD 3 does to establish a comprehensive regulatory structure for a new industry while instilling robust consumer protections. This legislation enables peer-to-peer car sharing to continue to serve Hawai`i residents and their neighbors by doing the following:

- Defines peer-to-peer car sharing platforms and activities
- Establishes new consumer protections for vehicle owners and drivers, including mandatory insurance coverages and liability insurance for every transaction
- Requires verification of valid drivers licenses
- Requires clear disclosures of insurance, fees, and terms and conditions of sharing agreements
- Explicitly defines the legal responsibilities of car sharing platforms
- Holds car sharing platforms accountable by mandating clear record keeping
- Places a daily surcharge on vehicle sharing in Hawai`i

Insurance

With regard to the amendments made to insurance, we do not support placing TNC coverage limit requirements onto peer-to-peer transactions. That is because unlike TNCs, peer-to-peer car sharing does not include a transaction in which a paying passenger is driven by a for-hire driver. Peer-to-peer car sharing involves a shared car owner sharing their vehicle with a shared car driver. As such, there is no increased risk in a sharing transaction as compared to a Hawaii driver driving their own car on a Hawaii roadway or a consumer driving a rental car. As such, there is no need for increased limits as the risk profile of peer-to-peer car sharing is not comparable to TNCs. These higher limits should only apply when a for-hire driver is transporting a paying passenger, which is never the case with peer-to-peer car sharing.

In addition to the increase in higher limits, the amendment stripped the bill of essential insurance provisions that make up the national model and provide for the appropriate insurance coverage during the car sharing period.

However, we do believe the following language that was amended into HB 333, HD 3, SD 1 on page 4, in Section 2 regarding Insurance coverage during car-sharing period, lines 17-19 satisfies the concerns discussed in the Senate Transportation Committee on March 16, 2021:

(b) In addition to the insurance coverage required by this section, insurers offering insurance through a peer-to-peer car-sharing program shall be subject to chapter 431.

For these reasons, we support reverting the bill back to the national model (the most recent HB 333 version) which is supported by the insurance industry coalition and including the language referenced above to address your concerns.

Considerations on the surcharge

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.

In addition to this creation of a regulatory framework and robust consumer protections, HB 333, HD 3, SD 1 creates a peer-to-peer car sharing surcharge. As a new industry, we look forward to a holistic discussion. A few points for consideration:

Precedent of incremental increase to surcharge over time

It is a challenging time for many in this environment. We understand this is an unprecedented time with many needs and priorities that need to be addressed.

As a new industry, we respectfully ask that the legislature consider the opportunity for peer-to-peer car sharing to grow as a resource for residents of Hawai'i -- whether as a host seeking to earn additional income from their personal car, and/or as a guest looking for a mobility option, when considering a surcharge amount. This consideration was given to rental car companies when the rental car surcharge began.

The rental surcharge has gone through multiple changes and it has taken 30 years for the surcharge to go from \$2 to \$5. The rental surcharge did not start at what it is and has gone up over time; we are asking for that same opportunity.

No state to date has taxed peer-to-peer at the same rate as rental

States that have considered peer-to-peer regulatory legislation have decided to either add no additional fees or create a lower tax structure taking into consideration the tax advantages provided to the traditional rental car industry.

For example, in the state of Maryland, one of the first to consider peer-to-peer car sharing legislation, decided to tax this emerging industry an excise tax rate lower than that of traditional rental car companies, specifically taking into consideration the tax exemption afforded to the rental car industry that cannot be enjoyed by peer-to-peer car sharing.

Additionally, states like Tennessee completely exempted peer-to-peer car sharing from the rental car excise tax. In Indiana, another early state to consider this industry, chose to charge peer-to-peer a surcharge that was 50% of the rental car surcharge.

In closing, this is an unprecedented time. As a relatively new industry, we truly do not know what impact this may have on local hosts and residents who use peer-to-peer car sharing. We respectfully ask that to avoid "sticker shock," that we start off at a lower surcharge to allow us to ramp up and grow, just like the rental car industry in which the surcharge started 30 years ago and incrementally went up. Just two years ago, the legislature imposed a surcharge of \$3 on the rental car industry and we ask that we start there.

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.

For those reasons, we thank you for the opportunity to provide comments on **HB 333, HD 3, SD 1**.

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE
HAWAII ASSOCIATION FOR JUSTICE (HAJ) REGARDING
H.B. 333 HD3 SD1**

Date: Tuesday April 6, 2021

Time: 9:55 a.m.

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) with comments on H.B. 333 HD3 SD1, Relating to Peer-to-Peer Car Sharing.

We support the SD1 amendment that requires Peer-to-Peer companies to carry the same \$1 million of insurance coverage (HRS 431:10C-703) as required of Transportation Network Companies (TNC). Peer-to-Peer is an internet platform that operates in the same way as Uber/Lyft TNC using privately owned vehicles, so it should be treated the same way. In fact, Turo, the primary peer-to-peer internet platform, currently provides \$750,000 in liability insurance coverage with every rental in Hawaii and on the mainland through its own Turo Insurance Agency with a policy underwritten by Liberty Mutual Insurance Company. There is no rational basis for giving Hawaii residents who may be injured by a Turo rental vehicle the \$20,000 insurance coverage proposed in this bill as originally drafted – essentially lowering the current insurance Turo already provides in Hawaii and on the mainland by \$730,000 (from \$750,000 to \$20,000 per person with a maximum of

\$40,000 per accident). Both Uber and Lyft provide \$1 million of insurance coverage for riders in Hawaii and on the mainland.

Good public policy requires consistent treatment of internet platforms like Turo, Uber and Lyft. They are all afforded the benefits of operating as an internet platform, taking profits off the top while passing-on expenses and risks of owning and operating vehicles to private owners, and should be governed by the same required insurance protections.

There are several unintended loopholes or gaps in insurance coverage in the SD1 that should be corrected. The following technical amendments should be made:

Delay in Returning the Share Car

There is no insurance coverage when there is any delay in returning the share car. The definition of “car-sharing termination time,” page 2, line 10 through page 3, line 3, currently contains a loophole or gap when a driver who is returning a vehicle may get stuck in traffic and be delayed in returning the vehicle. That gap can be closed by deleting the word “earliest” on page 2, line 10, and replacing it with “latest,” and adding a subparagraph (4) on page 3, line 4, to read: “When the shared car driver returns the shared car or relinquishes operation, use or control of the shared car.”

As currently drafted, the insurance terminates at the “expiration of the agreed upon period of time,” while the personal auto insurance on the vehicle is excluded while the vehicle is “available for rent, sharing, or hire.” So, if a car is due back at 4:30 pm, but there is an accident on the H-1 that delays the return of the car until 6:00 pm, the car would be uninsured between 4:30 pm and 6:00 pm. The amendments suggested above eliminates this unintended uninsured gap.

Uninsured Gap Between Internet Listing and Actual Rental Use

The exclusion for the owner’s personal insurance applies when a vehicle is listed for rental, i.e., “made **available** for rent, sharing or hire,” but not yet actually being used as a shared car (page 6, lines 4-5). This creates an unintended gap from the time the vehicle is listed on the Turo website (“made available for rent”), when personal insurance is excluded, until the renter actually starts to drive the vehicle because Turo’s insurance does not begin until the vehicle is in a “car-sharing period,” pursuant to section -2 on page 4, lines 10 -11. So if a car is listed and “available” for rental on Monday, but is not picked-up until Saturday when the “car-sharing period” begins, the vehicle could be uninsured between Monday through Saturday. This problem can be fixed by deleting “made available for rent, sharing or hire,” on page 6, lines 4-5, and replacing it with “during a car-sharing period.” This is essentially the same language proposed by the Office Consumer Protection (OCP).

Police and Claimants Omitted From Recordkeeping Disclosure

Recordkeeping and disclosure requirements in section -5 inadvertently omit those who may sustain injuries or property damage involving a shared car, as well as government entities such as police, fire and ambulance who routinely participate in accident investigation and rescue efforts. We support the amendments to section -5 proposed by the OCP to correct this oversight.

Peer-To-Peer Is Not Similar To U-Drive Companies

Peer-to-Peer companies, like Turo, are not similar to traditional U-Drive companies like Avis, Hertz or Enterprise. This is why this bill exempts peer-to-peer companies from regulation under Chapter 437D which regulates traditional rental companies like Avis, Hertz or Enterprise. See, page 2, line 4; page 3, line 9; page 3, line 19; page 4, line 2; page 4, line 7; and page 13, lines 5-6 (“Chapter 437D shall not apply to peer-to-peer car sharing.”).

Peer-to-peer internet platforms have no vehicles of their own, they pass on all financial and legal expenses of vehicle ownership and operation to private individuals, including vehicle purchase or lease price, maintenance costs, registration and vehicle taxes, garage/parking space, inspections and cleaning between rentals, and arranging for pick-up and drop-off of vehicles. If a private owner fails to properly service or repair a car, that private owner is liable. A private

owner is not likely to have the funds or additional insurance to cover this liability. Thus, Turo makes profits without bearing the risks or expenses of vehicle ownership.

Rental car companies own and pay for their vehicles, have physical facilities at the airport and in town, hire hundreds of workers statewide to check-in renters, drive shuttles, check rental cars as they leave the premises, receive returns and check-out renters, clean/wash and inspect vehicles after each rental, mechanics to service and repair rental cars, drive cars to/from parking/storage lots, and more. There are regulatory requirements for inspection, repair and maintenance of traditional rental cars, while there is no actual control or supervision by Turo to ensure that vehicles it rents have been properly serviced or repaired because Turo does not have employees to perform or verify that vehicles are properly repaired and maintained. Internet platform car maintenance and repair, as a practical matter, rests purely at the whim and cash-flow of many thousands of individual owners (Turo had 450,000 vehicles listed as of 2020). It is obvious that individuals with limited funds may delay getting brakes replaced, changing bald tires or performing other expensive repairs required for the safety of those driving the vehicle, as well as those by-standers who may be injured in accidents with unsafe vehicles.

In addition, U-Drive cars are covered by insurance provided by both the rental company and the driver. This is why many insurance agents advise that

drivers renting from traditional U-Drive companies decline the optional (and expensive) physical damage insurance because the driver's own insurance provides additional coverage. This bill however excludes coverage by the driver's insurance company for peer-to-peer share cars, in section -4 on pages 5-6, while there is no similar exclusion for traditional rental cars. Because of this, it is even more essential that the Peer-to-Peer company carry the same additional insurance coverage provided by TNC internet platforms like Uber/Lyft.

If the language in this measure was to revert back to any draft which excludes the \$1 million dollar coverage, there would be costly implications for the State. Without this necessary coverage the major risk of doing business would be placed on the public and would not be the responsibility of the Peer-toPeer company benefiting from the profit. Requiring the \$1 million coverage for Turo (which is only \$250,000 more than what they already provide for in other states), to be the same as for Uber & Lyft, will ensure that other Peer-to-Peer companies who come to Hawaii will also provide consistent and uniform coverage.

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



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: April 5, 2021

TO: Senator Karl Rhoads
Chair, Committee on Judiciary

Senator Donovan Dela Cruz
Chair, Committee on Ways and Means

Submitted Via Capitol Website

FROM: Matt Tsujimura

RE: **H.B. 333, H.D. 3, S.D. 1 Relating to Peer-to-Peer Car Sharing**
Hearing Date: Tuesday, April 6, 2021 at 9:55 a.m.
Conference Room: 211

Dear Chair Rhoads, Chair Dela Cruz, and Members of the Joint Committees:

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

Enterprise supports H.B. 333, H.D. 3, S.D. 1, which authorizes and regulates peer-to-peer car-sharing in the State. H.B. 333, H.D. 3, S.D. 1, 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. 333, H.D. 3, S.D. 1, is based on model language from the National Council of Insurance Legislators. While NCOIL has left room for state specific amendments, the model language covers all major issues including: insurance coverage, vicarious liability, disclosures, record keeping, motor vehicle recalls, and surcharges. Enterprise supports this draft created by insurance companies, peer-to-peer companies, and the rental car industry.

H.B. 333, H.D. 3, S.D. 1, is a comprehensive bill that includes language regarding consumer safety, insurance and indemnification, and applicable taxes and fees.

Enterprise supports the passage of H.B. 333, H.D. 3, S.D. 1, because it brings parity to the marketplace and ensures that all industries providing transportation to residents and visitors in Hawaii operate on a level and fair playing field.

With parity in mind, Enterprise requests that the proposed peer-to-peer car-sharing surcharge tax mirror the rental motor vehicle surcharge rates in HRS § 251-2.

We strongly support the passage of H.B. 333, H.D. 3, S.D. 1. Thank you for the opportunity to testify.



April 5, 2021

Chairman Karl Rhoads
Senate Judiciary & Ways and Means Committee
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

Re: Comment regarding HB 333 HD1 – Peer-to-Peer Car Sharing

Aloha Chairman and Members of the Committee:

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 in hope of amending H.B. 333 HD1 on peer-to-peer car sharing. We are very appreciative of your interest in this pro-consumer and innovative business platform and thank you for taking the appropriate and measured legislative response necessary to promote the car sharing industry. Unfortunately, in a previous committee much of the negotiated NCOIL model language was removed and P2P insurance limits were set to match TNC's. It is our sincere hope that the strongly supported NCOIL model language can be restored and that insurance limits can be uniquely set to reflect this new industry.

By restoring the NCOIL model language and enacting H.B. 333 HD1, Hawaii would follow numerous states across the country by providing clear definitions for the industry, relevant insurance and consumer protections as well as create the level playing field necessary to encourage competition with the traditional rental car companies.

It is important that this legislation be the prevailing model in Hawaii, as consistency is critical to operations and consumer protections. The language within the bill is based on NCOIL's model act of 2019. During the legislative process there will be several clarifying amendments that the car-sharing and insurance industry have agreed on that will enhance the original model act.

This updated NCOIL model has the support of the insurance trade associations, insurance companies and peer-to-peer car sharing companies and we appreciate H.B. 333 HD1 following this consensus model to provide a uniform, responsible and appropriate insurance regulatory framework for peer-to-peer car sharing.

The insurance and liability provisions in this bill reflect the three-party business model of car sharing and help provide various coverage needs for all parties involved. The car sharing industry, unlike the rental car companies, has agreed to assume primary liability because we understand how important it is to



protect consumers. Additionally, the provisions related to disclosures, recalls and driver verification will help assure all parties involved are protected and secure during the transactions.

Lastly, the industry is willing and able to come to the table to discuss the appropriate manner by which to generate necessary tax revenue from our business model. However, as this three-party model is drastically different from the rental car companies and relies on individuals who have already paid taxes on their vehicles—without receiving the enormous tax breaks that rental companies enjoy—we ask that any peer-to-peer surcharge tax discussions consider these differences. This will create a competitive environment and avoid redundant and burdensome taxes on your residents looking to earn a little extra income from sharing their personal vehicles.

Thank you again for this thoughtful legislation and again urge the Committee to restore the critical NCOIL model language. We look forward to working with you as H.B. 333 HD1 continues through the final aspects of the legislative process.

Mahalo,

Danielle Lenth

Danielle Lenth
Director of External Relations
Avail/Allstate

April 6, 2021
9:55 a.m.
Conference Room 211 & Videoconference

To: Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

From: Grassroot Institute of Hawaii
Joe Kent, Executive Vice President

RE: HB333 HD3 SD1 — RELATING TO PEER-TO-PEER CAR-SHARING

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB333](#), which would establish a peer-to-peer car-sharing surcharge tax.

We are gravely concerned about the impact of this tax hike and the many fees, tax increases, and surcharges that have been proposed this legislative session. Hawaii residents are already among the most taxed in the country; the state has the second highest overall tax burden in the U.S.¹

That high tax burden contributes to Hawaii's cost of living and is one of the reasons why so many Hawaii residents have been leaving in search of greater opportunities elsewhere.

¹ Adam McCann, "[2020's Tax Burden by State](#)," WalletHub, June 24, 2020. See also John S. Kiernan, "[2021's States with the Best & Worst Tax ROI](#)," WalletHub, March 23, 2021.

Given the state's already-high tax burden, there is never a good time to raise taxes. But this proposal comes at an especially bad time. Hawaii is still in a state of emergency, tourism has slowed to a trickle, businesses are closing and unemployment is high. The economy will take years to recover from the pandemic and lockdowns. The last thing Hawaii residents and businesses need at this point is a tax hike.

There are myriad reasons policy makers should be wary of implementing tax hikes at this time. Here are just a few:

>> Hawaii cannot sustain a hike in taxes since its already-damaged economy was hit harder by the lockdowns than any other state in the nation.²

>> State lawmakers increased taxes and fees substantially following the Great Recession of 2007-2008,³ despite a windfall in revenues from an economic boom over the past decade. Taxes and fees ballooned on motor vehicles, transient accommodations, estates, fuel, food, wealthy incomes, property, parking and businesses.

>> Hawaii's population reduction of 21,879 people since fiscal 2016⁴ has left Hawaii's remaining taxpayers with a greater tax burden.

>> Hawaii businesses will be experiencing an average 38% increase in their state unemployment tax in 2021.⁵ The UI tax rate depends not only on individual employer's claims experiences but also on the overall health of the state's unemployment insurance fund, which is hundreds of millions of dollars in the red.⁶

>> Hawaii has a regressive general excise tax that disproportionately hits the poor.⁷

² Dave Segal, "[Hawaii's unemployment rate hit nation-high 15% in September](#)," Honolulu Star-Advertiser, Oct. 20, 2020.

³ "[Tax Acts \(by Year\)](#)," Tax Foundation of Hawaii, accessed Feb. 8, 2021.

⁴ "[Annual Estimates of the Resident Population for the United States, Regions, States, and the District of Columbia: April 1, 2010 to July 1, 2020 \(NST-EST2020\)](#)" U.S. Census Bureau, Population Division, December 2020.

⁵ "[Grassroot Institute UI contribution analysis](#)" Grassroot Institute of Hawaii, Nov. 13, 2020, sheet 2.

⁶ "[UI Budget](#)," United States Department of Labor, Employment & Training Administration, Feb. 8, 2021.

⁷ "Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index: "[Sales Tax Burden](#)," American Legislative Exchange Council, 2021. Note that Hawaii does not have a sales tax, but a state general excise tax that is levied on almost all goods and services, and imposed multiple times throughout the production chain.

>> Hawaii has a progressive income tax that taxes high-income earners at 11%, second only to California at 13.3%.⁸ Hawaii's top 1% already pays 23% of all income taxes in the state.⁹

>> Closing tax exemptions would amount to a tax hike for Hawaii businesses already facing a steep spike in their unemployment insurance taxes.

Hawaii needs leadership that will stabilize the current financial crisis, reduce unsustainable long-term costs and lower the cost of living. Balancing the books without tax increases or future debt could send a message that Hawaii is a good place for businesses and future generations, and this could help the economy thrive while motivating people to return to the islands.

If the state needs more revenues, policymakers should focus on growing the economy. In our current condition, even small economic gains would have big effects.

If the purpose of the tax is to alter behavior, consider that the negative impact of a tax hike can far outweigh whatever policy goal is being pursued.

Hawaii's residents and businesses need a break from new taxes, fees, surcharges and tax hikes. This is not the time to make Hawaii a more expensive place to live and do business.

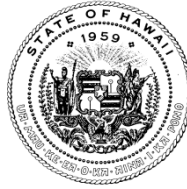
Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

⁸ Katherine Loughhead, "[State Individual Income Tax Rates and Brackets for 2020](#)," Tax Foundation, Feb. 4, 2020.

⁹ "[Hawaii Individual Income Tax Statistics](#)," Hawaii Department of Taxation, December 2020, Table 13A.



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April 6, 2021
9:55 A.M.
State Capitol, Teleconference

H.B. 333, H.D. 3, S.D. 1
RELATING TO PEER-TO-PEER CAR-SHARING

Senate Committee on Judiciary
Senate Committee on Ways and Means

The Department of Transportation (DOT) **supports** this bill which authorizes peer-to-peer car-sharing; and establishes the peer-to-peer car sharing surcharge tax on the operator of the peer-to-peer program with an effective date of 7/1/2050.

The DOT agrees that peer-to-peer car-sharing is a green transportation innovation and may provide the benefits of automobile access to our community that are not able to own or prefer not to own vehicles but have an occasional need to access vehicles for daily activities.

The rental motor vehicle surcharge revenues deposited into the state highway fund amounted to \$58 million or 20% of the total revenues for fiscal year 2019. The rental vehicle surcharge tax is a major source of revenues for the State Highway Fund. The State Highway Fund financial plan relies on these revenues to support the continued operations, maintenance and construction of the State Highway System. The rental vehicle surcharge tax is also a major source of pledged revenues for the Highway Revenue Bonds. The peer-to-peer car-sharing vehicle surcharge tax may help to preserve the revenues deposited into the State Highway Fund.

Thank you for the opportunity to provide testimony.