

DAVID Y. IGE
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To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Lisa Kitagawa, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Isaac W. Choy, Director
Department of Taxation

Date: Tuesday, February 15, 2022
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: H.B. 1971, H.D. 1, Relating to Peer-to-Peer Car-Sharing

The Department of Taxation (Department) supports the tax provisions of H.B. 1971, H.D. 1, and offers the following comments for your consideration.

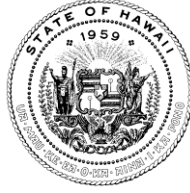
H.B. 1971, H.D. 1, creates a new chapter to regulate peer-to-peer car-sharing and imposes the current rental vehicle surcharge tax (RVST) on peer-to-peer car-sharing programs (P2P). The bill has a defective effective date of July 1, 2050.

The Department supports the tax provisions of H.B. 1971, H.D. 1, in its current form. The proposed new chapter to regulate P2Ps specifically states that P2Ps are subject to the General Excise Tax and daily RVST. The Department supports this imposition of the RVST as it is a consistent imposition of the tax across very similar industries.

On a technical note and to prevent any confusion, the Department respectfully requests that the bill be amended to add corresponding language regarding the imposition of RVST on P2Ps into chapter 251, Hawaii Revised Statutes (HRS). Specifically, the Department requests that the final paragraph in section 251-2(a), HRS, be amended to read as follows:

"In addition to the requirements imposed by section 251-4, a lessor shall disclose, to the department, the portion of the remittance attributed to the county in which the motor vehicle was operated under rental or lease. A peer-to-peer car-sharing program, as defined in chapter , shall be subject to the tax imposed by this subsection and be subject to the other requirements of this chapter."

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



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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Tuesday, February 15, 2022
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 1971, H.D. 1, RELATING TO PEER-TO-PEER CAR SHARING**

Chair Johanson and Members of the Committee:

My name is Michael Moriyama, and I am an Enforcement Attorney at the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department opposes this bill.

The purposes of this bill are to: (1) Authorize peer-to-peer car-sharing and establishes regulations, including insurance requirements; (2) impose the general excise tax and rental motor vehicle surcharge tax on peer-to-peer car-sharing programs, including peer-to-peer car-sharing program requirements; and (3) require those persons engaging or continuing in a peer-to-peer car-sharing program to register with the Department of Taxation.

In particular, the Department has two main concerns with this bill, the insurance provisions and the recall provision.

Insurance Coverage

The disastrous scenario with any vehicle, including a peer-to-peer shared car, is when innocent by-standers become severely injured, due to driver error or mechanical

breakdown. Without adequately and appropriately set insurance requirements, those severely injured would be left to fend for themselves for their financial losses.

Since H.B. 1971, H.D.1 would not come close to providing sufficient coverage in the above stated occurrence, the Department believes that more robust coverage must be required, such as, the one-million-dollar minimum limits advocated by Hawaii's Insurance Commissioner.

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. Unfortunately, H.B. 1971, H.D. 1 does not adequately guard against this risk. 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. H.B. 333 H.D. 3 S.D. 2's recall provision, as derived from the National Highway Traffic Safety Administration, will help 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.

Thank you for the opportunity to testify on this bill.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: RENTAL MOTOR VEHICLE, GENERAL EXCISE, Peer-to-Peer Car-sharing Surcharge Tax

BILL NUMBER: HB 1971 HD 1

INTRODUCED BY: House Committee on Transportation

EXECUTIVE SUMMARY: Authorizes peer-to-peer car-sharing and establishes regulations thereof, including insurance requirements. Imposes the general excise tax and rental motor vehicle surcharge tax on peer-to-peer car-sharing programs, including car-sharing program requirements. Requires those persons engaging or continuing in a peer-to-peer car-sharing program to register with the Department of Taxation. Effective 7/1/2050. (HD1).

SYNOPSIS: Adds a new chapter to the HRS to regulate peer-to-peer car sharing. Section -12 of the new chapter states that the activity of peer-to-peer car sharing shall be subject to general excise tax under chapter 237 and the rental motor vehicle surcharge tax pursuant to section 251-2(a); provided that the peer-to-peer car sharing program shall be responsible for collecting and remitting any taxes and surcharges to the department of taxation.

Amends section 251-3, HRS, in the rental motor vehicle surcharge tax (RVST), to explicitly subject engaging or continuing in a peer-to-peer car sharing program to the RVST.

EFFECTIVE DATE: July 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.

Digested: 2/12/2022

TESTIMONY OF ALISON UEOKA

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

Tuesday, February 15, 2022
2:00 p.m.

HB 1971, HD1

Chair Johanson, Vice Chair Kitagawa, and members of the Committee on Consumer Protection & Commerce, my name is Alison Ueoka, President of the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council supports certain sections of the bill with amendments. This bill seeks to regulate Peer-to-peer (P2Ps) programs including insurance provisions. We limit our comments to sections of the bill that impact insurance coverage of P2Ps.

An insurance-only bill for P2Ps is also moving in the House in HB 1619, HD1 that was heard on February 11, 2022 in this committee. As your committee has amended the bill in HD2, but the committee report and HD2 are not out yet, we are testifying based on the verbal decision-making details.

HIC believes that it is vital for a bill at least providing insurance requirements pass for P2Ps this session as there is a high number of people using various P2P programs or renting their motor vehicles directly. This bill and HB 1619, HD2 contain insurance provisions and other relevant sections of the law and we ask that they be mirrored in both bills.

First, HIC requests that the whole of HB 1619, HD2 be placed in this bill and if there are sections that overlap, that HB 1619, HD2 supersede. This way, consistency will follow in both bills and therefore, provide the greatest level of consumer protection.

Second, in new Section -2 of the bill, Insurance coverage, the phrase, "Primary insurance coverage for each shared car available and used through a peer-to-peer car-sharing program" should qualify each coverage required and not only the liability coverages.

Finally, since we are unsure of all the amendments to HB 1619 HD2, if this language has not been adopted, we ask that it be included in this draft to replace subsection (d) under the new -6 of HB 1971, HD1, Right of recovery. This amendment would allow a personal motor vehicle insurer to recover comprehensive or collision insurance coverage initially paid and then discovered that it should have been paid by the P2P insurer.

Section -6 of the bill, Right of recovery, subsection (d), would read as follows,

"(d) A motor vehicle insurer that pays a shared-car owner for loss or damage to a shared car that is excluded under the comprehensive physical damage coverage or collision physical damage coverage of the shared car owner's or shared car driver's policy shall have the right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if:

- (1) The loss or damage to the shared car occurs during the car-sharing period; and
- (2) The shared car owner or the shared car driver purchased comprehensive physical damage coverage or collision physical damage coverage, as applicable, from the peer-to-peer car-sharing program or its motor vehicle insurer."

Thank you for the opportunity to testify.



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 14, 2022

TO: Representative Aaron Ling Johanson
Chair, Committee on Consumer Protection & Commerce

FROM: Matthew Tsujimura

RE: **H.B. 1971, HD1 Relating to Peer-to-Peer Car-Sharing**
Hearing Date: Tuesday, February 15, 2022 at 2:00 p.m.
Conference Room: 329

Dear Chair Johanson, Vice Chair Kitagawa, and members of the House Committee on Consumer Protection & Commerce:

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. 1971, HD1 which authorizes and regulates peer-to-peer car-sharing in the State. H.B. 1971, HD1 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. 1971, HD1 is a comprehensive bill that includes language regarding consumer safety, insurance and indemnification, and applicable taxes and fees.

HRS 261-7(a) authorizes DOT-A to contract with any person seeking to use property at State airports. Enterprise suggests including language in the committee report that clarifies that peer-to-peer car-sharing programs must contract with the Department of Transportation – Airports Division (DOT-A) in order to operate at the Airport. The proposed language is attached below.

We strongly support the passage of H.B. 1971, HD1.

Thank you for the opportunity to testify.

Proposed Committee Report Language:

"Your Committee notes that existing law empowers the department of transportation airports division to establish policies and rules governing use and access to the airports' premises. Peer-to-peer car-sharing programs will be subject to such rules when operating at the airport."



Testimony of

Tami Bui – Senior Government Affairs Manager

Turo Inc., San Francisco, CA

Comments to HB 1971 HD 1 February 15, 2022

Chair Johanson, Vice Chair Kitagawa and Members of the House Committee on Consumer Protection & Commerce, I respectfully submit comments to **HB 1971 HD 1** on behalf of Turo.

Thank you and Chair Aquino for your leadership and continued efforts to establish a fair regulatory framework for peer-to-peer car sharing. We look forward to working collaboratively toward a result that is fair and provides an option to residents who are in need of a car as well as those who share their car as a way to help them become financially stable.

Since the last hearing to HB 1971 in the House Transportation Committee, Turo appreciated the opportunity to meet with the Hawaii Insurers Council (HIC) and are in agreement with a majority of the issues noted in their testimony to this committee dated 2/11/22, for HB 1619 HD 1, which relate to the insurance parts of this bill.

Additionally, in the House Consumer Protection Committee on 2/11/22, there were amendments offered by the Insurance Commissioner, that while relate to HB 1619 HD 1, we would like to address for a holistic discussion:

1. Relating to the language, “Insured under a motor vehicle insurance policy issued by an admitted carrier that provides.” (emphasis added)

This attempts to impose a discriminatory requirement solely on the peer-to-peer car sharing industry that is far more onerous than current Hawaii law.

Under current law, the requirement is to solicit coverage from authorized insurers as a first resort. After several attempts to secure a quote from an authorized insurer, current Hawaii law allows entities, including current peer-to-peer car sharing companies, to secure coverage from the excess lines market.

This amendment requires that the *only* possible provider of the mandated coverage is an authorized insurer. However, there is no provision to provide recourse for the circumstance when none of the authorized insurers offer a product that fits the requirement of the statute.

Given the platform must have the mandated coverage, if it may only come from an authorized insurer, which we are already obligated under the current law to attempt to secure coverage from first, the unavailability of the policy in Hawaii's authorized market would equate to a prohibition on peer-to-peer car sharing should the market not bear a quote for the mandated coverage.

We believe the language that was previously agreed to and included in HB 1971 on P. 7, Section 2, lines 13-15 regarding Insurance coverage during car-sharing period ensures that any insurance would be subject to existing Hawaii law and is more appropriate and consistent with Hawaii law and we would support its re-inclusion into HB 1971 HD 1:

(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.

2. Relating to the language, "Primary insurance coverage for each shared car available and used through a peer-to-peer car sharing programming amounts no less than \$1,000,000 for death, bodily injury, and property damage per accident, costs of defense outside such limits;"

As noted in the House Consumer Protection Committee hearing discussion on 2/11/22, Peer-to-peer car sharing is its own distinct business model, but the insurance calculation of risk on the road by someone driving a vehicle that is used for peer-to-peer car sharing is no different than the risk of driving a rental vehicle or an individual's own vehicle.

While there have been comparisons made to higher coverage requirements in place for Transportation Network Companies (TNCs), our business model is completely different. 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.

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. This is reflected in the significantly lower coverage requirements for periods when a TNC vehicle is not transporting a passenger. There is no factual or policy basis for the assumption that peer-to-peer car-sharing involves a greater risk, let alone 10x greater risk, than any other permissive use, including rental car. We maintain that peer-to-peer car sharing should not be held to a

different standard and that if minimums are increased in this bill they should apply to rental car companies as well.

3. Relating to “optional coverages” required under the Insurance Commissioner’s amendments

Additional amendments to HB 1619 HD1 proposed by the Insurance Commissioner and adopted by the Committee are currently under review by Turo. We remain deeply concerned that such requirements related to optional coverage offerings may be incompatible with our current business model and do not provide meaningful protections for shared car owners and drivers. Furthermore, Turo opposes efforts to place unfair and restrictive obligations on peer-to-peer car-sharing that are not currently imposed on analogous industries such as rental car. We will provide specific feedback to the Committee as soon as possible once we have completed a thorough review.

Additional Comments:

Vicarious liability:

Turo strongly supports re-inclusion of a statutory exemption from vicarious liability consistent with the existing exemption for rental car companies in federal law. Horizontal fairness supports extending these same protections to vehicle owners and car sharing platforms. HB 1971, as introduced, included language that would recognize as a matter of State law immunity from vicarious liability for shared vehicle owners and peer-to-peer car sharing platforms. This ensures a level playing field for rental car and peer-to-peer car sharing. That language was removed from HB 1971 HD 1 and was not included in HB 1619. We propose re-inclusion of the original language from HB 1971, page 10, lines 9-13:

Section -, Consistent with title 49 of the United States Code section 30106, a peer-to-peer car-sharing program and a shared car owner shall be exempt from vicarious liability under any state or local law that imposes liability solely based on motor vehicle ownership.

Definition of Car Sharing Termination:

As noted in our testimony on HB 1619 HD 1, we believe that amending the definition of “car sharing termination time” to change “earliest” to “latest” will unintentionally create an unworkable and internally inconsistent framework that extends obligations far beyond the intent of the legislation and reasonable concerns of regulators. By changing termination to the latest of the subclauses, the amendment effectively turns the subsequent clauses into a checklist, each of which must be met in order for the car sharing period to terminate. Some of

these would clearly conflict such as the subsection (d) regarding a vehicle returned early. In that case, the sharing period would not terminate until all of the other conditions are met, including the expiration of the original car sharing agreement. In other instances, the “latest” amendment might unintentionally force a platform and/or host to retain coverage obligations even in situations involving a vehicle stolen by a guest.

We suggest reverting back to the original “earliest” requirement in order to ensure a workable framework. During the hearings, members raised concerns about a driver returning a vehicle late due to traffic or other unforeseen circumstances. However, subsection (1) of the definition requires that BOTH the sharing period as defined in the agreement AND the return of the vehicle to the agreed upon location be effected before the termination time is effective. We believe that the dual requirements of the existing subsection (1) satisfies the concerns.

Mandatory Recalls:

Turo is reviewing the amendments to section 11, Motor Vehicle Safety Recalls. We are concerned that the new requirement regarding a verification at the car-sharing start time may not be technologically feasible at this time. We look forward to discussing this issue and how we can address these important concerns.

Turo is committed to ongoing efforts to actively contribute to Hawai‘i’s community and provide an option to residents who are in need of a car as well as those who share their car as a way to help them become financially stable.

We thank you for the opportunity to provide comments.



February 14, 2022

The Honorable Aaron Ling Johanson
Chair, The House Committee on Consumer Protection & Commerce
Hawaii State Capitol Room 436

REGARDING: Testimony by Soledad Roybal, Public Policy
Manager - Getaround, offering **Comments to HB 1971**

Aloha Chair Johanson, Vice-Chair Kitagawa, and Members of the House Committee on
Consumer Protection & Commerce,

I am submitting comments on behalf of Getaround, a peer-to-peer car-sharing company
that has recently started to operate in Hawaii, in regard to **HB 1971**.

Getaround appreciates the efforts behind HB 1971. We are supportive of clearly
defining peer-to-peer car sharing platforms and activities, ensuring insurance
protections for vehicle owners and drivers. This includes mandatory insurance
coverages and liability insurance for every transaction. We look forward to working with
other stakeholders and legislators to create the best legal framework possible for this
industry in Hawaii.

With Getaround's patented Connect Technology vehicle owners in Hawaii can share
their cars with individuals who choose not to own a car, cannot afford a car, or need a
different type of vehicle, without having to wait in line or meet in person to hand over the
keys. This allows Kama'aina car owners to earn extra income for their underutilized
vehicles, with minimal disruption to their daily lives.

We trust that the Chair and your committee members recognize the notable differences
between peer-to-peer carsharing, traditional car rental services, and other types of
carsharing models. Peer-to-peer carsharing is fundamentally different in terms of who
owns the cars, which if any taxes are paid on the purchase of the vehicles, and the
nature of our customers.

Peer-to-peer carsharing is a very different model than that of a TNC like Uber and Lyft.
Getaround is unaware of any data that demonstrates that the users of peer-to-peer car
sharing are any greater of an insurance liability than the average driver, including
drivers who use traditional rental cars.

Reviewing the bill we have questions and concerns which we have outlined in a redline version of HB1971. Some of these questions and concerns include parts of the following sections:

- The definition of "Car sharing termination time"
- Issues with the Insurance coverage during the car sharing period
- Recordkeeping
- Required disclosures and notices
- Motor vehicle safety recalls
- General excise tax; rental motor vehicle surcharge tax

We look forward to further discussion around the questions and concerns that are detailed in the redline document with the hopes of providing Hawaiians the best possible consumer protection when they use peer-to-peer car sharing services.

Mahalo for your consideration of our comments.

Very Respectfully

Soledad Roybal
Public Policy Manager
Getaround

STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO PEER-TO-PEER CAR-SHARING.

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

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

"CHAPTER

PEER-TO-PEER CAR-SHARING

§ -1 Definitions. As used in this chapter:

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

"Car-sharing period" means the period of time that commences with the car-sharing delivery period or, if there is

no delivery period, that commences with the car-sharing start time and, in either case, ends at the car-sharing termination time.

"Car-sharing program agreement" means the terms and conditions applicable to a shared car owner and a shared car driver that govern the use of a shared car through a peer-to-peer car-sharing program. "Car-sharing program agreement" does not include a rental agreement as defined in section [437D-3](#).

"Car-sharing start time" means the time when the shared car becomes subject to the control of the shared car driver at or after the time the reservation of a shared car is scheduled to begin as documented in the records of a peer-to-peer car-sharing program.

"Car-sharing termination time" means the latest of the following events:

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

(2) When the shared car is returned to a location as alternatively agreed upon by the shared car owner and shared car driver as communicated through a peer-to-peer car-sharing program; which alternatively agreed upon location shall be incorporated into the car-sharing program agreement; or

(3) When the shared car owner or the shared car owner's authorized designee takes possession and control of the shared car.

"Peer-to-peer car-sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through

a peer-to-peer car-sharing program. "Peer-to-peer car-sharing" does not include the business of providing rental motor vehicles to the public as that phrase is used in section [251-3](#) or the business of a lessor as defined in section [437D-3](#).

"Peer-to-peer car-sharing program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. "Peer-to-peer car-sharing program" does not mean a lessor as defined in section [437D-3](#). "Peer-to-peer car-sharing program" does not include a car-sharing organization as defined in section [251-1](#).

"Shared car" means a vehicle that is available for sharing through a peer-to-peer car-sharing program. "Shared car" does not include a rental motor vehicle or vehicle as those terms are defined in section [437D-3](#).

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

"Shared car owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared car drivers through a peer-to-peer car-sharing program. "Shared car owner" does not include a lessor as defined in section [437D-3](#).

§ -2 Insurance coverage during car-sharing

~~period. (a) A peer-to-peer car-sharing program shall ensure that during each car-sharing period, the shared car shall be insured under a motor vehicle insurance policy that provides primary insurance coverage for each shared car available and used through a peer-to-peer car-sharing program in amounts no less than the minimum amounts required under section 431:10C-301 and does not exclude use of a shared car by a shared car driver.~~

Sec. 1. (a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this chapter, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than those set forth in section 431:10C-301.

(b) If insurance maintained by a shared car owner or shared car driver in accordance with subsection (a) has lapsed, contains an exclusion for peer-to-peer car-sharing, or does not provide the required coverage, insurance maintained by a peer-to-peer car-sharing program shall provide the coverage required by subsection (a) beginning with the first dollar of a claim and shall have the duty to defend such claim.

(c) Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program shall not be dependent on another motor vehicle insurer first denying a claim.

(d) A peer-to-peer car sharing program and a shared vehicle owner are exempt from vicarious liability in accordance with any applicable law that imposes liability solely based on vehicle ownership.

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

§ -4 **Exclusions in motor vehicle insurance policies.** (a) Notwithstanding section -2, an authorized insurer that writes motor vehicle insurance in the State may exclude any and all coverage and the duty to defend or indemnify any claim afforded under a shared car owner's motor vehicle insurance policy during the car-sharing period, including:

- (1) Liability coverage for bodily injury and property damage;
- (2) Personal injury protection coverage as set forth in section [431:10C-304](#);
- (3) Uninsured and underinsured motorist coverage;
- (4) Medical payments coverage;
- (5) Comprehensive physical damage coverage; and
- (6) Collision physical damage coverage.

(b) Except as required under section -2, nothing in this chapter shall invalidate or limit an exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire.

§ -5 Recordkeeping; use of vehicle in car-sharing. A peer-to-peer car-sharing program shall collect and verify records pertaining to the use of a shared car for each car-sharing program agreement, including:

(1) Dates and times of the car-sharing start time and the car-sharing termination time in the car-sharing program agreement;

(2) Dates and times of the car-sharing start time and car-sharing termination time;

(3) Pick up and drop off locations;

~~Itemized descriptions and amounts of all fees and costs charged to the shared car driver;~~

(4) Itemized descriptions and amounts of all fees and costs paid by the shared car driver;

(5) Itemized descriptions and amounts of all revenues received by fees and costs paid to the shared car owner;

(6) The name and contact information of the shared car owner and the shared car driver;
and

(7) The insurance policy number, effective date, coverage, and coverage amounts of each insurance policy that identifies the peer-to-peer car-sharing program, shared car owner, or shared car driver as the insured.

The peer-to-peer car-sharing program shall retain the records for a time period of no less than six years. Upon request, the peer-to-peer car-sharing program shall provide the information required by this section to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation. ~~and any information relating to the peer-to-peer car-sharing agreement in its possession and control to the shared car owner, the shared car owner's insurer, the shared car driver, the shared car driver's insurer, persons who have sustained injury or property damage involving a shared car, and police and other governmental entities to facilitate accident or claim coverage investigation.~~

{A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, car sharing period pick up and drop off locations, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation. The peer-to-peer car sharing program

shall retain the records for a time period not less than the applicable personal injury statute of limitations.]

§ -6 Right of recovery from peer-to-peer car-sharing program or its motor vehicle insurer. (a) A motor vehicle insurer that defends or indemnifies a liability claim against a shared car owner or a shared car driver that is excluded under the terms of the shared car owner's or shared car driver's policy shall have a right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the liability claim is made against the shared car owner or the shared car driver for injury or damage that occurs during the car-sharing period.

(b) A motor vehicle insurer that pays personal injury protection benefits for injury sustained by an occupant of, or by a pedestrian when struck by, a shared car when the obligation to pay personal injury protection benefits is excluded under the shared car owner's or shared car driver's policy shall have the right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the injury occurs during the car-sharing period.

(c) A motor vehicle insurer that pays uninsured motorist benefits or underinsured motorist benefits for injury sustained by an occupant of a shared car when the obligation to pay uninsured motorist benefits or underinsured motorist benefits is

excluded under the shared car owner's or shared car driver's policy shall have the right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the injury occurs during the car-sharing period.

(d) A motor vehicle insurer that pays a shared-car owner for loss or damage to a shared car that is excluded under the comprehensive physical damage coverage or collision physical damage coverage of the shared car owner's or shared car driver's policy shall have the right to seek to recover from the peer-to-peer car-sharing program or its motor vehicle insurer if the loss or damage to the shared car occurs during the car-sharing period.

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

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

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

§ -8 Required disclosures and notices. For each shared car participating in a car-sharing program agreement, a peer-to-peer car-sharing program shall:

(1) Provide, prior to the execution of a car-sharing program agreement, the shared car owner and shared car driver with the terms and conditions of the car-sharing program agreement;

(2) Disclose to the shared car driver, prior to the execution of a car-sharing program agreement, all costs or fees that are charged to the shared car driver under the car-sharing program agreement, including all costs or fees for mandatory insurance coverage charged by the peer-to-peer car-sharing program;

(3) Disclose to the shared car owner, prior to the execution of a car-sharing program agreement, all costs or fees that are charged to the shared car owner under the car-sharing program agreement, including fees or costs for mandatory insurance coverage charged by the peer-to-peer car-sharing program;

(4) Provide a twenty-four hour emergency telephone number for a person capable of facilitating roadside assistance for the shared car driver;

(5) Disclose any right of the peer-to-peer car-sharing program to seek indemnification from the shared car owner or the shared car driver for economic loss sustained by the peer-to-peer car-sharing program caused by a breach of the car-sharing program agreement; ~~provided that the peer-to-peer car-sharing program shall require the shared car owner and the shared car driver to specifically and separately acknowledge notice of the disclosure prior to execution of a car-sharing program agreement;~~

(6) Disclose that a motor vehicle insurance policy issued to the shared car owner for the shared car or to the shared car driver may not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program; ~~provided that the peer-to-peer car-sharing program shall require the shared car owner and the shared car driver to specifically and separately acknowledge notice of the disclosure prior to execution of a car-sharing program agreement;~~

(7) Disclose that the peer-to-peer car-sharing program's insurance coverage on the shared car owner and the shared car driver is in effect only during each car-sharing period and that the shared car may not have insurance coverage for use of the shared car by the shared car driver after the car-sharing termination time; ~~provided that the peer-to-peer car-sharing program shall require the shared car owner and the shared car driver to specifically and separately acknowledge notice of the disclosure prior to the execution of a car-sharing program agreement;~~

(8) Disclose any insurance or protection package costs that are charged to the shared car owner or the shared car driver; ~~provided that the peer-to-peer car-sharing program shall require the shared car owner and the shared car driver to specifically and separately acknowledge notice of the disclosure prior to the execution of a car-sharing program agreement;~~

(9) Disclose to the shared car driver any conditions in which the shared car driver is required to maintain a motor vehicle insurance policy as the primary coverage for the shared car; and

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

§ -9 Driver's license verification and data

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

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

(2) Is a nonresident who:

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

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

(3) Otherwise is specifically authorized to drive vehicles of the class of the shared car.

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

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

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

§ -10 Responsibility for equipment. A peer-to-peer car-sharing program shall have sole responsibility for any

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

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

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

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

(b) A shared car owner shall:

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

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

(3) Notify the peer-to-peer car-sharing program of a safety recall when the shared car is in the possession of a shared car driver so that the peer-to-peer car-sharing program may notify

the shared car driver and the shared car may be removed from use until the shared car owner effects the necessary safety recall repair.

§ -12 **General excise tax; rental motor vehicle surcharge tax; collection.** (a) The activity of peer-to-peer car sharing shall be subject to general excise tax under [chapter 237](#) and, only if the shared vehicle owner has not paid general excise tax on the purchase of the shared vehicle, the rental motor vehicle surcharge tax pursuant to section [251-2\(a\)](#); provided that the peer-to-peer car sharing program shall be responsible for collecting and remitting any taxes and surcharges to the department of taxation.

§ -13 **Relation to other laws.** Chapter [437D](#) shall not apply to peer-to-peer car-sharing."

SECTION 2. Section [251-3](#), Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each person as a condition precedent to engaging or continuing in the business of providing rental motor vehicles to the public, engaging or continuing in the tour vehicle operator business, [~~or~~] engaging or continuing in a car-sharing organization business, or engaging or continuing in a peer-to-peer car-sharing program as defined in section -1 shall register with the director. A person required to so register shall make a one-time payment of \$20, upon receipt of which the director shall issue a certificate of registration in

such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued." [NEED TO CLARIFY WHETHER A SHARED VEHICLE OWNER AND/OR PEER-TO-PEER CAR-SHARING PROGRAM MUST REGISTER, AND THE PROCESS AND CRITERIA FOR APPROVAL]

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

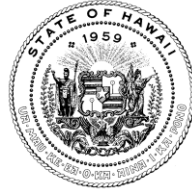
Report Title:

DoTAX; Peer-to-Peer Car-sharing; GET; Rental Motor Vehicle Surcharge Tax; State Highway Fund

Description:

Authorizes peer-to-peer car-sharing and establishes regulations thereof, including insurance requirements. Imposes the general excise tax and rental motor vehicle surcharge tax on peer-to-peer car-sharing programs, including car-sharing program requirements. Requires those persons engaging or continuing in a peer-to-peer car-sharing program to register with the Department of Taxation. Effective 7/1/2050. (HD1)

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



LATE

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce
Tuesday, February 15, 2022
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 1971, H.D.1, RELATING TO PEER-TO-PEER CAR-SHARING**

Chair Johanson and Members of the Committee:

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

The purpose of this bill is to authorize peer-to-peer car-sharing and establishes regulations, including insurance requirements. The bill also imposes the general excise tax and rental motor vehicle surcharge tax on peer-to-peer car-sharing programs, including car-sharing program requirements, and requires those persons engaging or continuing in a peer-to-peer car-sharing program to register with the Department of Taxation.

The Insurance Division prefers the insurance provisions set forth in H.B. 1619, H.D. 1, with the following amendments (Note that the following references to section, page, line numbers are for HB 1619, H.D. 1):

1. Section 2, p.6, line 19 to read as follows: "insured under a motor vehicle insurance policy issued by an admitted carrier that provides:"

2. Section 2, p. 6, line 20 to p. 7, line 3 to read as follows: “(1) Primary insurance coverage for each shared car available and used through a peer-to-peer car-sharing program in amounts no less than less than \$1,000,000 for death, bodily injury, and property damage per accident, costs of defense outside such limits;”
 - (2) Primary insurance coverage for each shared car available and used through a peer-to-peer car-sharing program for personal injury protection coverage that meets the minimum coverage amount where required by section 431:10C-103.5;
 - (3) Insurers providing the motor vehicle insurance policies pursuant to this section shall offer the following optional coverages, that any shared car driver may elect to reject or purchase that provides primary coverage for each shared car available and used through a peer-to-peer car-sharing program:
 - (A) Uninsured and underinsured motorist coverages as provided in section 431:10C-301, which shall be equal to the primary liability limits specified in this section and provided that uninsured and underinsured motorist coverage offers shall also provide for written rejection of the coverages as provided in section 431:10C-301;
 - (B) Uninsured and underinsured motorist coverage stacking options as provided in section 431:10C-301; provided that the offer of the stacking options shall also provide for written rejection as provided in section 431:10C-301; and
 - (C) An offer of required optional additional insurance coverages as provided in section 431:10C-302.”

Thank you for the opportunity to testify on this bill.

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT WITH
COMMENTS TO H.B. 1971**

Date: Friday February 15, 2022

Time: 2:00 p.m.

LATE

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **SUPPORT WITH COMMENTS** to H.B. 1971, Relating to Peer-to-Peer Car Sharing. HAJ supports the intent of measure with comments **to increase the required minimum amount of insurance coverage for car sharing on Peer-to-Peer car-sharing platforms to \$1,000,000.**

Peer-to Peer Car Sharing is one of the fastest growing industries across the United States resulting in a wave of legislative efforts and lobbying. This trend has an impact on the insurance industry, the rent-a-car industry, state tax collectors, and of course the companies deriving revenue from Peer-to-Peer transactions. Most importantly, the rise of Peer-to-Peer impacts drivers, passengers and pedestrians injured in motor vehicle accidents on Hawaii's roadways. H.B. 1971 does not take their interest into account as currently drafted, and therefore, HAJ recommends the following amendments.

HAJ's main concern is that H.B. 1971 does not require a sufficient amount of minimum insurance coverage. Many automobiles licensed in Hawaii lose their state-mandated coverage when they are used in a Peer-to-Peer Car Share as individual motor vehicle policies typically exclude coverage for injuries arising from the use of an auto as a private rental car, taxi or UBER/LYFT.

H.B. 1971 proposes to bridge this gap in insurance by requiring that a car share platform provide minimum \$20,000 in liability and \$10,000 in property damage coverage under HRS §

431:10C-301. Therefore, the net effect of H.B. 1971 will be to reduce the amount and quality of insurance protection currently available to people injured in motor vehicle accidents. Many vehicles are now insured for \$50,000, \$100,000, \$300,000 or more in bodily injury liability coverage, but these policies will now all be replaced with minimum limits of \$20,000. For example, if a doctor, who has a personal automobile insurance policy of \$1,000,000, uses the peer-to-peer car sharing program in Hawaii, his personal automobile policy may have an exclusion of coverage for peer-to-peer car sharing and so this doctor is now only covered by the \$20,000 insurance policy as required under HB 1619. The doctor thought he had sufficient insurance coverage to protect his assets in case of a collision, but because he used peer-to-peer car sharing in Hawaii he no longer has sufficient insurance protection. In order to protect, both the users of the Peer-to-Peer car sharing program, and the innocent victims of negligent drivers, it is important for Hawaii to require the Peer-to-Peer program to provide at least \$1,000,000 of insurance coverage.

HAJ strongly recommends the require minimum liability coverage for Peer –to- Peer use be increased to \$1 million which is consistent with the required insurance coverage for Transportation Network Companies (TNC) under HRS 431:10C-703. Peer-to-Peer is an internet platform that operates in the same way as Uber/Lyft TNC using privately owned vehicles, thus, it should be treated in the same manner. 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.

There is no rational basis for reducing the amount of insurance coverage as proposed in current draft of H.B. 1971. Essentially, the proposed \$20,000 limit lowers 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). Conversely, both Uber and Lyft provide \$1 million of insurance coverage for riders in Hawaii.

The minimum limit for Hawaii residents was set to accommodate the financial ability of all Hawaii citizens. It allows lower limits for lower income residents, such as the elderly on social security, and higher limit options for those with higher incomes. The minimum limit is set low as a practical matter to keep premiums affordable for all residents, not at a level sufficient to cover the cost of reasonably anticipated losses. Internet platform businesses however should be required to provide limits sufficient to cover the risks of injuries and damages of the business, as was done for UBER/LYFT vehicles.

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

Peer-to-Peer companies, like Turo, are akin to TNCs such as UBER/ LYFT and are distinct from traditional U-Drive companies such as Avis, Hertz or Enterprise. 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, 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.

In contrast, rental car companies: 1) own and pay for their vehicles; 2) maintain physical facilities at the airport and in town; 3) hire hundreds of workers statewide to check-in renters; 4) drive shuttles; 5) check rental cars as they leave the premises; 6) receive returns and check-out

renters; 7) clean/wash and inspect vehicles after each rental; 8) employ mechanics to service and repair rental cars; and 9) drive cars to/from parking/storage lots among other tasks. U-Drive companies must comply with regulatory requirements for inspection, repair, and maintenance of traditional rental cars. Conversely, there is no actual control or supervision by Turo to ensure that vehicles it rents have been properly serviced or repaired. This is due to the fact 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 individuals. 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 bystanders 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's own personal auto insurance policy. This is why many insurance agents advise that drivers renting from traditional U-Drive companies decline the optional (and expensive) liability insurance because the driver's own insurance provides coverage. Conversely, most individual automobile policies have an exception of coverage for Peer-to-Peer car sharing, leaving the driver with only the insurance provided by the Peer-to-Peer company. If the Peer-to-Peer insurance minimum was only \$20,000, many drivers would be grossly underinsured. It is also notable that, H.B. 1971 exempts Peer-to-Peer companies from regulation under Chapter 437D which regulates traditional U-Drive rental companies.

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.

Accordingly, it is essential that Peer-to-Peer companies carry the same additional insurance coverage at a minimum of \$1 million akin the level provided by TNC internet platforms like Uber/Lyft. Without this necessary coverage the major risk of doing business would be placed on the public and not on the Peer-to-Peer 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.

HAJ recommends that Section -2 (a) should be amended to read:

"(a) A peer-to-peer car-sharing program shall assume liability, except as provided in subsection (b), of a shared car owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the car-sharing program agreement. The following motor vehicle insurance requirements shall apply during each car-sharing period:

(1) Primary motor vehicle liability insurance that provides at least \$1,000,000 for death, bodily injury, and property damage per accident, costs of defense outside such limits;

(2) Personal injury protection coverage that meets the minimum coverage amount where required by section 431:10C-103.5; and

(3) The coverage requirements of this subsection may be satisfied by any of the following:

(A) A motor vehicle insurance policy maintained by the Shared car driver;

(B) A motor vehicle insurance policy maintained by the Peer-to- peer car-sharing

program; or

(C) Any combination of subparagraphs (A) and (B).

Additional Reporting Requirements

In addition, we recommend the following amendment to address reporting requirement provisions. Proper recordkeeping is vital to holding Peer-to-Peer car sharing companies accountable while conducting business in Hawaii. As currently drafted H.B. 1971 omits several key recordkeeping requirements that will be crucial when determining assumption of liability and insurance coverage as proposed in this measure. We believe that a more robust and enumerated set of recordkeeping requirements is recommended. In turn, HAJ recommends that section -5 be amended to read as follows:

§ -5 Recordkeeping; use of vehicle in car-sharing. A peer—to—peer car—sharing program shall collect and verify records pertaining to the use of a shared car for each car— sharing program agreement, including:

(1) Dates and times of the car-sharing start time and the car-sharing termination time in the car—sharing program agreement;

(2) Dates and times of the car-sharing start time and car-sharing termination time;

(3) Itemized descriptions and amounts of all fees and costs charged to the shared car driver;

(4) Itemized descriptions and amounts of all fees and costs paid by the shared car driver;

(5) Itemized descriptions and amounts of all fees and costs paid to the shared car owner;

(6) The name and contact information of the shared car owner and the shared car driver;

and

(7) The insurance policy number, effective date, coverage, and coverage amounts of each

insurance policy that identifies the peer—to—peer car—sharing program, shared car owner, or shared car driver as the insured.

The peer—to—peer car—sharing program shall retain the records for a time period of no less than six years. Upon request, the peer—to—peer car—sharing program shall provide the information required by this section, and any information relating to the peer—to-peer car—sharing agreement in its possession and control, to the shared car owner, the shared car owner's insurer, the shared car driver, the shared car driver's insurer, persons who have sustained injury or property damage involving a shared car, and police and other governmental entities to facilitate accident or claim coverage investigation.

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.