

HB-1971

Submitted on: 2/2/2022 11:48:33 AM

Testimony for TRN on 2/4/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Michael Moriyama	Office of Consumer Protection	Oppose	Yes

Comments:

Available to answer questions.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Henry J.C. Aquino, Chair;
The Honorable Greggor Ilagan, Vice Chair;
and Members of the House Committee on Transportation

From: Isaac W. Choy, Director
Department of Taxation

Date: Friday, February 4, 2022
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

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

The Department of Taxation (Department) offers the following comments regarding H.B. 1971 for your consideration.

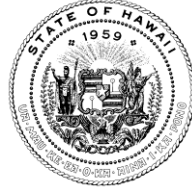
H.B. 1971 creates a new chapter to regulate peer-to-peer car-sharing and imposes the current car-sharing surcharge tax on peer-to-peer car-sharing programs (P2P). The bill also adjusts the rate of the car-sharing surcharge tax to a set portion of the general rental motor vehicle surcharge tax (RVST). The bill is effective July 1, 2022.

First, the Department notes that P2Ps are already subject to the \$5.50 per day RVST. Allowing P2Ps to be subject to the car-sharing tax in lieu of RVST will provide a competitive advantage over other car rental companies. Since P2Ps and other car rental companies are engaging in the same business activity, the Department does not believe that disparate application of tax is appropriate.

Second, the Department supports the update of the car-sharing tax rate as it was not updated when the RVST was increased. Act 237, Session Laws of Hawaii 2021, increases the RVST by 50 cents per year for six years beginning on January 1, 2022. By setting the car-sharing tax rate at one-twelfth of the daily RVST rate, it will not have to be updated when the daily RVST changes.

Finally, the Department is able to administer the tax provisions of this measure, but respectfully requests that the tax provisions in Sections 2 and 3 be made effective on January 1, 2023. This will provide sufficient time to make the necessary forms, instructions and computer system changes.

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



DAVID Y. IGE
GOVERNOR

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

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CATHERINE P. AWAKUNI COLÓN
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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Transportation
Friday, February 4, 2022
10:00 a.m.
Via Videoconference**

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

Chair Aquino and Members of the Committee:

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

The purposes of this bill are to: (1) Authorize peer-to-peer car-sharing and establishes regulations; (2) impose the car-sharing surcharge tax on peer-to-peer car-sharing programs; (3) set the car-sharing vehicle surcharge tax at a rate equal to one-twelfth of the rate of the rental motor vehicle surcharge tax; (4) require those persons engaging or continuing in a peer-to-peer car-sharing program to register with the Department of Taxation; and (5) require peer-to-peer car-sharing programs, pursuant to Hawaii Revised Statutes (HRS) section 261-7(a), to enter into agreements with the Department of Transportation prior to operating at State airports.

The business model of peer-to-peer car rental differs markedly from that of the existing traditional car rental, which 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.

The OCP supports peer-to-peer car sharing regulation by reaffirming its support of H.B. 333, H.D.3, S.D.2, currently in conference, in particular, the provisions relating to: (1) notification of implications of lien; (2) exclusions in motor vehicle insurance policies; (3) record keeping; (4) indemnification; (5) insurable interest; (6) required disclosures and notices; (7) driver's license verification and retention; (8) equipment responsibility; (9) motor vehicle safety recalls; (10), surcharge tax, and vicarious liability; (11) airports division contracts and rules; (12) prohibition of additional mandatory charges; and (13) civil penalties.

The Department offers the following comparison of the provisions of H.B. 1971 with H.B. 333, H.D. 3, S.D. 2.

1. H.B 1971 improperly claims that 49 USC § 30106 applies to peer-to-peer car sharing transactions.

H.B 1971, page 10, lines 9 through 13, inaccurately and improperly claims that the liability exception created by 49 USC § 30106, which limits the liability of companies in the "business of renting or leasing motor vehicles", applies to car-sharing programs.

H.B 1971 repeatedly asserts¹ that peer-to-peer car-sharing does not include "any person in the business of providing rental motor vehicles to the public", which is how a "lessor" is defined in chapter 437D. If peer-to-peer car-sharing is not in the "business of renting or leasing motor vehicles", then 49 USC § 30106 does not apply to peer-to-peer car-sharing.

¹ "Car-sharing program agreement' does not include a rental agreement as defined in section 437D3." H.B 1971, p. 2, lines 2 - 4.

"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." H.B 1971, p. 3, lines 6 – 9.

"Peer-to-peer car-sharing program' does not mean a lessor as defined in section 437D-3." H.B 1971, p. 3, lines 12 - 14.

"Shared car' does not include a rental motor vehicle or vehicle as those terms are defined in section 437D-3." H.B 1971, p. 3, lines 17 - 19.

"Shared car driver' does not include a lessee as defined in section 437D-3." H.B 1971, p. 4, lines 1 - 2.

"Shared car owner' does not include a lessor as defined in section 437D-3." H.B 1971, p. 4, lines 6 - 7.

"Chapter 437D shall not apply to peer-to-peer car-sharing." H.B 1971, p. 16, lines 17 - 18.

H.B. 333, H.D. 3, S.D. 2 (2021) addresses this issue by excluding any reference to 49 USC § 30106.

2. H.B 1971 fails to anticipate probable situations involving public safety under which a car-sharing arrangement should be terminated.

H.B 1971, page 2, line 10 through page 3, line 3, recognizes only three situations under which a car-sharing arrangement is terminated: 1) Upon agreed-upon termination time, 2) When a shared car is returned to an alternatively agreed-upon location, or 3) When the owner or owner's designee takes possession of a shared car. None of these transactional situations recognize the public safety aspect of terminating a shared car arrangement.

H.B 1971 fails to address other likely scenarios, that potentially involve public safety, in which a shared car arrangement might and should be terminated. First, H.B 1971 fails to address the situation where a shared car cannot be safely or legally operated and, as a result, the shared car is not returned on time or to an alternatively agreed-upon location or there is a lag before an owner or designee takes possession and control of a shared car. Second, H.B 1971 fails to address the situation where a shared car, subsequent to the start of the shared car period, is discovered to have been subject to a safety recall or becomes subject to a safety recall.

H.B 333, H.D.3, S.D.2 (2021) § -1 (page 3, lines 8 through 20) specifically addresses these two situations potentially threatening public safety.

3. H.B 1971 fails to adequately address the public safety concerns of recalled vehicles made available for car sharing.

H.B. 1971, page 15, lines 9 through 14, inadequately requires a platform to verify that a shared car is not subject to recall *at the time* when a vehicle owner registers a shared car on the platform and at any time *before* a shared car is made available through the platform. H.B. 1971 § 12(a). Since a shared car must necessarily be registered *before* it can be available for sharing, a platform need only verify that no recalls exist at the time of registration to satisfy this provision. That means that days, weeks, months or years later, when a vehicle may, subsequent to registration and

availability for sharing, become subject of a safety recall, the platform is under no obligation to remove the car from sharing availability.

H.B. 333, H.D.3, S.D. 2 (2021) § -11(a)(1) (page 17, line 19 through page 18, line 3) addresses this issue by requiring that a platform verify that no safety recall exists for each shared car *available* for car sharing through the platform. In other words, any car listed as available on a platform's website must not be subject to recall.

4. H.B. 1971 fails to protect shared car drivers from charges for disputed damage to shared cars.

H.B. 1971 fails to contain any provision protecting shared car drivers from charges for disputed damage to shared cars. For out-of-state visitors, this can create a significant vulnerability. When out-of-state visitors return home, they may not receive a credit card statement until sometime thereafter when unauthorized charges for vehicle repair may be reported. Unscrupulous shared car platforms and owners may charge visitors' credit cards for disputed or false damage claims. Once an out-of-state visitor returns home, it can be difficult to contest such charges.

H.B. 333, H.D.3, S.D.2 (2021) § -10(d) (page 16, line 17 through page 17 line 18) addresses this issue by prohibiting platforms and owners from requiring advance deposits for damages and requiring platforms and owners to obtain agreement from drivers about actual repair costs and liability. If a platform or owner can't obtain such agreement, then the platform or owner has the option to sue the driver for damages. A platform and shared-car owner can further protect themselves from loss by having adequate insurance coverage for the shared-car.

5. H.B. 1971 fails to protect shared-car owners from damage to shared-cars or other injury caused by platform equipment installed in shared cars.

H.B. 1971, page 14 line 19 through page 15, line 8, fails to address losses caused by the installation of platform equipment in shared cars.

H.B. 333, H.D.3, S.D.2 (2021) § -10 (page 15, line 19 through page 16, line 16) ensures that platforms are responsible for injury and losses caused by their equipment installed in shared cars. This protects shared-car owners from damages caused by

installed equipment, as well as Hawaii residents and innocent bystanders who also may be injured because of defective or defectively installed equipment.

6. H.B. 1971 fails to require car-sharing programs to enter into agreements with the State, putting car-sharing platforms on equal footing with other transportation alternatives operating at State airports.

H.B. 1971 fails to require car-sharing platforms to comply with State rules and regulations regarding operations of various transportation alternatives at State airports.

H.B. 333, HD 3, S.D. 2 (2021) § -12 (page 19 lines 15 through 21) provides that, “A peer-to-peer car-sharing program shall enter into a contract or other agreement with the airports division of the department of transportation pursuant to section 261-7(a) prior to operating at any airport in the State.”

7. H.B. 1971 fails to provide any specific remedies for violations of its provisions.

H.B. 1971 contains no specific or clear remedies for violations of its provisions.

H.B. 333, H.D. 3, S.D.2 (2021) § -14 (page 21, lines 3 through 7), by contrast, states that, “Any person who violates or attempts to violate any provision of this chapter shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.” This subjects any violator to the remedies for unfair and deceptive acts or practices provided by chapters 480 and 487.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON TRANSPORTATION
Representative Henry J.C. Aquino, Chair
Representative Greggor Ilagan, Vice Chair

Friday, February 4, 2022
10:00 a.m.

HB 1971

Chair Aquino, Vice Chair Ilagan, and members of the Committee on Transportation, 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 the intent of the insurance sections of this bill with amendments. Specifically, those sections in the bill are Section 2, 4, 7, and 8. This bill would regulate Peer-to-Peer (P2P) activities and provides insurance requirements. P2P programs and their users have been operating in Hawaii for several years. However, during the pandemic, there has been a large increase in activity in this area because there is a new car and rental car shortage. This shortage of vehicles is expected to last at least another two years. Meanwhile, consumers are renting personal vehicles on their own, i.e., without using a platform that provides insurance for rental vehicles. When this happens insurance coverage to protect accident victims will likely be inadequate if it exists at all. Additionally, the renter may not understand that there is no insurance coverage on the vehicle they are using.

We believe that at least insurance provisions should be enacted based on the large number of people renting through P2Ps and the number of vehicles involved in P2Ps. Having appropriate insurance coverage for users of P2Ps or their victims is the best way

to protect consumers. Our preference for insurance provisions is contained in HB 1619, however if the language on insurance contained in sections 2, 4, 7, and 8 remain in this bill, we ask for the definition of “car-sharing start time” to be broadened so that if a renter drives the P2P vehicle prior to the contract time, the new definition would encompass that situation. The definition would read,

““Car-sharing start time” means the time the shared car driver obtains operation, use, or control of a shared car through a peer-to-peer car-sharing program.”

Thank you for the opportunity to testify.



Testimony of
Tami Bui – Senior Government Affairs Manager
Turo Inc., San Francisco, CA
Comments to HB 1971 February 4, 2022

Chair Aquino, Vice Chair Ilagan and Members of the House Committee on Transportation, I respectfully submit comments to **HB 1971** on behalf of Turo.

Turo is a peer-to-peer car sharing platform that connects car owners with those in need of a mobility solution. Through the Turo online marketplace, anyone in need of a mobility option can obtain the freedom a car can provide. In Hawai'i, our community of car owners share their personal cars with those in the local community as well as visitors to the islands.

The Hawai'i peer-to-peer car sharing community has played a key role during the pandemic with a reduction of public transportation and mobility options. HB 1971 enables residents to share their cars and serve those in need of mobility options in Hawai'i 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
- Ensures the driver holds a license that authorizes the driver to operate vehicles of the class of the shared vehicles
- 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

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 falls within Turo's value system of investing in communities.

We acknowledge there is a surcharge in this bill that sets peer-to-peer car sharing at the same rate as rental and this is something we have not faced in any other state where we have a regulatory framework in place. We look forward to working with the legislature 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.

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.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: HB 1971, SB 3271

INTRODUCED BY: HB by AQUINO, ILAGAN, JOHANSON; SB by LEE

EXECUTIVE SUMMARY: Authorizes peer-to-peer car-sharing and establishes regulations thereof. Imposes the car-sharing surcharge tax on peer-to-peer car-sharing programs. Sets the car-sharing vehicle surcharge tax at a rate equal to one-twelfth of the rate of the rental motor vehicle surcharge tax. Requires those persons engaging or continuing in a peer-to-peer car-sharing program to register with the Department of Taxation.

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

Amends section 251-2.5, HRS, in the rental motor vehicle surcharge tax (RVST), to impose a peer-to-peer car-sharing surcharge tax of 1/12 the daily rate specified in the RVST per half-hour, or portion thereof, 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.

EFFECTIVE DATE: July 1, 2022

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: 2/2/2022



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 3, 2022

TO: Representative Henry Aquino
Chair, Committee on Transportation

FROM: Matthew Tsujimura

RE: **H.B. 1971, Relating to Peer-to-Peer Car Sharing**
Hearing Date: Friday, February 4, 2022 at 10:00 a.m.
Conference Room: 423

Dear Chair Aquino, Vice Chair Ilagan, and members of the House Committee on Transportation:

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 which authorizes and regulates peer-to-peer car-sharing in the State. H.B. 1971 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 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.

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."



February 4, 2022

The Honorable Henry J.C. Aquino
Chair, The House Committee on Transportation
Hawaii State Capitol Room 419

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

Aloha Chair Aquino, Vice-Chair Ilagan, and Members of the House Committee on
Transportation,

I am pleased to submit comments with regard to **House Bill 1971** on behalf of
Getaround, a peer-to-peer car-sharing company that has recently started to operate in
Hawaii.

Getaround is poised to deliver unique benefits to individuals and communities across
Hawaii. Our patented Getaround Connect technology enables vehicle owners to share
their cars with their people who choose not to own a car, cannot afford a car, or need a
different type of vehicle, without ever having to wait in line or meet in person to hand
over the keys.

This technology enables people using a smartphone to book a car on demand 24/7, for
a period as short as one hour. Meanwhile, kama'aina car owners whose vehicles are
underutilized – on average, cars are idle 95% or more of the time – are able to earn
extra income.

Getaround appreciates that HB 1971 recognizes the importance of facilitating access for
those who want to utilize this important mobility option while protecting consumers and
the community. In this regard, the bill would make helpful, peer-to-peer carsharing-
specific, updates to the state's laws by:

- Defining peer-to-peer car sharing platforms and activities
- Establishing new consumer protections for vehicle owners and drivers,
including mandatory insurance coverages and liability insurance for every
transaction

- Ensuring the driver holds a license that authorizes the driver to operate vehicles of the class of the shared vehicles
- Requiring clear disclosures of insurance, fees, and terms and conditions of sharing agreements
- Explicitly defining the legal responsibilities of car sharing platforms
- Holding car sharing platforms accountable by mandating clear record keeping

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

Getaround is excited to be operating in Hawaii and welcomes the opportunity to play our part in making communities across Hawaii even better places to live and work. As you consider HB 1971 and other legislation affecting carsharing, we look forward to being a resource to you and working with all stakeholders and policymakers.

Mahalo for your consideration of our comments.

Very Respectfully

Soledad Roybal
Public Policy Manager
Getaround



February 3, 2022

Chairman Henry Aquino
House Committee on Transportation
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

Re: Comments on H.B. 1971 – Peer-to-Peer Car Sharing

Aloha Chairman Aquino:

On behalf of Avail, a peer-to-peer car sharing company and subsidiary of Allstate Insurance, we write today in support to H.B. 1971 regarding peer-to-peer car sharing, which is scheduled to be heard by the House Committee on Transportation on February 4, 2022. Peer-to-peer car sharing allows Hawaii residents to share their cars with other residents and visitors in need of a safe, convenient, and affordable means of transportation. At the same time those sharing their vehicles enjoy the added benefit of earning passive income through the sharing process by utilizing an asset that for many has been sitting in their driveway or garage for months as we endure the lasting impact of the COVID-19 pandemic. In addition to providing an alternative to traditional car renting, peer-to-peer car sharing gives citizens a new solution to longstanding mobility needs where public transit and other alternatives are not an option.

We are very appreciative of your continued 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. By enacting H.B. 1971, 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 definitions within the bill follow the nationally adopted model law passed by NCOIL which lays out exactly what car sharing is and how it should be regulated. These definitions are the foundation for establishing the appropriate regulatory environment and ensuring shared car owners and shared car drivers are protected at all times.

In addition, the insurance and liability provisions in H.B. 1971 bill reflect the three-party business model of car sharing and help provide various coverage needs for all parties involved. Also, the provisions related to disclosures, recalls and driver verification will help assure all parties involved are protected and secure during the transactions.

Lastly, the only concern we have with H.B. 1971 is that the bill contemplates assigning a surcharge on peer-to-peer car sharing that is equal to the surcharge that rental car companies now pay. The peer-to-peer industry is willing and able to come to the table to discuss the appropriate manner by which the surcharge issue should be addressed, but because our business model is drastically different from the rental car companies—we ask that any surcharge discussions consider these differences when looking at surcharges on the peer-to-peer industry.

Thank you again for this thoughtful legislation, and we look forward to working with you as this bill continues through the legislative process.

Mahalo,

Jon Van Arsdell
Head of Government Affairs for Avail

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

Date: Friday February 4, 2022

Time: 10:00 a.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. 1971, Relating to Peer-to-Peer Car Sharing. HAJ appreciates the intent of the measure, however, we oppose H.B. 1971 in its current form as it does not sufficiently ensure that vehicles used for car sharing on Peer-to-Peer car-sharing platforms are covered by insurance that is adequate in amount and complies with the requirements of the Hawaii motor vehicle insurance law.

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.

The main issue at hand 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.

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.

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, 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).

Moreover, the current draft of H.B. 1971 includes several unintended loopholes or gaps in insurance coverage that should be corrected. The following technical amendments should be

made:

Delay in Returning the Share Car

First, 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. Specifically, the definition for “Car-sharing termination time” states that 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.” For instance, a gap in coverage occurs 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. As such, this unintended gap in coverage can be closed by deleting the word “earliest” on page 2, line 10, and replacing it with “latest.”

In addition, under section -2(b)(2) this gap in insurance coverage is expressly stated as the assumption of liability does not apply when a shared car owner is “ [a]cting in concert with a shared car driver who fails to return the shared car pursuant to the terms of the car-sharing program agreement.” For instance, if a driver is delayed in traffic and notifies the owners that he or she will be late, the assumption of liability would not apply while the personal auto insurance is inapplicable due to the exclusions while the vehicle is “available for rent, sharing, or hire.” Accordingly, HAJ recommends deletion of section -2(b)(2).

Additional Reporting Requirements

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.

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

Peer-to-Peer companies, like Turo, are distinct from traditional U-Drive companies such as Avis, Hertz or Enterprise. For this reason, H.B. 1971 exempts Peer-to-Peer companies from regulation under Chapter 437D which regulates traditional rental companies.

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. 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 page 9, while there is no similar exclusion for traditional rental cars.

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.

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.

HB-1971

Submitted on: 2/4/2022 8:57:52 AM

Testimony for TRN on 2/4/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kekoa McClellan	Getaround	Comments	No

Comments:

February 4, 2022

The Honorable Henry J.C. Aquino

Chair, The House Committee on Transportation

Hawaii State Capitol Room 419

REGARDING: Testimony by Kekoa McClellan, Advocate for Getaround, offering Comments to HB 1971

Aloha Chair Aquino, Vice-Chair Ilagan, and Members of the House Committee on Transportation,

Mahalo for this opportunity to further a discussion on sensible regulation of peer-to-peer carsharing in our State. The McClellan Group has the pleasure of working with the team at Getaround, an innovator in peer-to-peer carsharing which recently began operations here in the islands. Getaround values working with key policy, business, and most importantly community stakeholders, and these comments are in line with this commitment to transparency and open dialogue.

Getaround's patented Getaround Connect technology makes it possible for kamaaina to share their cars for a day, or for an hour. This unique solution will enable more truly local hosts to avail themselves of this opportunity to earn an income using cars they already own.

HB 1971 makes significant progress in outlining helpful statutory guardrails on peer-to-peer carsharing by:

- Defining peer-to-peer car sharing platforms and activities
- Establishing new consumer protections for vehicle owners and drivers, including mandatory insurance coverages and liability insurance for every transaction
- Ensures the driver holds a license that authorizes the driver to operate vehicles of the class of the shared vehicles

- 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

We recognize that this legislation is the culmination of many years of work, stakeholder conversations, and is still a work in progress. To this end, Getaround and our team at The McClellan Group are ready and willing to engage in these meaningful public conversations with your Committee on Transportation and your peers in the Hawaii State Legislature.

As you consider HB 1971 and other legislation affecting carsharing, please do not hesitate to reach out to us as a resource.

Mahalo piha for your consideration of these comments.

Me ka Pono,

Kekoa McClellan

Advocate - Getaround