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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Tuesday, February 16, 2021
2:00 p.m.
Via Videoconference**

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

Chair Johanson and Members of the Committee:

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

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

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

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

Insurance Coverage

From a consumer protection standpoint, requiring peer-to-peer car-sharing programs to provide primary insurance coverage for each shared car vehicle will provide minimal protection to consumers and innocent bystanders in the event of an accident. In this regard, proposed H.D. 2 amends page 6, line 3 to page 8, line 8, in section -2 to include this critical consumer protection.

Vicarious Liability

The OCP recommends removing section -6, the vicarious liability provision, in its entirety because it duplicates existing federal law.

Disclosures

Disclosures related to the terms and conditions associated with the car sharing agreement must be clearly and conspicuously disclosed to consumers. Consequently, all required taxes and fees, charges, insurance costs, as well as the total price to rent the vehicle, should be obvious to the consumer. To achieve this, proposed H.D. 2 requires clear disclosure of all terms and conditions and all costs to be charged prior to execution of the car-sharing program agreement.

Record Keeping

Consumer access to complete and accurate data is critically important when a disputed claim results from an event involving a consumer, such as an accident resulting in vehicle damage. Proposed H.D. 2 strengthens the record keeping provision of H.B. 333 by requiring peer-to-peer car-sharing programs to collect more complete information, such as insurance policy numbers, coverage amounts, and the names and contact information of car share driver and car share owners.

Motor Vehicle Recalls

A vehicle under recall should not be made available to a consumer through a platform hosted by a peer-to-peer company. The average completion rate for newer passenger vehicle recalls is only 75%, and this percentage drops to 44% for vehicles 5 to 10 years old. Proposed H.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.

Surcharge Tax

Finally, to remove any ambiguity in H.B. 333, proposed H.D. 2 amends the surcharge tax provision to clarify that surcharge tax should be assessed against the peer-to-peer car-sharing program.

Thank you for the opportunity to testify on this bill.

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

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

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

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

1 agreed upon by the shared car owner and the shared car
2 driver, as communicated through a peer-to-peer car-
3 sharing program, before the expiration of the period
4 of time established for the use of a shared car
5 according to the terms of the car-sharing program
6 agreement, and the shared car driver notifies the
7 peer-to-peer car-sharing program of the location of
8 the shared car;

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

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

22 ~~[-3-]~~ (6) When the shared car owner or the shared car
23 owner's authorized designee takes possession and
24 control of the shared ~~vehicle~~ car.

1 "Peer-to-peer car-sharing" means the authorized ~~[use]~~
2 control and operation of a vehicle by an individual other than
3 the vehicle's owner through a peer-to-peer car-sharing
4 program. For the purposes of assessing a vehicle surcharge tax,
5 "~~Peer~~ peer-to-peer car-sharing" ~~[does]~~ shall not mean the
6 "business of providing rental motor vehicles to the public" as
7 the phrase is used in section 251-3 ~~[or the business of a~~
8 ~~"lessor" as defined in section 437D-3].~~

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

- 12 (1) Any person who enables a shared car driver to
13 identify, reserve, or use a shared car owned by a
14 shared car owner; or
- 15 (2) Any person who enables a shared car owner to describe,
16 list, or make available a shared car for
17 identification, reservation, or use by a shared car
18 driver.

19 ~~["Peer-to-peer car-sharing program" does not mean "lessor" as~~
20 ~~defined in section 437D-3.]~~ "Peer-to-peer car-sharing program"
21 ~~[is not a "car-sharing organization" as defined in section 251-~~
22 ~~4] does not include:~~

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

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

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

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

7 "Shared car" means a motor vehicle that is registered
8 pursuant to chapter 286 and is not owned, controlled, operated,
9 maintained, or managed by or registered, directly or indirectly
10 through an affiliate, to the peer-to-peer car-sharing program
11 and is available for sharing through a peer-to-peer car-sharing
12 program. "Shared car" ~~does~~ shall not ~~mean~~ include a "rental
13 motor vehicle" or "vehicle" as defined in section 437D-3.

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

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

23 **§ -2 Insurance coverage during car-sharing period. (a)**

24 ~~[A peer-to-peer car-sharing program shall assume liability,~~

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

7 ~~(b) Notwithstanding the definition of "car-sharing~~
8 ~~termination time" as set forth in section -1, the assumption~~
9 ~~of liability under subsection (a) shall not apply to any shared~~
10 ~~vehicle owner when:~~

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

15 ~~(2) Acting in concert with a shared vehicle driver who~~
16 ~~fails to return the shared vehicle pursuant to the~~
17 ~~terms of program agreement.~~

18 ~~(c) Notwithstanding the definition of "car-sharing~~
19 ~~termination time" in section -1, the assumption of liability~~
20 ~~under subsection (a) shall apply to bodily injury, property~~
21 ~~damage, uninsured and underinsured motorist or personal injury~~
22 ~~protection losses by damaged third parties as required by~~
23 ~~section 431:10C-301.~~

1 ~~(d)~~ A peer-to-peer car-sharing program shall ensure
2 that~~[7]~~ during each car-sharing period, the shared car owner and
3 the shared car driver shall be insured under a motor vehicle
4 insurance policy that provides insurance coverage in amounts no
5 less than the minimum amounts required under section 431:10C-301
6 and:

7 (1) ~~[Recognizes that]~~ Insurance to pay on behalf of the
8 shared car owner and the shared car driver while the
9 shared ~~[vehicle]~~ car insured under the policy is made
10 available and used through a peer-to-peer car-sharing
11 program; ~~[or]~~ and

12 (2) Does not exclude use of a shared car by a shared car
13 driver.

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

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

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

- 1 ~~(1) A shared car owner;~~
- 2 ~~(2) A shared car driver;~~
- 3 ~~(3) A peer-to-peer car-sharing program; or~~
- 4 ~~(4) Both a shared car owner, a shared car driver, and a~~
- 5 ~~peer-to-peer car-sharing program.~~

6 ~~(f) Insurance described in subsection (e) that satisfies~~
7 ~~the insurance requirement of subsection (d) shall be primary~~
8 ~~during each car-sharing period.~~

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

- 12 ~~(1) A dispute exists as to who was in control of the~~
- 13 ~~shared car at the time of the loss; and~~
- 14 ~~(2) The peer-to-peer car-sharing program does not have~~
- 15 ~~available, did not retain, or fails to provide the~~
- 16 ~~information required by section 5.~~

17 ~~The shared car's insurer shall indemnify the car-sharing~~
18 ~~program to the extent of its obligation under, if any, the~~
19 ~~applicable insurance policy, if it is determined that the shared~~
20 ~~car's owner was in control of the shared car at the time of the~~
21 ~~loss.~~

22 ~~(h) If insurance maintained by a shared car owner or~~
23 ~~shared car driver in accordance with subsection (e) has lapsed~~
24 ~~or does not provide the required coverage, insurance maintained~~

1 ~~by a peer-to-peer car-sharing program shall provide the coverage~~
2 ~~required by subsection (d) beginning with the first dollar of a~~
3 ~~claim and have the duty to defend the claim except under~~
4 ~~circumstances as set forth in section 2(b).~~

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

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

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

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

22 **§ -3 Notification of implications of lien.** When a car
23 owner registers as a shared car owner on a peer-to-peer car-
24 sharing program and prior to when the shared car owner makes a

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

8 **§ -4 Exclusions in motor vehicle insurance**

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

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

22 (b) Nothing in this chapter shall invalidate or limit an
23 exclusion contained in a motor vehicle insurance policy,
24 including any insurance policy in use or approved for use that

1 excludes coverage for motor vehicles made available for rent,
2 sharing, or hire or for any business use.

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

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

13 **§ -5 Recordkeeping; use of vehicle in car-sharing.** A
14 peer-to-peer car-sharing program shall collect and verify
15 records pertaining to the use of a [~~vehicle, including~~] shared
16 car for each car-sharing program agreement, including:

17 (1) Dates and times [~~used~~] of the car-sharing start time
18 and the car-sharing termination time in the car-
19 sharing program agreement;

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

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

1 (4) Itemized descriptions and amounts of all fees and
2 costs paid by the shared car [driver, and revenues
3 received by] driver;

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

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

8 (7) The insurance policy number, effective date, coverage,
9 and coverage amounts of each insurance policy that
10 identifies the peer-to-peer car-sharing program,
11 shared car owner, and shared car driver as the insured
12 ~~[and provide that information upon request to the~~
13 ~~shared car owner, the shared car owner's insurer, or~~
14 ~~the shared car driver's insurer to facilitate a claim~~
15 ~~coverage investigation].~~

16 The peer-to-peer car-sharing program shall retain the records
17 for a time period not less than the six-year statute of
18 limitations period set forth under section 657-1(4). Upon
19 request, the peer-to-peer car-sharing program shall provide the
20 information required in this section, and any information
21 relating to the peer-to-peer program agreement in its possession
22 and control, to the shared car owner, the shared car owner's
23 insurer, the shared car driver, or the shared car driver's
24 insurer, to facilitate a claim coverage investigation.

1 ~~[\$ -6 Exemption; vicarious liability. Consistent with~~
2 ~~title 49 United States Code section 30106, a peer-to-peer car-~~
3 ~~sharing program and a shared car owner shall be exempt from~~
4 ~~vicarious liability under any state or local law that imposes~~
5 ~~liability solely based upon motor vehicle ownership.]~~

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

- 11 (1) Made against the shared car owner or the shared car
12 driver for loss or injury that occurs during the car-
13 sharing period; and
- 14 (2) Excluded under the terms of ~~[its policy.]~~ the shared
15 car owner's or shared car driver's insurance policy.

16 § ~~-[8]~~7 **Insurable interest.** (a) Notwithstanding any
17 other law, statute, or rule to the contrary, a peer-to-peer car-
18 sharing program shall have an insurable interest in a shared car
19 during the car-sharing period.

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

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

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

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

1 agreement, including fees or costs for mandatory
2 insurance coverage charged by the peer-to-peer car-
3 sharing program;

4 (4) Provide [~~an~~] a twenty-four-hour emergency telephone
5 number for a person capable of facilitating roadside
6 assistance [~~to~~] for the shared car driver;

7 (5) Disclose any right of the peer-to-peer car-sharing
8 program to seek indemnification from the shared car
9 owner or the shared car driver for economic loss
10 sustained by the car-sharing program caused by a
11 breach of the car-sharing program [~~agreement;~~]
12 agreement, and the peer-to-peer car-sharing program
13 shall require the shared car owner and the shared car
14 driver to specifically and separately acknowledge
15 notice of the disclosure prior to execution of a car-
16 sharing program agreement;

17 (6) Disclose that a motor vehicle insurance policy issued
18 to the shared car owner for the shared car or to the
19 shared car driver [~~does~~] may not provide a defense or
20 indemnification for any claim asserted by the peer-to-
21 peer car-sharing [~~program;~~] program, and the peer-to-
22 peer car-sharing program shall require the shared car
23 owner and the shared car driver to specifically and

1 separately acknowledge notice of the disclosure prior
2 to execution of a car-sharing program agreement;

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

14 (8) Disclose any insurance or protection package costs
15 that are charged to the shared car owner or the shared
16 car ~~[driver;]~~ driver, and the peer-to-peer car-sharing
17 program shall require the shared car owner and the
18 shared car driver to specifically and separately
19 acknowledge notice of the disclosure prior to
20 execution of a car-sharing program agreement;

21 (9) Disclose that if the shared car owner's or shared car
22 driver's motor vehicle insurance policy ~~[may]~~ does not
23 provide or excludes coverage for a shared ~~[car;]~~ car,
24 the shared car owner and the shared car driver are

1 prohibited from participating in the peer-to-peer car-
2 sharing program; [and]

3 (10) Disclose to the shared car driver any conditions in
4 which the shared car driver is required to maintain a
5 motor vehicle insurance policy as the primary coverage
6 for the shared car in order to drive a shared [~~car.~~]
7 car; and

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

11 § ~~-[10]9~~ **Driver's license verification and data**

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

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

18 (2) Is a nonresident who:

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

23 and

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

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

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

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

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

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

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

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

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

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

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

19 (e) No peer-to-peer car-sharing program or shared car
20 owner shall charge a shared car driver more than the cost of the
21 parts and labor necessary to repair damages to a shared car that
22 occur during the car-sharing period, if the vehicle is repaired.
23 The costs to repair the damages to the shared car shall be in

1 accordance with standard practice in the motor vehicle industry
2 in the community.

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

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

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

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

23 (3) Shall immediately notify the shared car driver of any
24 safety recall affecting the shared car, so that the

1 shared car may be removed from use until the shared
2 car owner effects the necessary safety recall repair.
3 Continued use of the shared car by the shared car
4 driver, pursuant to the car-sharing program agreement,
5 shall not indemnify the peer-to-peer sharing program
6 or shared car owner from loss arising out of use of
7 the shared car by the shared car driver;

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

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

13 (b) A shared car owner shall:

14 (1) Not make the shared car available for use through a
15 peer-to-peer car-sharing program if the shared car
16 owner has received notice of a safety recall on the
17 shared car, until the safety repair has been [~~made;~~]
18 completed;

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

1 (3) Notify the peer-to-peer car-sharing program of a
2 safety recall within [~~seventy-two~~] forty-eight hours
3 of receipt of a safety recall when the vehicle is in
4 the possession of a shared car driver [~~so that the~~
5 ~~peer-to-peer car-sharing program may notify the shared~~
6 ~~car driver and the shared car may be removed from use~~
7 ~~until the shared car owner effects the necessary~~
8 ~~safety recall repair~~].

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

17 [~~§ -13 Relation to other laws. Chapter 437D shall not~~
18 ~~apply to peer-to-peer car-sharing.~~]

19 § -13 Additional mandatory charges prohibited. (a)
20 Prior to the execution of a car-sharing agreement, the peer-to-
21 peer car-sharing program shall disclose to the shared car driver
22 the total cost to be charged to the shared car driver that shall
23 include the total cost, as well as itemized descriptions of the
24 amount of each charge, that is required as a condition to the

1 peer-to-peer car-sharing program agreement. As part of any
2 quotations of price, the peer-to-peer car-sharing program shall
3 disclose, including all quotations contained in advertising or
4 through online quotations, all costs that a shared car driver is
5 required to pay as part of the car-sharing program agreement.

6 (b) A peer-to-peer car-sharing program shall separately
7 disclose the cost of any insurance offered to a shared car owner
8 or shared car driver by or through the peer-to-peer car-sharing
9 program. The cost of insurance shall be included in the total
10 cost to be disclosed to a shared car driver as required by
11 subsection (a).

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

19 § -14 Civil penalties. Any person who violates or
20 attempts to violate any provision of this chapter shall be
21 deemed to have engaged in an unfair or deceptive act or practice
22 in the conduct of trade or commerce within the meaning of
23 section 480-2.

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

4 "§251- Peer-to-peer car-sharing surcharge tax. (a)
5 There is levied, assessed, and collected each month a peer-to-
6 peer car-sharing tax of \$ per day, or any portion of a day,
7 that a shared vehicle is shared pursuant to a car-sharing
8 program agreement. [Notwithstanding any law to the contrary,
9 neither the tax levied pursuant to section 251-2(a) for rental
10 motor vehicles rented or leased by rental motor vehicle lessors,
11 nor the tax provided for pursuant to section 251-2.5 on car-
12 sharing organizations is applicable to peer-to-peer car
13 sharing.]

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

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

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

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

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

24 SECTION 3. New statutory material is underscored.

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

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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PHONE NO: (808) 587-1540
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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: February 16, 2021
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

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

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

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

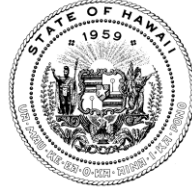
The Department first notes that it recently promulgated temporary administrative rules related to peer-to-peer car-sharing.¹ Those temporary rules deem a peer-to-peer car-sharing marketplace facilitator to be the "lessor" for purposes of the RVST. Thus, the tax this bill intends to capture is already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

The Department suggests clarifying the measure to be more specific as to who the new tax applies to. If the intent of the measure is to impose the tax on the operator of the peer-to-peer car-sharing platform that should be expressly stated.

Thank you for the opportunity to provide comments.

1

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



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Tuesday, February 16, 2021
2:00 p.m.
Via Videoconference**

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

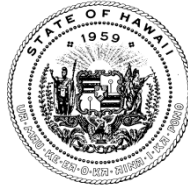
Chair Johanson and Members of the Committee:

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

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

The INS has conferred with the Department of Commerce and Consumer Affairs' Office of Consumer Protection regarding proposed revisions to this bill as it relates to the Insurance Code. The INS is available to answer any questions the Committee may have regarding the impact this bill may have on insurance coverage.

Thank you for the opportunity to testify on this bill.



JADE T. BUTAY
DIRECTOR

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

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

February 16, 2021
2:00 p.m.
State Capitol, Room 423
Teleconference
H.B. 333, H.D. 1
RELATING TO PEER-TO-PEER CAR-SHARING

House Committee on Consumer Protection & Commerce

The Department of Transportation (DOT) **supports** this bill which authorizes peer-to-peer car-sharing; and establishes the peer-to-peer car sharing surcharge tax. However, the DOT requests consideration be given to the preferred H.D. 1 language as proposed by the Department of Commerce and Consumer Affairs' Office of Consumer Protection (OCP).

Notably, page 17 Section 2. Beginning on line 7 to be revised to read,

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

“(c) For purposes of this section:”

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

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

Revenue Bonds. The peer-to-peer car-sharing vehicle surcharge tax may help to preserve the revenues deposited into the State Highway Fund.

DOT also recommends including language in the committee report that clarifies that peer-to-peer car-sharing programs must contract with DOT – Airports Division in order to operate at the Airport. The proposed language is attached below.

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.”

Thank you for the opportunity to provide testimony.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: HB 333, HD1

INTRODUCED BY: House Committee on Transportation

EXECUTIVE SUMMARY: Authorizes peer to peer-to-peer car sharing. Establishes the peer-to-peer car sharing surcharge tax.

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

Adds a new section to chapter 251, HRS, to impose a peer-to-peer car-sharing surcharge tax of \$___ per day or portion of a day that a shared car is shared pursuant to a car-sharing program agreement. Provides that this tax is in lieu of any tax under section 251-2(a) (for motor vehicles rented or leased by rental motor vehicle lessors) or 251-2.5 (for car-sharing organizations).

EFFECTIVE DATE: 7/1/2050.

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

The tax is currently an unspecified amount. We would understand if the tax is the same as the rate of RVST that is now imposed upon car rentals. If the tax is a different amount, we would be concerned about how the difference is justified.

Digested 2/13/2021

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



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 15, 2021

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

FROM: Matt Tsujimura

RE: **H.B. 333, HD1, Relating to Peer-to-Peer Car Sharing**
Hearing Date: Tuesday February 16, 2021 at 2:00 p.m.
Conference Room: 329

Dear Chair Johanson, Vice Chair Kitagawa, and members of the Committee on Consumer Protection and 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. 333, HD1 which authorizes and regulates peer-to-peer car-sharing in the State. H.B. 333, 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. 333, 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. 333, HD1.

Thank you for the opportunity to testify.

Proposed Committee Report Language:

"Your Committee notes that existing law authorizes the Airport Division of the Department of Transportation to establish policies and rules governing use and access to the airports' premises. As such, peer-to-peer car-sharing programs will be subject to these rules when operating at the airport."



Testimony of
Tami Bui – Senior Government Affairs Manager
Turo Inc., San Francisco, CA
Comments on HB 333, HD 1
February 16, 2021

Chair Johanson and Vice Chair Kitagawa of the House Committee on Consumer Protection & Commerce, I respectfully submit comments in **SUPPORT of HB 333, HD 1** on behalf of Turo, an internet-based, peer-to-peer car sharing platform.

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

Local Impact

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

HB 333, HD 1 enables peer-to-peer car sharing to continue to serve Hawai`i residents and their neighbors. This legislation clearly defines peer-to-peer car sharing platforms and activities; establishes new consumer protections for vehicle owners and drivers, including mandatory insurance coverages and liability insurance for every transaction; requires verification of valid drivers licenses; requires clear disclosures of insurance, fees, and terms and conditions of sharing agreements; explicitly defines the legal responsibilities of car sharing platforms, holds car sharing platforms accountable by mandating clear record keeping; places a daily surcharge on vehicle sharing in Hawaii; in addition to establishing a comprehensive regulatory structure for a new industry.

Peer-to-Peer Car Sharing Program Model Act

The foundation of this legislation is based on the Peer-to-Peer Car Sharing Program Model Act. This National Model is supported by the National Council of Insurance Legislators, where stakeholders, including the insurance industry, the peer-to-peer car sharing industry and the rental car industry, participated in the development of the legislation. What emerged was model legislation that was developed through compromises of all parties involved.

Additionally this legislation is supported by the Council of State Governments as part of their Shared State Legislation. Over a dozen states to date regulate peer-to-peer car sharing and the national model continues to be adopted in full or part across the country.

Key Features

HB 333, HD 1 aligns with the National Model as well as includes some key updates to reflect input from various stakeholders in Hawai`i. These compromises include:

- **Vehicle Safety Recalls**

The national model for peer-to-peer car sharing includes vehicle safety recall provisions that are supported by the peer-to-peer car sharing industry. The legislation we are sharing with you today includes vehicle safety recall language that has been adopted in the state of Maryland to provide for robust protections for drivers if there is an open safety recall on a vehicle.

Specifically, this language would require the platform ensure that no vehicle with an active safety recall is made available on the platform both at the time of listing and prior to a car sharing transaction.

- **Insurable Interest**

In the 2020 legislative session, the Hawai`i Insurance Council raised an issue regarding Section 8, Insurable Interest, and the peer-to-peer car sharing industry agreed to remove language to address the concerns of the Hawaii Insurance Council. The legislation being shared with you does not include the language that previously raised an issue with the Hawai`i Insurance Council.

- **Surcharge Tax:**

The peer-to-peer car sharing community has agreed to include language in this legislation that would impose a surcharge for every day, or portion of a day, a vehicle is shared on a peer-to-peer car sharing platform. We look forward to working with the legislature on a fair and reasonable surcharge being applied to Hawai`i residents who belong to the peer-to-peer car sharing community.

Response to Comments by Hawaii Association for Justice (HAJ) and Office of Consumer Protection (OCP)

I would like to also address comments raised by the Hawaii Association for Justice (HAJ) and Office of Consumer Protection (OCP) in a previous hearing of HB 333, HD 1 and the companion bill, SB 155 on 2/10/21 and 2/11/21, accordingly.

Response to Hawaii Association for Justice (HAJ) re: minimum protection

The HAJ raised concerns regarding the application of state minimum coverage with a reference to TNC law that imposes higher liability limits in HI.

These concerns conflate two very distinct and separate industries and misrepresent peer-to-peer car sharing:

- Unlike TNCs, peer-to-peer car sharing does not include a transaction in which a paying passenger is driven by a for-hire driver.
- Instead, the liability risk is not dissimilar to traditional rental car use, in which only minimum financial responsibility is required.
- 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 rental car transaction or a Hawaii driver driving their own car on a Hawaii roadway. The increased limits on TNCs take into consideration the existence of a paying passenger and would be inappropriately applied to peer-to-peer car sharing which is not a comparable industry.

Response to Office of Consumer Protection (OCP)

The following concerns were raised by OCP in italics and our responses are below.

Insurance Coverage

Insurance Coverage From a consumer protection standpoint, requiring peer-to-peer car-sharing programs to provide primary insurance coverage for each shared car vehicle will provide minimal protection to consumers and innocent bystanders in the event of an accident. In this regard, proposed S.D. 1 amends page 6, line 3 to page 8, line 8, in section -2 to include this critical consumer protection.

In response, we would like to clarify that the insurance-backed National Conference of Insurance Legislators (NCOIL) model, and HB 333, HD 1/SB 155 which directly tracks the model, requires the following:

- The peer-to-peer car sharing platform ensures that the shared car owner and shared car driver are insured during the car sharing period with coverage no less than state minimum requirements.
- In this model, three different categories of coverage (host, guest, program) can satisfy that requirement and the platform guarantees that one will. The one that does is primary.
- As a result, there can be no lack of coverage.

Additionally, some of the proposed modifications by OCP actually creates gaps in consumer protections rather than mitigating them. One notable example of this is the following:

- There is proposed deletion of language from the NCOIL model bill under which the peer-to-peer car sharing program must assume all liability of the shared vehicle owner during the car sharing period.
- The elimination of this assumption of liability mandate has the potential to leave individual vehicle owners exposed to liability risk and cost for simply sharing a vehicle.
- This is contrary to the objective of protecting consumers.

The NCOIL model has been carefully assembled based on lengthy negotiation engagement and collaboration among a broad network of interested stakeholders from legislatures, executive departments, insurance companies, trade groups, peer-to-peer companies, and lobbying organizations across the country. The provisions that have resulted from this process represent carefully-considered structures that attempt to achieve an optimal balance of many important considerations. The edits proposed here, while well intentioned, show how modifying one section of a comprehensive framework with one objective in mind can actually have detrimental and unintended consequences, such as the elimination of the platforms' obligation to assume the liability of the shared vehicle owner.

Vicarious Liability

The OCP recommends removing section -6, the vicarious liability provision, in its entirety because it duplicates existing federal law.

In response, we respectfully point out that this provision addresses a gap in the scope of the protection that is available under the federal statute.

- Currently, there is ambiguity about whether the immunity available to major corporate rental companies under 49 USC 30106 extends to individually owned cars (such as what are used in peer-to-peer car sharing) or to peer-to-peer car sharing platforms (which do not own vehicles).
- The federal statute only protects large corporate owners of fleets of vehicles.
- This distinction is important because while it seems like there is some overlap, this provision was intentionally incorporated into the national NCOIL model because it is essential to making sure that peer-to-peer car sharing is afforded the same protections.

Disclosures

Disclosures related to the terms and conditions associated with the car sharing agreement must be clearly and conspicuously disclosed to consumers. Consequently, all required taxes and fees, charges, insurance costs, as well as the total price to rent the vehicle, should be obvious to the consumer. To achieve this, proposed S.D. 1 requires clear disclosure of all terms and conditions and all costs to be charged prior to execution of the car-sharing program agreement.

We certainly agree with the general concern about making sure that there is full disclosure of key terms of the car sharing program agreements for purposes of consumer protection and transparency.

This objective was a central concern for legislators, other policymakers, the insurance industry and the peer-to-peer car sharing industry in adopting the NCOIL model peer-to-peer legislation. Respectfully, adopting the NCOIL model enables policymakers to be sure that their state will have a regulatory framework in place that uniformly ensures that these objectives are achieved.

This is due to the structure of the NCOIL model framework, which clearly delineates the relationship of the host, guest and platform in a car sharing program agreement. This must include a long list of statutorily mandated consumer protection disclosures:

- Prices must be fully disclosed
 - The daily rate, fees, and any costs for insurance or protection packages must be included in the car sharing program agreement
- Emergency Telephone Number
- Insurance Coverage
 - Clear information on the scope and duration of any platform-provided coverage
 - Information about the scope and minimum requirements, if any, for personal auto insurance coverage for shared vehicle drivers and information on physical damage to the shared vehicle

Under the NCOIL model bill, which is fully reflected in HB 333, HD 1/SB 155, the car sharing program agreement must have been executed by all three parties (guest, host, and platform) in order for the guest (shared vehicle driver) to access the shared car.

As a result, the guest (the consumer) must be fully apprised of all of the key terms of the agreement and must have agreed to these key terms - *prior to* taking over possession of the shared vehicle.

The existing language of the bill fully achieves the objective as stated of ensuring “clear disclosure of all terms and conditions and all costs to be charged prior” to the beginning of a car sharing transaction.

Record Keeping

Consumer access to complete and accurate data is critically important when a disputed claim results from an event involving a consumer, such as an accident resulting in vehicle damage. Proposed S.D. 1 strengthens the record keeping provision of S.B. 155 by requiring peer-to-peer car-sharing programs to collect more complete information, such as insurance policy numbers, coverage amounts, and the names and contact information of car share driver and car share owners.

It is important to emphasize that NCOIL, in crafting the model bill, sought to ensure access to complete and accurate data for consumers as an important objective in the legislation. In that respect, the coalition that developed NCOIL and the Department of Commerce and Consumer Affairs share a common objective.

However, with respect to the specific changes proposed in this regard, we would respectfully offer the following observations:

- Many of the changes that are suggested in this regard are duplicative. For example, there are a number of edits that speak to collecting data on car sharing start time, the fees and costs of the transaction, names and addresses of owners and drivers and other similar proposals. All of these data points are addressed in the NCOIL bill as it current is written and the inclusion of the proposed edits is at best duplicative, and at worst, would create unnecessary ambiguity
- There are potential privacy law issues with the breadth of disclosure required for the data encompassed within the proposed changes. The proposed changes specify that any insurer

of the driver or owner or the driver or owner themselves would have the right to receive from the peer-to-peer program “any information required in this section, and any information relating to the peer-to-peer program agreement in its possession and control.” This is potentially a vast, and unlimited universe of data, that could include personal information.

- This language puts a mandate for disclosure on the platform without any acknowledgment or recognition of the platform’s data privacy and security obligations or any of the consumer’s rights to data privacy.

In light of these considerations, we respectfully suggest that the legislation in its present form is more than sufficient to achieve the common objective of ensuring access to appropriate and necessary data, but doing so in a way that gives appropriate balance and deference to the privacy and security rights of individuals and the data privacy and security obligations of platforms.

Motor Vehicle Recalls

A vehicle under recall should not be made available to a consumer through a platform hosted by a peer-to-peer company. The average completion rate for newer passenger vehicle recalls is only 75%, and this percentage drops to 44% for vehicles 5 to 10 years old. Proposed S.D. 1’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.

- The peer-to-peer car sharing industry considers the safety of its consumers its highest priority and agrees that vehicles with open safety recalls should not be available on a peer-to-peer platform. The recall requirements included in HB 333, HD 1/SB 155 ensure that this priority is met.
- Under HB 333, HD 1/SB 155, the peer-to-peer car sharing platform is obligated to ensure that no vehicle with an active safety recall is made available on the platform both at the time of listing and prior to a car sharing transaction.
- As you know, unlike traditional rental car companies, peer-to-peer car sharing companies do not own vehicles and thus do not receive manufacturer notices of safety recalls for shared cars. Instead, shared car owners, like all Hawaii car owners, receive these notices. That is why the bill requires that the car owner notify the platform within 72 hours of receipt of a recall notice. However, even if this does not occur, **the platform is responsible for ensuring vehicles listed on the marketplace do not have open safety recalls** both at the time of listing and prior to being made available for sharing.

Surcharge Tax

Finally, to remove any ambiguity in S.B. 155, proposed S.D. 1 amends the surcharge tax provision to clarify that surcharge tax should be assessed against the peer-to-peer car-sharing program.

- HB 333, HD 1/SB 155 is not ambiguous on the implementation of a surcharge on peer-to-peer car sharing. HB 333, HD 1/SB 155 is very clear in defining peer-to-peer car sharing differently from rental. What this clearly suggests is that the policy makers are in the position to consider, based on that clear distinction, what the proper tax and fee structure should be for this new and emerging industry.
- While we respect that reasonable minds can have a range of opinions on this particular point, we must respectfully underscore that simply characterizing peer-to-peer car sharing as car rental (as is done in these proposed amendments) for this purpose, is not an appropriate answer to this question. And, it would seem that advocating for higher fees and taxes on consumers to be contrary to the objective of protecting consumers.

That concludes our response to the issues raised by HAJ and OCP.

Turo and our community of Hawai`i peer-to-peer car sharing residents are appreciative of the legislature's interest in protecting consumers while also establishing a comprehensive regulatory framework for peer-to-peer car sharing that supports Hawai`i residents who share their personal vehicles.

Thank you for the opportunity to provide comments in **SUPPORT of HB 333, HD 1.**

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPOSITION TO H.B. 333 HD1**

Date: Tuesday, February 16, 2021

Time: 2:00 p.m.

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. 333 HD1, Relating to Peer-to-Peer Car Sharing. We oppose H.B. 333 HD1 because it does not ensure that vehicles used for car sharing are covered by insurance that is adequate in amount and complies with the requirements of Hawaii motor vehicle insurance law.

The rise of Peer-to-Peer Car Sharing throughout the United States has resulted in a wave of legislative efforts and lobbying. The Peer-to-Peer 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. They have all had a voice in crafting legislation. But who speaks for the drivers, passengers and pedestrians injured in motor vehicle accidents on Hawaii's roadways? We submit that this current bill does not take their interest into account as currently drafted and recommend the following amendments.

The question lawmakers face is how to address the fact that many automobiles licensed in Hawaii lose their state-mandated coverage when they are used in a Peer-to-Peer Car Share. Individual motor vehicle policies commonly exclude coverage for injuries arising from the use of an auto for business or financial gain. This means cars on our roadways with ample insurance to cover the loss of life and property suddenly provide no protection for motor vehicle accidents that occur in or around a car-sharing period. A pedestrian or motorist injured in an accident with a car share driver will not be

able to rely on the coverage that the vehicle owner purchased and may find themselves forced to pursue an out of state policy issued to an at-fault driver (if they are lucky and driver possessed insurance, which is certainly not guaranteed).

H.B. 333 HD1 creates a gap in insurance, in a way that provides the least protection to Hawaii drivers, passengers and pedestrians. Insurers are expressly permitted to withdraw statutorily mandated, UM, UIM and optional coverage for insured vehicles use in car sharing. Wealthy car share platforms are permitted to satisfy the bill's meagre requirements by ensuring that there is insurance available providing the minimum \$20,000 in liability coverage; the carrier need not even be licensed in Hawaii. The net effect of H.B. 333 HD1 will be to reduce the amount and quality of insurance protection available to people injured in motor vehicle accidents.

The bill resembles one proposed last year by the National Council of Insurance Legislators. The Model Act was drafted with input from corporate stakeholders including Turo, Enterprise and the State Farm, but apparently with no input from consumers, drivers or pedestrians. We submit that it is not an appropriate model for Hawaii, and this state should look instead to the laws enacted in California, Oregon, Washington, Maine and other states, which require that peer-to-peer companies provide an appropriate type and level of coverage on the vehicle during the car share.

Requiring adequate coverage from Peer-to Peer corporations would be consistent with the Hawaii statute regulating Transportation Network Companies, Act 236 enacted in 2016 (HB260 SD1 CD1). Lawmakers faced an analogous situation: licensed vehicles losing protection, in that case because their owners were using them for commercial activity. Lawmakers appropriately put the burden on the companies making substantial

profit from the activity, the Ubers and the Lyfts. It mandated that they provide \$1 million liability coverage provided by an insurance company licensed in Hawaii or an approved surplus lines broker. There is no rational basis for giving \$1 million to a pedestrian struck by an Uber driver, and \$20,000 for a pedestrian struck by a person sharing a vehicle through Turo.

In the preamble to the model legislation, the National Council cautions that the model act needs to be tailored to “accommodate the particular needs of that state.” In this case the bill needs to be tailored to reflect Hawaii’s particular need to ensure adequate coverage for persons injured in motor vehicle accidents in this remote state. Tailoring is also required because Hawaii’s liability limits are among the lowest in the United States. Forty states have higher liability coverage requirements than Hawaii. The model act requires only that the company providing the peer to peer platform ensure liability coverage meeting the state minimum, but that has a different impact in North Carolina where the minimum is \$30,000; or Maine where the limit is \$50,000; than it would here.

Hawaii has kept its liability coverage limits low to benefit cash strapped residents who struggle to afford coverage. It was not intended to benefit non-resident Corporations deriving millions from transactions in the State. Those entities should be made to pay their fair share.

HAI also believes that the provision of the bill allowing Hawaii licensed insurers to avoid all coverage for car sharing is wrong and dangerous. Given the growing prevalence of car sharing by Hawaii residents, this provision of the bill will result in many vehicles in this state being stripped of coverage mandated by the motor vehicle insurance laws, and many persons injured lacking the minimum coverage deemed

essential for health and safety. If lawmakers want to allow insurers a car-share exclusion out of a concern that car sharing poses risks not usually found under personal motor vehicle policies, it should require insurers to offer a car sharing endorsement for an appropriate fee.

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.



February 15, 2021

The Honorable Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu HI 96813

RE: Internet Association Supports HB 333, HD 1

Dear Chair Johanson and Members of the Committee:

Internet Association (IA) appreciates the opportunity to reiterate our support for HB 333, HD 1 which establishes statewide regulations for peer-to-peer car sharing. IA represents more than 40 of the world's leading internet companies, and advances public policy solutions that foster innovation, promote economic growth, and empower people through the free and open internet.

HB 333, HD 1 is a common sense piece of legislation because it establishes regulations for peer-to-peer (P2P) car sharing which is a nascent, yet vital, industry in the state of Hawaii. Residents of Hawaii use P2P for a variety of reasons, sometimes they want to do things not allowed in a rental car (go off road). Residents offer their vehicles for a variety of reasons, maybe pay off their car quicker or to supplement their income. Regardless, Hawaiians should be given the opportunity to know when they engage in car sharing they will have uniform protections and safety standards.

The legislation before you does five things:

1. Clearly defines peer-to-peer vehicle sharing;
2. Establishes insurance requirements agreed to at the national level involving many stakeholders;
3. Establishes consumer protection laws;
4. Establishes safety regulations for P2P car sharing;
5. Establishes a tax structure appropriate for P2P car sharing.

Having these uniform regulations will ensure all Hawaiians are protected. It will also open up new opportunities to Hawaiians interested in hosting their vehicle to their neighbors or tourists.

IA believes Hawaii has an opportunity with passing HB 333, HD 1 to promote this growing industry. IA requests you pass HB 333, HD 1. If you have any questions please contact me at rose@internetassociation.org or 206-326-0712.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rose Feliciano', with a long horizontal line extending to the right.

Rose Feliciano
Director, Northwest Region, State Government Affairs



TECHNET
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INNOVATION ECONOMY

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February 15, 2021

Representative Aquino
Hawaii State Capitol
415 S Beretania St, Room 419
Honolulu, HI 96813

RE: HB 333 HD 1 (Aquino) Peer-to-Peer Vehicle Sharing - Support

Dear Representative Aquino,

TechNet is the national, bipartisan network of innovation economy CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from revolutionary start-ups to some of the most recognizable companies in the world. TechNet represents over three million employees and countless customers in the fields of information technology, e-commerce, sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

TechNet respectfully submits this letter in strong support of HB 333 HD 1 (Aquino) which sets out a comprehensive peer-to-peer vehicle sharing regulatory framework and is in line with language previously approved by the National Conference of Insurance Legislators (NCOIL) and the Council of State Governments (CSG). HB 333 HD1 has been developed between peer-to-peer vehicle sharing companies and all stakeholders who have worked in good faith this session.

The bill includes important consumer protections and safety measures including recall protections, robust insurance and driver licensure requirements, disclosures and much more. Importantly, this bill defines peer-to-peer vehicle as a novel and unique source of transportation and mobility, benefiting all Hawaii residents participating in the sharing economy. Furthermore, this legislation will enable and support Hawaii residents to share their personal vehicle or, get access to a vehicle from their neighbor or another resident of Hawaii.

Consumer protections outlined in HB 333 HD 1, include required emergency and roadside assistance for all customers; prohibitions on vehicles subject to federal safety recalls; establishes a notification process and protections for lienholders, lenders and lessors; and requires consumer disclosures of insurance and indemnification provisions, fees, terms and conditions of sharing agreements.

Mandatory insurance requirements in HB 333 HD 1 create clear mandatory insurance coverages for peer-to-peer vehicle sharing, requires vehicle sharing platforms to provide liability insurance for every transaction and ensures that the shared vehicle owner and

shared vehicle driver are provided insurance coverage. This bill also includes a surcharge that would be applied to Hawaii residents and TechNet urges the legislature to take into consideration an amount that is fair and that will continue to encourage the growth of the innovation economy.

Peer-to-peer vehicle sharing has become an incredibly convenient way of connecting people wishing to utilize internet-based platforms to safely and securely share their personal vehicle with drivers seeking affordable, convenient, accessible and locally sourced mobility options. Peer-to-peer vehicle sharing connects vehicle owners in your district and across Hawaii with people who need alternative methods of transportation. This technology provides users with more choice and allows Hawaii vehicle owners to create passive income opportunities using one of their largest assets – which is needed more than ever in these trying economic times. We urge you to support HB 333 HD 1 which TechNet believes fosters and encourages this growing innovation while establishing important safeguards and consumer protections.

Thank you for your consideration. If you have any questions regarding our support to HB 333 HD 1 please contact Cameron Demetre, Executive Director, at cdemetre@technet.org or 916-903-8070.

Sincerely,



Cameron Demetre
Executive Director, California and the Southwest
TechNet