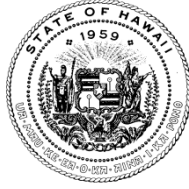


DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

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

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

February 11, 2021
3:00 P.M.
State Capitol, Teleconference

S.B. 770
RELATING TO TRANSPORTATION NETWORK COMPANIES

Senate Committee on Transportation

The Department of Transportation (DOT) **supports** S.B. 770 which establishes requirements and permitting procedures for transportation network companies operating in the State. The bill establishes permanent insurance requirements for transportation network companies and transportation network drivers.

The DOT believes that transportation options are beneficial for the communities we serve, and that the demand is apparent. The DOT also believes that the regulations provided in the bill promotes the safety of our traveling public.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
www.labor.hawaii.gov

ANNE PERREIRA-
EUSTAQUIO
DIRECTOR

JOANN A. VIDINHAR
DEPUTY

February 11, 2021

To: The Honorable Chris Lee, Chair,
The Honorable Lorraine R. Inouye, Vice Chair, and
Members of the Senate Committee on Transportation

Date: Thursday, February 11, 2021

Time: 3:00 p.m.

Place: Room 224, State Capitol

From: Anne Perreira-Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 770 RELATING TO TRANSPORTATION NETWORK COMPANIES

I. OVERVIEW OF PROPOSED LEGISLATION

This measure would provide statewide regulation of transportation network companies to provide operational consistency across the State and to establish a permitting process within the department of transportation.

The DLIR strongly opposes the proposed § -9 (c) and (d) as it conflicts with Chapter 383, Hawaii Revised Statutes (HRS), Hawaii's Employment Security Law.

II. CURRENT LAW

Chapter 383, HRS, serves as an integral part of the nation's social safety net system. §383-6 Master and servant relationship, not required when is the ABC test that determines whether a worker is covered by the unemployment insurance program.

Services performed for remuneration are considered to be in employment under section 383-2, HRS, unless and until all three prongs – in the conjunctive— contained in section 383-6, HRS, are met. The ABC test, a statutory requirement since the beginning of the unemployment insurance (UI) program in 1939, is found in most other state laws.

Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies **all three** of the following conditions:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B. The worker performs work that is outside the usual course of the hiring entity's business; **and**
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

III. COMMENTS ON THE SENATE BILL

The COVID-19 Pandemic has underscored the vital role played by the unemployment insurance (UI) program in providing temporary & partial wage replacement for workers and economic stability. Unemployment insurance is a Critical part of our nation's safety net, helping workers stay afloat during particularly difficult times. UI benefits help individuals & families by assisting them through unemployment spells without a dramatic drop in spending whereby Workers can still meet basic needs and avoid cutting back drastically on expenses during a temporary period without work.

The Federal-State program was designed (Social Security Act (1935) & FUTA¹ (1939) to counter economic fluctuations such as recessions. When the economy grows, it increases UI tax revenue and dampens demand in the economy & creates surplus (reserve) UI funds. During a downturn, the benefits dampen the effect of lost earnings by injecting funds into the economy.

The importance of this dual role for the unemployment insurance program is evident by the \$4,608,335,677 in benefits and assistance the department has distributed during this pandemic.

The ABC test has been challenged over the years, but has remained undisturbed in the Hawaii Employment Security Law since its adoption in 1939 and its amendment in 1941 adding language to further expand coverage beyond where the common law relationship of master and servant exists.

Further, as all employers subject to unemployment taxes pay into a collective unemployment trust fund to support the payment of benefits, if this measure increases the number of self-employed, UI tax collections would diminish to the extent that those employers who cover their workers would ultimately be assessed higher unemployment contributions to maintain a solvent trust fund. The DLIR has paid out millions in unemployment benefits to the employees of transportation network companies during the COVID-19 Pandemic.

If the intent of the measure is to exclude transportation company network drivers from coverage under chapter 383, then the measure should explicitly exclude the drivers from coverage under chapter 383.

It is for the above reasons that the DLIR strongly opposes the language in the proposed § -9 (c) and (d) of the measure.

¹ Federal Unemployment Tax Act



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 770, RELATING TO TRANSPORTATION NETWORK COMPANIES.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION

DATE: Thursday, February 11, 2021 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Via Videoconference Room 224

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Li-Ann Yamashiro,
Deputy Attorney General, at 586-1450)

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) has concerns about this bill including a concern that the bill may be preempted by the federal Employee Retirement Income Security Act (ERISA) and offers the following comments.

The bill provides for regulation of transportation network companies by the Department of Transportation. In addition, it provides that transportation network company drivers (drivers) are independent contractors if certain conditions are met (page 8, line 17, through page 9, line 15) and defines transportation network company as an entity that “[d]oes not control, direct, or manage the . . . transportation network company drivers . . . except where agreed to by written contract” (page 2, lines 12-15).

The Department of Labor and Industrial Relations (DLIR) administers programs including unemployment insurance, workers' compensation, wage and hour, occupational safety and health, prepaid health, and temporary disability, and has an attached agency, the Hawaii Civil Rights Commission under which employees receive certain benefits and protections. Each program and agency has its own laws to determine whether a worker is an employee or an independent contractor for purposes of the benefits offered by those programs.

Because the wording regarding independent contractors throughout the bill is vague and does not specify to which program(s) the wording applies, there is a concern

that the bill could be interpreted to amend the definitions of "employment" and "regular employee" under section 393-3, Hawaii Revised Statutes (HRS), of the prepaid health care act (PHCA), which we believe might subject the wording to an ERISA preemption challenge. ERISA is a comprehensive federal legislative scheme that regulates the administration of private employee benefit and pension plans and establishes standards relating to the administration of these plans. In enacting ERISA, Congress included a sweeping preemption provision that provides in relevant part, that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C.A. § 1144(a). The wording relates to an employee benefit plan because it potentially amends the definition of who is an employee entitled to such benefits. Accordingly, the bill may be subject to ERISA's preemption.

Although exemptions from ERISA's expansive preemption exist, we cannot conclude that the wording falls within any of them. Additionally, although the PHCA relates to an employee benefit plan, it is not preempted because Congress amended ERISA to exempt the PHCA from preemption. The exemption, however, is narrow and applies only to the PHCA as it existed on September 2, 1974, and not to amendments to the PHCA "to the extent it provides for more than the effective administration" of the PHCA. 29 U.S.C.A. § 1144(b)(5)(B)(ii). The wording may fall outside of that exemption because by classifying drivers as independent contractors the provision might change the definition of "employment" and "regular employee" under the PHCA and therefore appears to provide for more than the effective administration of the PHCA.

It also appears that the wording at page 2, lines 12-15, and page 8, line 17, through page 9, line 20, providing that drivers are independent contractors conflicts with section 383-6, HRS, which deems an individual to be an employee for purposes of unemployment benefits unless the DLIR determines that 1) the individual is free from control or direction over the performance of their service; 2) the service is outside the usual course of the business for which the service is performed or outside all the places of business of the enterprise for which the service is performed; and 3) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service. If the intent of

the bill is to exclude drivers from receiving unemployment benefits, to avoid a conflict in the law and for purposes of clarity and consistency, wording can be added to section 383-7, HRS, to provide that the services of a driver are excluded from employment. A definition of driver may need to be included in the new chapter established in the bill.

The wording at page 2, lines 12-15, and page 8, line 17, through page 9, line 20, also conflicts with the workers' compensation law, which also provides a presumption that an individual is an employee unless the individual is excluded from coverage under section 386-1, HRS, or the employer proves that the individual is not an employee under the control or relative nature of the work test under section 386-73.5, HRS. If the intent of the bill is to exclude drivers from receiving workers' compensation benefits, to avoid a conflict in the law and for purposes of clarity and consistency, section 386-1, HRS, could be amended to add an exclusion from the workers' compensation law to exclude service performed by a driver similar to the suggested amendment regarding section 383-7, HRS.

There are similar conflicts in the bill with the laws of other DLIR programs, and the same types of exclusion from benefits can be added to those programs including, but not limited to, HRS sections 378-1 (discriminatory practices), 378-26 (lie detector tests), 378-31 (unlawful suspension or discharge), 378-61 (whistleblower's protection act), 378-71 (victims protections), 378-91 (opportunity to express milk), 387-1 (minimum wage), 388-1 (payment of wages), 392-3 and 392-5 (temporary disability insurance); 396-3 (occupational safety and health); and 398-1 (family leave).

As the independent contractor wording could violate ERISA and conflicts with many of the laws of the DLIR programs, we respectfully request that the wording on page 2, lines 12-15, and page 8, line 17, through page 9, line 20, be deleted from the bill. Alternatively, to avoid conflict in the law and for purposes of clarity and consistency, with the exception of the PHCA, we respectfully request that the exclusion for independent contractors be placed in the specific program chapters.

Thank you for the opportunity to testify on the bill.

Testimony of
Robert's Hawaii, Inc.
on
S.B. NO. 770
Relating to Regulating Transportation Network Companies
Committee on Transportation
Thursday, February 11, 2021, 3:00pm, Room 224

My name is Roy Pfund, President, CEO of Robert's Hawaii, Inc., and I am testifying in strong opposition to S.B. No. 770 which proposes to establish a statewide system of regulation of Transportation Network Companies (TNC).

For the past few years, the TNC's have introduced bills to establish an independent class of commercial vehicle service that falls outside of the current regulations that cover Public Utility Commission (PUC) vehicles and County Taxis. The true intent of this effort is to create a façade of regulation that will allow the TNC's to bypass all the current rules, regulations and taxes that Hawaii based operators must comply with.

Who are these TNC's? Both are public companies, Uber with a market capitalization of \$100 billion and Lyft with \$15 billion are the two undisputed leaders in the industry. These two TNC companies want to monopolize the taxi and ride sharing transportation and now even the food and package delivery market in Hawaii by promoting legislation that discriminates against locally based regulated transportation companies their workforces.

How does the proposed regulation discriminate against local transportation companies and their workforces?

1. TNC's use their software to connect the customer and the service provider (independent driver under TNC contract) to provide a service of either moving passengers or goods from point A to point B. TNC service is no different from the service provided by PUC regulated companies and taxis. So why the big push to classify TNC's separately? It's because TNC's do not want to comply with the PUC and Taxi rules and regulations that local companies must follow. They want to operate in a self-regulated environment, meaning little to no regulations.
2. How do the TNC's treat our local workforce? Local drivers are "hired" as independent contractors. As independent contractors, do our local residents have the ability to receive medical insurance if they work over 20 hours per week? Do they have a set minimum wage? Are they reimbursed for costs of their vehicle? Are they covered by workers compensation if they get injured while working? The answer is no in all instances.
3. Do the TNC's pay their fair share of state taxes and fees? The answer is no one would know unless the TNC's were regulated by the PUC or Counties, then they would be required to file annual financial reports and pay GET on the gross revenues generated. Additionally, they should be paying Hawaii Income tax on their Hawaii based TNC operations. If the TNC's want a separate regulation, lets make sure that they report and pay GET and income taxes on the hundreds of millions in fare revenue that they take in annually to help cover Hawaii's budget deficit.

4. An additional point that supports the TNC's disregard for paying their fair share of costs to operate in Hawaii is that the bill proposes the Department of Transportation to undertake handling the permit process for an annual fee of up to \$25,000. This is an insignificant amount to manage, audit and follow up on the thousands of independent contractor drivers and their complaints that the TNC's would be generating on an annual basis.

If we take into consideration Hawaii's pandemic ravaged economy, it is very bold to be generous, for the TNC's to be proposing legislation that discriminates against local companies that have been enduring the loss of revenues while maintaining regulatory compliance. Isn't Hawaii's goal to support local business? We should not be enabling multibillion companies headquartered elsewhere that show little concern for Hawaii's workers and for paying their fair share to operate in and support Hawaii's economy.

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



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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February 10, 2021

Senator Chris Lee
Hawaii State Capitol
415 S Beretania St, Room 216
Honolulu, HI 96813

RE: SB 770 (Lee) Transportation Network Companies - Support

Dear Chair Lee and Committee Members,

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 SB 770 (Lee) which establishes requirements and permitting procedures for transportation network companies (TNCs) operating in Hawai'i. Additionally, the bill would make permanent insurance requirements for transportation network companies and transportation network drivers.

In Hawai'i, TNCs enhance transportation options for locals and tourists alike and provide people with an alternative transportation choice to increase their mobility. TNCs have been a transportation option in Oahu since 2004 and have expanded to other islands subsequently. Currently, TNCs operate in six airports across four islands, as well as at Honolulu Harbor. As of this year, 46 states across the country have passed statewide rideshare legislation that regulates TNCs in a safe and comprehensive manner. We hope that Hawai'i can join other states in allowing consumers to have the ability of choosing TNCs across the islands.

Currently, there is a disparate landscape of laws that regulate TNCs. For example, TNC driver screening and other operating requirements are currently only mandated for Honolulu county, under ROH Chapter 12. TNC insurance regulations are mandated by HRS 431:10C-703 and TNC airport operations are subject to HAR Title 19, Chapter 20.1. A comprehensive TNC framework would ensure TNC driver screening and other operating requirements are mandated for all islands throughout Hawaii, not just the City and County of Honolulu.

Statewide legislation would help alleviate the concerns associated with a patchwork of disparate regulations across the different islands and would provide uniform regulations for TNC operations throughout all of Hawai'i. A uniformed state framework is a path towards providing consumers, drivers and visitors a consistent ridesharing experience across islands.

Thank you for your consideration. If you have any questions regarding our support to SB 770 please contact Cameron Demetre, Executive Director, at cdemetre@technet.org or 916-903-8070.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cameron Demetre', written in a cursive style.

Cameron Demetre
Deputy Executive Director, California and the Southwest
TechNet



February 11, 2021

**TESTIMONY BEFORE THE SENATE COMMITTEE ON TRANSPORTATION
ON SB 770 RELATING TO TRANSPORTATION NETWORK COMPANIES**

Aloha Chair Lee, and committee members. I am Gareth Sakakida Managing Director of the Hawaii Transportation Association (HTA) with over 375 members involved with the commercial ground transportation industry.

HTA supports this bill. The critical nature of transporting passengers warrants a regulatory structure to ensure driver safety and qualification regardless of mode, business structure, or label.

This is evidenced by the need to regulate “motor carriers” (common and contract) by the Public Utilities Commission, State Motor Vehicle Safety Office, and Federal Motor Carrier Safety Regulations. It is further evidenced by the regulation of “taxi cabs” by their respective counties.

All modes and organizations offering transportation to passengers warrant oversight.

Mahalo.

**Testimony of Robert Toyofuku, on behalf of Uber Technologies, Inc., in support of
SB 770 Relating to Transportation Network Companies**

February 11, 2021

To: Chairman Chris Lee and Members of the Senate Committee on Transportation:

My name is Bob Toyofuku and I am the Government Affairs Consultant for Uber Technologies, Inc. (“Uber”) in Hawaii. I am submitting this testimony on behalf of Uber in support of SB 770 Relating to Transportation Network Companies.

The Uber app facilitates Transportation Network Company (TNC) services. This provides flexible work opportunities for thousands of small business owners across Oahu, Maui, Big Island, and Kauai. Uber’s technology platform connects local, independent drivers, with Hawaii residents and visitors. Before the pandemic began in early 2020 these independent drivers completed millions of trips every year throughout Hawaii via the Uber platform. This bill would provide uniform regulations for TNC operations throughout all of Hawaii. TNC driver screening and other operating requirements are currently only mandated for City and County of Honolulu, under ROH Chapter 12. TNC insurance regulations are mandated by HRS 431:10C-703 and TNC airport operations are subject to HAR Title 19, Chapter 20.1.

SB 770 would ensure TNC driver screening and other operating requirements are mandated for all islands throughout Hawaii, not just the City and County of Honolulu. The provisions of this bill are very similar to the current requirements of Honolulu ROH Chapter 12 and mandate background screenings for all drivers. These screenings include criminal background checks on all potential drivers. These checks must search federal, state, and local databases as well as the Sex Offender Public Registry Website. Driver Motor Vehicle Record (MVR) checks are also included. Various other TNC operating requirements are also addressed, including operating permits, fare transparency, driver and vehicle

identification, receipt requirements, non-discrimination and accessibility policies, record retention, and audit provisions. This bill also contains some suggested changes which were discussed with key staff persons at the Department of Transportation (DOT). The primary role of the DOT is to issue permits and to do an annual audit and it has said that they are capable of doing so.

Uber is of the opinion that a statewide regulatory framework as set forth in this bill will benefit all of our residents and provide uniformity throughout the state.

Thank you for the opportunity to present this testimony and I am available for any questions that you may have.

WRITTEN TESTIMONY OF TRACI LEE OF LYFT
SB 770 - Relating to Transportation Network Companies
Senate Committee on Transportation
Feb. 11, 2021 3 PM in conference room 224.

Chair Lee, Vice Chair Inouye, and Committee Members,

My name is Traci Lee, and I am a Senior Public Policy Manager for Lyft, responsible for Lyft's policy and government relations in Hawaii. Lyft **supports Senate Bill 770**, which creates a statewide regulatory and insurance framework for ridesharing that will allow Lyft to expand throughout the state of Hawaii.

Lyft was founded in 2012 with the mission of reconnecting communities through better transportation and making our cities more livable. Lyft is an online platform that connects people with efficient, friendly and reliable drivers in their community. At a basic level, Lyft was created as an alternative to personal car ownership, and we make it easier for people to offer their neighbors a ride and carpool more efficiently.

In Oahu, Lyft has been operating since June 2014, and on Big Island, Maui, and Kauai since March 2017. Lyft's availability enhances transportation options for locals and tourists alike as we operate at airports and harbors across the four islands. As of this year, 46 states across the country have passed statewide rideshare legislation, like SB 770, that regulates transportation network companies ("TNCs") through a uniform framework. Vermont and Louisiana were the 45th and 46th states, respectively, to pass such legislation. We support SB 770 in hopes that Hawaii can become the 47th state to pass comprehensive TNC legislation.

We are proud that Lyft is more than just a transportation network company-- during a challenging year when workplaces have shuttered or scaled back employee hours, Lyft has provided a unique and flexible economic opportunity that allows anyone with a car to be an entrepreneur who can set a schedule according to their terms. In fact, 97% of drivers on the Lyft platform in Hawaii drive fewer than 20 hours per week. The Lyft driver community is made up of retirees, single parents, students, folks trying to get around, and families looking to earn extra income. In Hawaii, drivers span a diverse cross-section of the community-- 42% of drivers are over the age of 50, 17% are veterans, 16% identify as female, 15% are retired, and 26% speak a language other than English at home. Further, Lyft supports first-/last mile solutions to help fill transit gaps -- 46% of rides start or end in low-income areas and 23% of riders have used the Lyft platform to access healthcare services.

Along with these community and economic benefits, we believe that Lyft is contributing to a more sustainable Hawaii. In fact, 42% of riders have used a Lyft service to get to or from public transit, and 43% of riders who have access to a personal use that car less because of Lyft. By taking a Lyft instead of driving their cars, Hawaiians are not just saving time, they are reducing congestion, freeing up parking, making more efficient use of existing roads, and supporting sustainable transportation infrastructure.

Most notably, during the Covid-19 pandemic, Lyft has been instrumental in helping people and communities access work, medical appointments, and other essential services. Across the islands, Lyft has partnered with with a dozen organizations, such as Hawaii Food Bank, U.S. Vets Hawaii, Hale Kipa, Lunalilo Home and Hauli Homecare on Oahu, Kauai Adult Health Center, and Na Hoaloha on Maui, to support essential travel, including rides for survivors seeking shelter, kūpuna accessing grocery stores and medical appointments, and individuals looking for work opportunities.

Statewide legislation is a path towards providing consumers, drivers and visitors a consistent experience with Lyft across islands. Through SB 770, we urge this committee to support establishing the clear, workable regulatory structure that can be applied to all ridesharing companies regardless of size and cities of operation to ensure that responsible, reliable, and affordable rides are available for all in Hawaii.

Thank you for your consideration of Lyft's testimony in **support of SB 770**.

SB-770

Submitted on: 2/10/2021 1:52:11 PM

Testimony for TRS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Phillips	Individual	Support	No

Comments:

Aloha, representatives of the Commerce, Consumer Protection, and Transportation committees. I hope you and your families are doing well during this challenging time. I want to add my testimony in full support of SB 770. This beautiful state we live in is worth exploring and sharing. With rideshare, I have had the opportunity to do that everyday by ensuring that residents and tourists alike get to their destinations safely. I am supporting the community by offering a great service. As an Air Force veteran and someone who currently works for the government as my primary job, I am a public servant through and through. Granted, the current situation has changed the landscape for Hawaii economically, and soon enough residents will once again be able to get back out there and earn additional income for their families; rideshare will be a great way to do so. To that end, ensuring uniform regulations across the state will be critical to extend the opportunity to all potential drivers that want to contribute to their family and community, especially amidst these challenging times. I know this has worked for me and thank you for picking up this discussion to ensure that it works for others as well. Mahalo!

- John Phillips, Rideshare Driver, Oahu