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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Transportation and Culture and the Arts
Tuesday, February 14, 2023
3:15 p.m.
State Capitol, Conference Room Conference Room 224 Via Videoconference

On the following measure:
S.B. 1224, RELATING TO INSURANCE

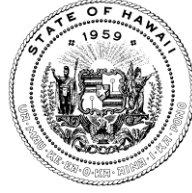
Chair Lee and Members of the Committee:

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

The purpose of this bill is to amend the required coverage for shared cars that are made available through a peer-to-peer car-sharing program and on June 30, 2025, to repeal the allowable exclusions, recordkeeping requirements, right of recovery, insurable interest, and required disclosures and notices under the peer-to-peer car-sharing insurance law.

2022 Haw. Sess. Laws Act 56 (Act 56), which enacted the provisions amended by this bill, only became effective on January 1, 2023, less than three weeks before the start of the current session of the Legislature. These laws have not been in effect long enough to determine whether they warrant amendment. Moreover, Act 56 already includes a sunset date June 30, 2025.

Thank you for the opportunity to testify.



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On the following measure:
S.B. 1224, RELATING TO INSURANCE

Chair Lee and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director for the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department opposes this bill.

The purposes of this bill are (1) effective upon approval, to reduce the amount of the motor vehicle insurance policy coverage that a peer-to-peer car sharing program must ensure applies to a shared car from \$750,000 to the minimum required by law, and (2) effective June 30, 2025, to (a) eliminate all other insurance coverage requirements for a peer-to-peer car-sharing program, including the requirements to obtain uninsured and underinsured motorist coverages, and (b) eliminate the requirement that a car-sharing program obtain written acknowledgment from a car-sharing driver when the only named insured is the car-sharing program, (3) eliminate a car-sharing program's statutory duty to defend and duty to provide coverage under certain conditions, and (4) eliminate requirements that the car-sharing program's motor

vehicle insurance policy be considered the primary insurance policy, and independent of another motor vehicle insurer first denying a claim.

This bill re-writes the State's policy choices for motor vehicle insurance coverages provided by peer-to-peer car-sharing programs, which were enacted pursuant to Act 56, Session Laws of Hawaii 2022. Act 56 took effect on January 1, 2023. As of this writing, Act 56 has been in effect for less than fifty days. Fifty days is not enough time to conceive an approach to insurance coverages by car-sharing programs that will provide equivalent benefits to consumers.

Effective upon approval, this bill would reduce required coverage levels from \$750,000 for death, bodily injury, and property damage per accident, to the minimum coverage levels required by law. Current coverage levels under HRS § 431:10C-301 are \$40,000 per accident for all damages arising out of accidental harm, and \$10,000 for all damages arising out of damage to or destruction of property.

Effective June 30, 2025, this bill would eliminate a car sharing platform's duty to provide motor vehicle insurance policy coverage in excess of statutory minimums. Effective June 30, 2025, a car sharing platform's motor vehicle insurance policy would no longer be considered primary, and a car sharing platform would no longer be required to provide uninsured or underinsured motorist coverages.

Section 3 of Act 56 requires the Insurance Commissioner to submit a report on the progress in the implementation of Act 56 no later than twenty days before the regular session of 2025. If the Legislature changes the law during the 2023 session, the Insurance Commissioner's report will have to report on two different time periods: the period during which the Act 56 requirements went into effect, and the period when the Act 56 requirements were amended. Neither period would be long enough to obtain meaningful information about complaints and the effect of the coverage limits on victims involved in motor vehicle accidents with peer-to-peer vehicles.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS
Senator Chris Lee, Chair
Senator Lorraine R. Inouye, Vice Chair

Tuesday, February 14, 2023
3:15 p.m.

SB 1224

Chair Lee, Vice Chair Inouye, and members of the Committee on Transportation and Culture and the Arts, my name is Alison Ueoka, President for Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. The issue of insurance required for P2P entities was debated for at least four years at the Legislature before a bill passed in 2022. After much discussion, insurance requirements were agreed to for the protection of residents and visitors in Hawaii who may be injured or killed by a driver using a P2P vehicle. The insurance commissioner, the consumer protector and the Hawaii Association of Justice all testified asking for even higher liability limits of \$1 million. What passed was a lower amount of \$750,000. The law just took effect on January 1, 2023, and there has been very little experience and time to see the effects of the law. At least three years of data should be collected and analyzed to determine whether the law needs to be changed.

This bill virtually guts the law enacted last year, stripping out many consumer protections regarding primacy of insurance, coverage, offers of additional insurance and disclosures to users of P2P vehicles. This bill does not provide adequate insurance protection for those who may be injured by a P2P vehicle.

Section 2 of the bill (page 4, lines 15-20) removes the sunset date for the proposed revised insurance provision in Section 1 of the bill (starting on page 1, line 2 through page 4, line 14).

However, it also seeks to repeal five important consumer protection provisions in the current law on June 30, 2025: (1) section 431:10C-C (this section reference and all other similar references are in Act 56, 2022 Session Laws), which currently is codified as section 431:10C-803 (Exclusions in motor vehicle insurance policies); (2) section 431:10C-D, which currently is codified as section 431:10C-804 (Recordkeeping; use of vehicle in peer-to-peer car-sharing); (3) section 431:10C-E, which currently is codified as section 431:10C-805 (Right of recovery from peer-to-peer car-sharing program or its motor vehicle insurer); (4) section 431:10C-F, which currently is codified as section 431:10C-806 (Insurable interest); and (5) section 431:10C-G, which currently is codified as section 431:10C-807 (Required disclosures and notices).

Section 3 of the bill (starting on page 5, line 1 through page 8, line 19) permanently removes all five the important consumer protection provisions set forth above.

The proposed amendment reducing the insurance limits is premature. This proposed amendment and the proposed deletion of the five important consumer protection provisions in the current P2P law would reduce or eliminate protections for P2P drivers, passengers and pedestrians who may suffer injury, death or property damage in an accident involving the use of a P2P vehicle.

We ask that this bill be held.

Thank you for the opportunity to testify.



Testimony of
Davin Aoyagi - Senior Government Relations Manager
Turo Inc.

SUPPORTING SB1224 12/14/23

Aloha e Chair Lee, Vice Chair Inouye, and other Members of the Senate Committee on Transportation and Culture and the Arts,

On behalf of Turo, I respectfully offer the following written testimony in support of SB1224, which amends the general liability insurance coverage for peer-to-peer car sharing programs.

Last year the legislature established a statutory framework to regulate this industry, which included a variety of insurance provisions, consumer protection provisions, recordkeeping requirements, and taxation. SB1224 focuses on amending the insurance portion of this framework set forth by HRS§431:10C-802:a(1) which states that “a peer-to-peer car-sharing program shall ensure that during each car-sharing period, the shared car shall be insured under a motor vehicle insurance policy in amounts not less than \$750,000.”

This \$750,000 requirement is significantly higher than the current state minimums (20/40/10) which are imposed on every individual vehicle driver in the state as well as those driving a traditional rental car. Since insurance coverage requirements are predicated on an assessment of risk, it is important to note that there is no difference in risk between an individual driving a rental car, a shared car, or their own personal vehicle. Despite this fact, current law requires the peer-to-peer car sharing industry to ensure coverage that is 18.75 times higher than what is required of others on the road, despite there being no policy basis for the assertion that peer-to-peer car-sharing involves any greater risk. In fact, peer-to-peer marketplaces have operated nationally for years without any evidence of such risk, including in Hawaii. What this creates is a disparity not only in the cost of doing business for comparable industries (the cost of insurance is the greatest cost of doing business), but also in coverage provided for individuals in nearly identical situations. For example, two individuals could be driving the exact same make, model, and year of a vehicle for the exact same amount of time, but be covered by vastly different insurance policies.

Comparisons have been made over the years between peer-to-peer car sharing and transportation network companies (TNC”) like Uber and Lyft, who are also newer to the

transportation space, but provide a distinctly different service. The \$750,000 motor vehicle insurance policy applied to peer-to-peer car sharing seems to be linked to 431:10C-703d(1), which covers insurance minimums for TNCs, without taking into consideration the vast differences between the industries.

A TNC transaction involves a vehicle-for-hire service whereby a paid driver provides a ride to a paying passenger. Conversely, peer-to-peer car sharing simply provides access to a self-driven vehicle as is the case in personal car ownership or the traditional rental car industry. In essence, TNC's provide the service of a ride, whereby the TNC driver operates and controls the vehicle, rather than providing a licensed driver the opportunity to operate a vehicle themselves.

Commercial operators like Uber/Lyft drivers have greater tort liability to paying passengers that are injured in the course of a commercial ride. This is because commercial operators owe a higher duty of care to passengers they transport as part of a business. This is a different category of tort liability altogether from what actions an injured party has when hit by a self-driven passenger vehicle.

This distinction is already reflected in the structure of the existing TNC requirements. HRS 431:10C-703 only imposes the \$1 million requirement when a TNC driver has accepted a ride or is engaged in transporting a passenger. While a driver is simply logged-in to the TNC application but has not accepted a ride, the statute imposes a vastly lower insurance requirement of \$100,000 for death and bodily injury per accident.

By comparison, Turo hosts do not carry passengers for commercial rides. Since no ride is being provided, they are not subject to the same exposure that a commercial operator has when carrying customers as passengers. The experience that Turo guests encounter is, instead, more in line with a rental car company not a TNC like Uber or Lyft. For this reason, we support this effort to align insurance coverage requirements for peer-to-peer car sharing with more analogous circumstances.

We are therefore supportive of SB1224, which seeks to amend the current \$750,000 mandate down to the standard State auto insurance limits, putting us at parity with rental car companies and personal vehicle drivers.

We extend a warm mahalo to the committee for its consideration of our testimony.

TESTIMONY OF MICHAEL IOSUA ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF SB 1224

Date: Tuesday February 14, 2023

Time: 3:15 p.m.

My name is Michael Iosua and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **STRONG OPPOSITION** to SB 1224 - Relating to Peer-to-Peer Car Sharing Insurance Requirements. HAJ opposes this which measure creates hourly peer-to-peer insurance minimum and reduce the required minimum amount of insurance coverage for car sharing on Peer-to-Peer car-sharing platforms during the car sharing period.

This measure unnecessarily reduces consumer protection for peer-to-peer users and Hawaii residents. SB 1224 attempts to reduce the newly implemented \$750,000 in coverage to the current motor vehicle insurance minimums at \$20,000. This substantial reduction in insurance coverage does not reflect the risks associated with peer-to-peer usage.

It is concerning that SB 1224 attempts to circumvent the consumer protections for peer-to-peer car sharing programs which were recently implemented. The current \$750,000 insurance minimums for peer-to-peer car-sharing programs were implemented last year during the 2022 legislative session. Since the legislation's implementation, the risk to consumers has not changed. It seems unreasonable to amend the insurance minimums immediately after carefully passing legislation which properly balanced the need for consumer protection with allowing peer-to-peer programs to operate safely here in Hawaii.

Moreover, a gap in insurance coverage remains as driver's personal auto insurance policy still excludes peer-to-peer programs. Many personal automobile insurance companies are denying coverage for accidents and injuries related to the use of a privately owned vehicle as a private Peer-to-Peer car sharing. An unintended consequence of this coverage denial is that a vehicle may be treated by an insurance company as uninsured, if there is no insurance provided by the Peer-to-Peer company. The \$750,000 protects both the users of the Peer-to-Peer car sharing program, and the innocent victims of negligent drivers.

Furthermore, the proposed reduced minimum insurance amounts are inadequate. The minimum insurance amounts in HRS 431:10C-703 take into account not only the anticipated loss in a covered situation, but also the ability of Hawaii residents to pay the insurance premiums for the minimum amount of coverage. Financial ability should not be a factor considered to the same extent for commercial enterprises. The \$750,000 minimum is not likely a financial burden on Peer-to-Peer Car Share companies which can pass on costs of insurance to consumers. Such inconsequential costs resulting from the current insurance minimums will not deter Peer-to-Peer Car Share companies from conducting business in Hawaii.

Additionally, \$750,000 in coverage was deemed by the legislature to properly reflect the need

for protection of Hawaii residents. It is unclear as to why it would now be necessary to reduce protection of pedestrians and other third parties injured in Hawaii. Local residents will be disadvantaged if Peer-to-Peer Car Share companies are allowed to provide less coverage due to the amount of time a vehicle is in use when the same risks are still present.

Also, other internet platform companies like UBER/LYFT have already agreed to the \$1,000,000 minimum coverage in HRS § 431. Peer-to-Peer Car Share Companies remain akin to other internet platform companies because they have no vehicles of their own, they pass on all financial and legal expenses of vehicle ownership and operation to private individuals, including vehicle purchase or lease price, maintenance costs, registration and vehicle taxes, garage/parking space, inspections, cleaning between rentals, and arranging for pick-up and drop-off of vehicles. Thus, Peer-to-Peer Car Share companies are able to make profits without bearing the risks or expenses of vehicle ownership. Therefore, \$750,000 is the appropriate level of insurance for peer-to-peer car sharing regardless of duration in time.

Ultimately, Peer-to Peer Car Sharing is still one of the fastest growing industries across the United States resulting in a wave of legislative efforts and lobbying. This trend has an impact on the insurance industry, the rent-a-car industry, state tax collectors, and of course the companies' deriving revenue from Peer-to-Peer transactions. Most importantly, the rise of Peer-to-Peer impacts drivers, passengers and pedestrians injured in motor vehicle accidents on Hawaii's roadways.

Accordingly, **HAI recommends this measure be deferred** and the \$750,000 be maintained for all peer-to-peer car sharing programs to protect Hawaii residents. Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 13, 2023

TO: Senator Chris Lee
Chair, Committee on Transportation and Culture and the Arts
Submitted Via Capitol Website

FROM: Matt Tsujimura

RE: **S.B. 1224 – Relating to Insurance**
Hearing Date: Tuesday, February 14, 2023 at 3:15PM
Conference Room: 224

Dear Chair Lee, Vice Chair Inouye, and Members of the Committee on Transportation and Culture and the Arts:

I am Matt Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers this testimony **in opposition** to S.B. 1224 which amends the required coverage for shared cars that are made available through a peer-to-peer car-sharing program.

The proposed amendment to HRS 431:10C-802 would be harmful to consumers. The proposed bill would remove the requirement that a Peer-to-Peer car sharing company provide primary insurance coverage for a shared vehicle by simply requiring the Peer-to-Peer company to “ensure that during the car-sharing period, the shared car shall be insured.” While this may seem like a simple change, the proposal is not simple at all. It would require the shared car owner or the shared car driver to confirm that their insurance provides the correct coverage for the vehicle, most likely via an endorsement or specialized company at an additional expense.

This is made even more troubling by the fact that the shared car driver will not know the policy, coverage, endorsements, limits, or financial strength of the shared car owner’s vehicle. Likewise, the shared car owner will not know the policy, coverage, endorsement, limits, or financial strength of the shared car driver’s insurance. This may lead to complicated and costly disputes involving questions of insurance coverage, liability, property damage, or bodily injury.

Consumers will be better protected if the requirement to provide primary coverage for the shared car during the car sharing period remains with the Peer-to-Peer platform. The Peer-to-Peer platform is a sophisticated entity, that operates a non-owned, commercial vehicle fleet servicing Hawaii. The Peer-to-Peer platform receives the policy information from its users, the shared car driver and the shared car owner. For this reason, the Peer-to-Peer platform is in the best position to purchase commercial policies which provide primary insurance coverage and ensure that consumers are protected.

For the reasons set for above, we respectfully ask the Committee **to hold** S.B. 1224. Thank you for the opportunity to submit testimony.