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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, March 14, 2023
3:00 p.m.

State Capitol, Conference Room Conference Room 224 and via Videoconference

On the following measure:
H.B. 640, H.D. 1, RELATING TO INSURANCE

Chair Lee and Members of the Committee:

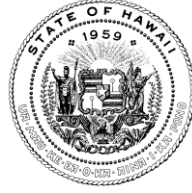
My name is Gordon Ito, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

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; clarify when the requirements for motor vehicle insurance coverage are satisfied; and repeal the sunset of the peer-to-peer car-sharing insurance requirements.

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 for a significant amount of time.

However, discussions with stakeholders on issues are ongoing.

Thank you for the opportunity to testify.



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H.B. 640, H.D. 1, 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 Office of Consumer Protection submits comments on this bill.

The purposes of this bill are (1) to amend the required coverage for shared cars that are made available through a peer-to-peer car-sharing program, (2) to clarify when the requirements for motor vehicle insurance coverage are satisfied, and (3) to repeal the sunset of the peer-to-peer car-sharing insurance requirements.

HD1 addresses concerns that insurers or peer-to-peer car sharing programs should make disclosures about insurance coverages in writing to shared car drivers. HD1 also specifies that a policy of motor vehicle insurance that sets forth coverage in an amount no less than the minimum amounts set forth in HRS § 431:10C-301 is the primary insurance during each car-sharing period. For bodily injury or property damages to third parties or uninsured or underinsured motorist or personal injury

protection losses in excess of the policy limits, the peer-to-peer car sharing program assumes liability in an amount no less than \$750,000.

Thank you for the opportunity to testify on this bill.

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION OF HB 640 HD1**

Date: Tuesday March 14, 2023

Time: 3:00 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **STRONG OPPOSITION** to HB 640 HD1 - 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. The previous committees made several concerning amendments which:

1. Specifies that peer-to-peer company assumes liability of the shared car owner for no less than \$750,000 in liability insurance;
2. Specifies exemptions for liability for certain incidents;
3. Reduces coverage for shared car drivers from \$750,000 to \$20,000;
4. Specifies instances in which the car sharing company must assume liability;
5. Clarifies optional coverages and disclosure requirements; and
6. Clarifies the construction and application of the insurance code to peer-to-peer car sharing companies.

Most importantly, HB 640 HD1 attempts to reduce the newly implemented \$750,000 in coverage for shared car drivers 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. The measure as amended would only allow \$750,000 in coverage for shared car owners. It is unclear as to why the shared car owners should be covered in this amount while shared car drivers are provided with less protection. Hawaii residents should be protected at all times from potential injuries related to peer-to-peer companies operating in the State.

It is concerning that HB 640 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, **HAIJ 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.



Testimony of
Davin Aoyagi - Senior Government Relations Manager
Turo Inc.
SUPPORTING HB640, HD1 3/14/23

Aloha e Chair Lee, Vice Chair Inouye, and other Committee Members,

On behalf of Turo and our vibrant community of peer-to-peer car sharing hosts and guests in Hawaii, I respectfully offer the following written testimony in support of HB640, which seeks to amend the statutory framework for the peer-to-peer industry set in place under Act 56. Specifically, this legislation amends the requirements of peer to peer car sharing platforms by requiring that the platform assume all liabilities of the vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses to at least \$750,000.

Last year the legislature established a statutory framework to regulate the peer to peer car sharing industry, in which vehicle owners (“hosts”) share their vehicle with someone looking for a car for temporary use (“guests”) via a marketplace like Turo. The framework included a variety of insurance provisions, consumer protection provisions, recordkeeping requirements, and taxation. HB640 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 for both the vehicle and the driver 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. We also respectfully note that the \$750,000 in minimum insurance coverage is an anomaly compared to other states. 41 states and the District of Columbia merely require state minimums, while six other states require ranges from two to three times state minimums. The only states that have comparable insurance minimums to Hawai'i are New York (which recently legalized peer-to-peer car sharing operations in 2022) and West Virginia, whose legislature just transmitted a bill to the governor's office to amend the \$750,000 minimum to its state minimums.

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.

Peer-to-peer marketplaces have operated nationally for years without any evidence of such risk, including in Hawaii. In fact, there were no data points in our five years worth of claims information which we've provided to the Insurance Division of the Hawaii Department of Commerce which demonstrated a justification for these higher insurance limits.

Despite this, and recognizing the concerns of the State Legislature, HB640, HD1 has now been amended to address concerns raised by opponents to the original bill. The language offered in this draft closely mirrors the compromise language that was offered by Turo last year in the context of HB1619. However, we recognize that this is not the only solution. We are in communication with the Insurance Commissioner, and recognize that there still may be concerns with the language offered. We respectfully request that HB640, HD1 continue to move forward as a vehicle that allows us to both meet legislative deadlines and continue dialogue with the Insurance Commissioner's office.

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



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Alison H. Ueoka
President

TESTIMONY OF ALISON UEOKA

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

Tuesday, March 14, 2023
3:00 p.m.

HB 640, HD1

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. Peer-to-Peer (P2P) insurance requirements were debated for several years before the 2022 Legislature enacted a bill which took effect very recently, on January 1, 2023. The law today clearly states that the P2P policies are primary in relation to any other insurance policies and liability limits are required at \$750,000. Both requirements in current law are vital consumer protection measures.

HB 640, HD1 rewrites the current law by taking away the clear language requiring P2P primacy of coverage which may result in unnecessary litigation and a delay in payment for medical treatment and other coverage to the injured victim. The bill lowers the mandatory liability limits required of a P2P driver and, in the event no coverage can be found, leaves the injured victim with unclear coverage, if any. HB 640, HD1 creates ambiguity and confusion and clearly shifts the burden of a commercial enterprise providing coverage to the victim who may be forced into litigation to seek coverage. We ask that this bill be held and the current law be given a chance to work.

Thank you for the opportunity to testify.