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TESTIMONY BY:

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

February 5, 2020
10:15 a.m.
State Capitol, Room 423

H.B. 2463
RELATING TO TRANSPORTATION NETWORK COMPANIES.

House Committee on Transportation

The Department of Transportation (DOT) **supports the intent** of H.B. 2463 which establishes requirements and permitting procedures for transportation network companies operating in the State.

The DOT believes transportation options are a good thing for the communities we serve, and that the demand is apparent. The DOT also believes the regulations the bill provides to ensure our public is safe using these options are good.

The DOT has the ability to administer the program as required by the bill with its existing staffing and funding. The penalty fee can be determined when the requirements are finalized.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF CUSTOMER SERVICES
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February 4, 2020

The Honorable Henry J.C. Aquino, Chair
The Honorable Troy N. Hashimoto, Vice Chair
and Members of the Committee on Transportation
The House of Representative
State Capitol, Conference Room 423
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Aquino and Members of the Committee on Transportation:

SUBJECT: H.B. No. 2463
Relating to Transportation Network Companies

H.B. No. 2463, calls for the establishment of state-wide regulation of transportation network companies. The Department of Customer Services (CSD) **supports H.B. 2463.**

The earlier establishment of such rules at independent county levels resulted in fractured and inconsistent operations.

The City's attempt to apply umbrella rules that cover both taxi operations and transportation network companies were challenging, especially in the areas of insurance requirements, fee transparency and applicable caps, trade dress, and digital vs metered operations.

Taxi companies operate locally and the application of individual county rules are clear. TNCs operate with the same system on all islands, yet the rules on each island differ, which is confusing for the public as they traverse from island to island.

HB 2463 addresses these major concerns, creates uniform rules, and strengthens the management of the industry.

Thank you for this opportunity to provide testimony in support of the intent of H.B. No. 2463.

Sincerely,

-For- 

Sheri T. Kajiwara
Director

Testimony of
Hawaii Passenger and Property Carriers Association
on
H.B. No. 2463
Relating to Transportation Network Companies
Committee on Transportation
Wednesday, February 5, 2020, 10:15 a.m.
Room 423

My name is Deems Narimatsu, representing the Hawaii Passenger and Property Carriers Association, testifying in strong support of H.B. No. 2463, which proposes to establish a regulatory structure for transportation network companies (TNC).

Like motor carriers and taxis, TNCs engage in the transportation by motor vehicle of passengers for compensation. H.B. No. 2463 acknowledges that transportation network companies and transportation network company drivers do not have an employer-employee relationship and considers that relationship in establishing a regulatory structure that also protects the consumer.

Registration of TNCs

The Director of Transportation is assigned the authority to regulate TNCs, which are required to register with the director and pay the established fee, and submit the following information:

- Name of the company, in-state address, in-state agent, phone number, and other contact information required by the director;
- If the company is registered out-of-state, the name, address, and out-of-state contact information required by the director; and
- The general excise tax license number issued to the company.

Certification of TNC Vehicles

A TNC is required to certify the vehicles used by the transportation network company and requires a driver applicant to submit:

- The vehicle identification number;
- The registered owner's full legal name;
- Proof of registration for the motor vehicle in the name of the driver;
- The license plate number and expiration date;
- Proof of current vehicle safety inspection and date of the annual inspection for the motor vehicle; and
- Proof of insurance.

Proof of Financial Responsibility

A TNC is required to provide evidence of financial responsibility. The security may be in the form of surety bonds, insurance, qualifications as a self-insurer, or other securities. It requires:

- An insurance policy that meets the requirements of section 431:10C-703;
- Securities in the form of a cashier's check, bank draft, irrevocable letter of credit, certified check, bond or other security in an amount to be determined by the director; or
- A certificate of self-insurance issued by the insurance commissioner if the commissioner is satisfied that the company has the financial ability to pay judgments as a self-insurer.

Maintenance of Records

A TNC is required to maintain for at least five years:

- Global positioning system records and electronic records for each period while a transportation network company driver is logged onto the transportation network company's digital network or software application service or is engaged in a prearranged ride;
- Transportation network company driver records after a driver's activation on the transportation network company digital network or software application service has ended; and
- The records for a transportation network vehicle after it was last used to provide a prearranged ride.

A TNC is required to produce any records requested for the investigation of any accident or the resolution of any dispute related to drivers while they are logged onto the transportation network company's digital network or software application service or while they are engaged in a prearranged ride.

TNC Drivers

Establishes requirements for a person applying to a TNC as a driver, which include:

- The individual's name and address;
- A copy of the individual's valid driver's license;
- A copy of the registration of the personal vehicle to be used by the applicant to provide transportation to a passenger;
- A copy of the individual's motor vehicle insurance identification card for the personal vehicle used to provide prearranged rides a motor vehicle insurance policy that meets the requirements of section 431:10C-103.5;
- A copy of the applicant's general excise tax license;
- The individual's certified abstract from the traffic violations bureau; and

- A certificate from a physician who is selected by the individual which attests that the individual is free of any known medical condition that would put a passenger at risk.

Criminal History Background Checks

A TNC is required to conduct a criminal history background check of each driver applicant in accordance with section 846-2.7, which provides for the performance of criminal history background checks by the Hawaii Criminal Justice Data Center, and allows the TNC to pass on the cost of the criminal history record checks to the applicant. Section 846-2.7 requires the TNS to notify the driver applicant that the applicant is subject to a criminal history record check, which includes retention of fingerprints by the criminal justice data center and submission to the Federal Bureau of Investigation for national criminal history record check.

Consumer Protection

The TNC's digital network is required to identify its driver by displaying a picture of the driver, license plate number of the vehicle, proof of motor vehicle insurance, and other information which may be required by the director. It requires a TNC vehicle to display a company-issued sign or marking to identify it and establishes guidelines for the sign.

It prohibits discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to riders and potential riders, and requires compliance with laws to accommodate service animals and prohibits imposing additional charges for persons with physical disabilities.

It establishes a procedure for the filing of complaints of any violations and authorizes the director to conduct investigations, examinations, and hearings of any complaints arising from the operations of transportation network companies or a specific complaint against a transportation network company driver. Further, it authorizes the director to retain attorneys, accountants, or other professionals and specialists to assist in the investigations.

For these reasons, we strongly support H.B. No. 2463.

Thank you for the opportunity to submit testimony on this legislation.



February 5, 2020

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION
ON HB 2463 RELATING TO TRANSPORTATION NETWORK COMPANIES**

Aloha Chair Aquino, and committee members. I am Gareth Sakakida Managing Director of the Hawaii Transportation Association (HTA) with 400 members involved with the commercial ground transportation industry.

HTA supports this bill. There are points in HB 2463 that we support over other measures.

The definition of “personal vehicle” which includes a passenger limitation of not more than seven passengers including the drivers, ensures that a TNC vehicle truly remains a vehicle type accepted as one operated by untrained drivers. Beyond that you step into an entirely different world of commercial driver regulations.

In addition to registration requirements, this bill provides for a penalty for illegal operations, and provides for the revocation/suspension of said registration.

The markings of a vehicle is critical for identification, whether by clients or enforcement personnel. This bill provides for clear identification of TNC vehicles. In addition, it’s TNC vehicle certification requirement is appropriately robust, as are the points regarding insurance certification.

Even more important is the continuous monitoring of vehicle registration renewal and safety check.

A driver is THE most critical factor in providing a safe ride. Pre-employment requirements like a criminal background check, providing a driving abstract, compliance with the Tax Department’s general excise tax license, and a physician’s certificate is a prudent start. Disqualification for driving under the influence is a very important factor.

House Bill 2002 has items that should be included in these regulations like the inclusion of the driver’s age under the TNC driver application. The annual criminal background check, and agent for service requirements should also be included.

Mahalo.

**HB 2463: WRITTEN TESTIMONY OF TRACI LEE OF LYFT
HOUSE TRANSPORTATION COMMITTEE HEARING
FEBRUARY 5, 2020**

LATE

Chair Aquino, Vice Chair Hashimoto, 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 Hawai'i. This testimony is to express Lyft's **opposition to House Bill 2463**, which imposes burdensome, duplicative, and ineffective regulations on transportation network companies and drivers.

Lyft respectfully opposes HB 2463 for the following reasons:

A medical evaluation is not necessary to protect public safety in HI.

Medical evaluations have been required for drivers in industries such as long-haul trucking. However, the nature of the ridesharing industry is fundamentally different. Almost 94% of Lyft drivers in Hawai'i drive fewer than 20 hours per week. These drivers include students, retirees, single moms, artists, and those in the hospitality industry.

For these drivers, a valid driver's license should serve as confirmation that they are safe to be on the road. For context, out of the 46 states that have passed comprehensive ridesharing legislation, only one state -- Colorado -- has required a medical certificate signed by a medical professional. Colorado was the first state in the nation to pass preemptive ridesharing legislation -- and served as a regulatory laboratory for an industry which at that time was in its infancy. No other state since has found it necessary or beneficial to require medical certificates, and every other state relies on the rules promulgated by their Department of Motor Vehicles to govern the medical fitness of a driver. If the DMV deems a driver is medically fit enough to receive a driver's license, then it logically follows that DMV licensing should be sufficient for drivers to offer rides via the Lyft app.

A medical evaluation will be a significant barrier for potential rideshare drivers, particularly for those in rural areas where physicians are harder to reach. Medical exams can be costly and difficult to schedule, particularly for individuals who are hoping to use ridesharing as a tool to earn supplemental income. All this for someone who might only be looking to drive a few hours a week and to drive on the same roads as their neighbors in the state.

Furthermore, Lyft's Risk department calculated that based on billions of miles and millions of rides that medical fitness *is not* a good predictor of accident frequency according to our extensive data. The factors with the biggest impact are: driver age, driver tenure, ratings, and number of safety flags, which are consistent with variables used by personal auto insurance carriers. Medical fitness certification is not even part of the loss cost model used by auto insurance, nor industry loss cost models, signifying that it is not a good predictor of accident frequency. Thus, requiring a TNC driver to

undergo a medical examination before platform onboarding is duplicative and an unnecessary invasion of driver privacy, that does not enhance safety for Hawaii residents and visitors.

We hold all Lyft drivers to high standards. Before drivers are approved to drive for Lyft and continuously thereafter, Lyft conducts rigorous and thorough background checks and screenings for every driver.

Before giving the first Lyft ride, all driver-applicants* are screened for criminal offenses and driving incidents. Administered through a third-party company that specializes in background checks, our comprehensive **criminal screening process** includes:

- Social Security Number trace
- Nationwide criminal search
- County court records search
- Federal criminal search
- US Department of Justice 50-state sex offender registry search

Drivers must also pass a **DMV record check** to ensure their driving record meets Lyft's standards. While standards vary per state and local law, in most places, if a driver-applicant has any of the below violations they will not be permitted to drive with Lyft:

- Any major violation in the past 3 years (like driving on a suspended license or reckless driving)
- Any DUI or other drug-related driving violation in the last 7 years
- Any driving-related convictions in the last 7 years (like a hit-and-run or felony involving a vehicle)
- More than 3 minor violations in the past 3 years (including collisions and traffic light violations)

Once drivers pass the initial screenings and are approved to drive on the Lyft platform, they are then subject to thorough **annual background and driving record checks**. Our standards for annual checks are the same as the initial checks, and are performed at least once a year.

We don't stop at the annual screenings. Throughout the year, Lyft also conducts **subsequent criminal monitoring and driving record checks** that provide Lyft with notification of any disqualifying criminal convictions or driving offenses. These subsequent checks allow Lyft to identify unsafe drivers and remove them from the platform as soon as a violation of Lyft's safety standards is detected.

Any driver who does not pass the initial, annual and subsequent screenings is barred from our platform.

Why we don't fingerprint check

Lyft uses a multi-tiered criminal screening process, facilitated by two of the top background check companies in the country. The process provides Lyft with comprehensive criminal history reports using personally identifiable information (PII) to search wide-ranging national and local sources. We do not use fingerprint-based

checks for two core reasons: fingerprinting relies on a federal database that is unreliable and incomplete, and is shown to have potential discriminatory effects on minority communities.

Unreliable and incomplete database

Fingerprint-based background checks rely on the FBI's Criminal Justice Information System, a database of state- and municipality-submitted arrest records. This database is often incomplete.

Not all records in the FBI database are complete

States and counties have no mandate to update the database with final case outcomes, meaning the database often lacks up-to-date records and final court dispositions - whether someone was charged, convicted or acquitted. A **2015 Government Accountability Office report** estimated that up to 50% of arrest records lack final dispositions. Instead of relying on a singular database and biometric features, Lyft's comprehensive background check process pulls from multiple criminal databases and inputs.

The FBI database is not subject to the same regulations

Our independent, third-party background check companies are subject to the Fair Credit Reporting Act (FCRA)¹, which requires consumer reporting agencies to ensure their background check information is accurate, up-to-date and complete. In contrast, FBI records are not subject to consumer protection laws including the FCRA. These records often lack personal identifying information and are not subject to the same accuracy and completeness standards.

Not all records are included in the FBI database

Some records do not meet the standards for inclusion in the database because the fingerprints are poor quality. Some may become missing or lost when transferred between departments.

Discriminatory against minority communities

Fingerprint-based background checks have shown to have a discriminatory impact on communities of color. Nearly 50% of African American men and 44% of Latino men are arrested by age 23 nationwide², and 1/3 of felony arrests do not result in conviction³. Basing background checks on incomplete arrest records with no final disposition is unfair and discriminatory to communities of color, who are more likely to come into contact with the police.

Fingerprint-based background checks also require applications to be fingerprinted at a

¹Under the FCRA, consumer reporting agencies can only report information that is complete, accurate and not obsolete. End users of reports (such as Lyft) are not permitted access to records that are not verified as such.

² <https://journals.sagepub.com/doi/abs/10.1177/0011128713514801?journalCode=cadc>

³ Source: <https://bjs.gov/content/pub/pdf/fdluc06.pdf>

location with notary services. This places an additional burden on applicants in rural areas and small towns, who are forced to travel long distances to complete this process.

This bill contains significant hindrances for drivers.

Several requirements in the bill would make it difficult for individuals who do not own a motor vehicle to drive on the platform. The bill requires a TNC to restrict a driver's access to the platform for certain noncompliance with other aspects of motor vehicle law, such as registration, without regard to whether the driver is utilizing the noncompliant vehicle on the platform.

Ridesharing drivers are already required to pay GET in Hawaii.

Ridesharing companies should not be required to enforce drivers' tax obligations by collecting proof of their GET licenses. Lyft informs drivers of the requirement to pay GET on our Help Center page, where drivers are directed to the Hawaii State Department of Taxation webpage for instructions on how to obtain a GET license.

For these reasons, Lyft respectfully opposes HB 2463. We hope that Hawai'i will join dozens of other states in allowing consumers to choose Lyft as a transportation option across the islands, but through legislation such as HB 2002 or its companion bill SB 2808 that more effectively addresses ridesharing regulation. Thank you for your time and consideration.

LATE

Testimony of
Roberts Hawaii, Inc
on
H.B. No. 2463
Relating to Transportation Network Companies
Committee on Transportation
Wednesday, February 5, 2020, 10:15 a.m.
Room 423

My name is Roy Pfund, President of Roberts Hawaii and I am testifying in strong support of H.B. No. 2463, which proposes to establish a statewide regulatory process for transportation network companies.

Transportation Network Companies (TNCs) are trying to monopolize the taxi and ride sharing transportation market in Hawaii. The legislation that they have proposed (H.B. No. 2002) effectively provides them with privileged operating advantages that the taxis and PUC regulated passenger carriers do not have. These include:

1. The ability to operate outside of existing Motor Carrier Act definition of a contract carrier. The TNC drivers fall squarely under the legal definition of a contract carrier thus should be regulated by the PUC.
2. The ability to operate with insurance coverage standards that are less than comparable public liability coverage for taxis and PUC regulated operators
3. The ability to charge the public any fare amount that can be extracted based on passenger demand at time of day or location. Rates and fares can fluctuate greatly within a given day, as opposed to the set fare structures that taxi and PUC regulated operators must follow and must seek approval to increase.
4. The ability to operate outside of the scope authority of the Consumer Advocate, the State Tax Office and the Department of Transportation regulatory bodies that would help to ensure that the TNC contract drivers are paying comparable fees and taxes that the taxi and PUC companies must pay.

H.B. No. 2463 establishes a regulatory scheme that regulates TNCs by requiring the registration of the companies and the drivers utilized by the companies, establishing reporting requirements and operating requirements that protect the consumer, and provide for the enforcement of the TNC requirements established.

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

LATE

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF UBER
TECHNOLOGIES IN OPPOSITION TO HB 2463 RELATING TO
TRANSPORTATION NETWORK COMPANIES**

February 5, 2020

My name is Bob Toyofuku and I am presenting this testimony on behalf of Uber Technologies (Uber) in opposition to H.B. 2463, Relating to Transportation Network Companies (TNCs).

This bill attempts to create a different framework and system for the regulation of TNCs that has been in place in the City and County of Honolulu since 2016. The regulation of TNCs passed by the Honolulu City Council in December 2016 created a system which has been operating well since that time. Uber has followed the same regulation requirements on the neighbor islands although there is no specific law or ordinance governing TNCs on Kauai, Maui and Hawaii counties.

Also, the state legislature passed an insurance measure in 2016 which applies to all TNCs; namely, HRS 431:10C-703. This law requires that a TNC have \$1 million in insurance coverage when a driver is en route to pick up a rider up to the time when the rider leaves the vehicle at the end of the ride.

Further, the background check of drivers has been in place since 2014/2015 and has been shown to be an effective safety measure. The requirements for the current background check are identical to the same provision in HB 2002 which Uber supports.

Uber feels that this bill will hamper the operation of TNCs in Hawaii and Uber opposes the passage of this bill.

Thank you for scheduling this bill and allowing me to submit this testimony.