

JAN 22 2016

S.B. NO. 2371

A BILL FOR AN ACT

RELATING TO TRANSPORTATION NETWORK COMPANIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **TRANSPORTATION NETWORK COMPANIES**

6 § **-1 Definitions.** As used in this chapter:

7 "Department" means the department of commerce and consumer
8 affairs.

9 "Digital network" means any online-enabled application,
10 software, website, or system offered or utilized by a
11 transportation network company that enables the prearrangement
12 of rides with transportation network company drivers.

13 "Personal vehicle" means a vehicle that is:

- 14 (1) Used by a transportation network company driver;
15 (2) Owned, leased, or otherwise authorized for use by the
16 transportation network company driver; and
17 (3) Not a taxicab, limousine, or other for-hire vehicle.



1 "Director" means the director of commerce and consumer
2 affairs.

3 "Prearranged ride" means the provision of transportation by
4 a driver to a rider, beginning when a driver accepts a ride
5 requested by a rider through a digital network controlled by a
6 transportation network company, continuing while the driver
7 transports a requesting rider, and ending when the last
8 requesting rider departs from the personal vehicle. A
9 prearranged ride shall not include transportation provided using
10 a taxicab, limousine, or other for-hire vehicle; a ridesharing
11 arrangement as that term is defined in section 279G-1; or a
12 regional transportation provider.

13 "Transportation network company" means a corporation,
14 partnership, sole proprietorship, or other entity that operates
15 in Hawaii and uses a digital network to connect transportation
16 network company riders to transportation network company drivers
17 who provide prearranged rides. A transportation network company
18 shall not be deemed to control, direct, or manage the personal
19 vehicles or transportation network company drivers that connect
20 to its digital network, except where agreed to by written
21 contract.



1 "Transportation network company driver" or "driver" means
2 an individual who:

3 (1) Receives connections to potential riders and related
4 services from a transportation network company in
5 exchange for payment of a fee to the transportation
6 network company; and

7 (2) Uses a personal vehicle to offer or provide a
8 prearranged ride to riders upon connection through a
9 digital network controlled by a transportation network
10 company in return for compensation or payment of a
11 fee.

12 "Transportation network company rider" or "rider" means an
13 individual or persons who use a transportation network company's
14 digital network to connect with a transportation network company
15 driver who provides prearranged rides to the rider in the
16 driver's personal vehicle between points chosen by the rider.

17 § -2 **Relation to other laws.** Neither a transportation
18 network company nor a transportation network company driver
19 shall be deemed to be a common carrier by motor vehicle, a
20 contract carrier by motor vehicle, a motor carrier as defined in
21 section 271-4, a taxicab, or a for-hire vehicle service.



1 § **-3 Permit required.** (a) No person shall operate a
2 transportation network company in the State without first
3 obtaining a permit from the department.

4 (b) The department shall issue a permit to each
5 application that:

6 (1) Meets the definition of a transportation network
7 company under section -1; and

8 (2) Pays an annual permit fee of \$ to the
9 department.

10 (c) The director may adjust the fee amount established
11 under subsection (b) through rulemaking subject to chapter 91.

12 (d) The fees collected under subsections (b) and (c) shall
13 be deposited to the credit of the compliance resolution fund
14 established pursuant to section 26-9(o).

15 § **-4 Agent.** A transportation network company shall
16 maintain an agent in the State for service of process.

17 § **-5 Duration of fare; amount charged for fare.** (a)
18 Transportation network company fare shall be deemed to:

19 (1) Commence when a transportation network company driver
20 begins to transport a rider in the transportation
21 network company driver's vehicle; and



(2) Conclude when the rider exits the transportation network company driver's vehicle.

(b) On behalf of a transportation network company driver, a transportation network company may charge riders; provided that if a fare is charged, the transportation network company shall disclose to riders the fare calculation method on its website or within the digital network. The transportation network company shall also provide riders with the applicable rates being charged and the option to receive an estimated fare before the rider enters the transportation network company driver's vehicle.

§ -6 Identification of vehicles and drivers. The transportation network company's digital network shall display a picture of:

(1) The transportation network company driver; and

(2) The license plate number of the motor vehicle being used for providing the prearranged ride,

before the rider enters the transportation network company driver's vehicle.

§ -7 Electronic receipt. Within a reasonable period of time following the completion of a trip, a transportation



1 network company shall transmit an electronic receipt to the
2 rider that specifies:

- 3 (1) The origin and destination of the trip;
- 4 (2) The total time and distance of the trip;
- 5 (3) An itemization of the total fare paid, if any; and
- 6 (4) The information required by section -6.

7 § -8 **Transportation network company and transportation**
8 **network company driver; insurance requirements.** (a) On or
9 before July 1, 2016, and thereafter, a transportation network
10 company driver or transportation network company on the driver's
11 behalf shall maintain primary motor vehicle insurance that meets
12 the requirements of this section.

13 (b) The primary motor vehicle insurance required under
14 this section shall recognize that the driver is a transportation
15 network company driver or otherwise uses a vehicle to transport
16 riders for compensation and covers the driver:

- 17 (1) While the driver is logged on to the transportation
18 network company's digital network; or
- 19 (2) While the driver is engaged in a prearranged ride.

20 (c) The following motor vehicle insurance requirements
21 shall apply while a participating transportation network company



1 driver is logged on to the transportation network company's
2 digital network and is available to receive transportation
3 requests but is not engaged in a prearranged ride:

4 (1) Primary motor vehicle liability insurance in the
5 amount of at least \$50,000 for death and bodily injury
6 per person, \$100,000 for death and bodily injury per
7 incident, and \$25,000 for property damage;

8 (2) Personal injury protection benefits that provide the
9 minimum \$10,000 coverage amount specified in section
10 431:10C-103.5;

11 (3) Uninsured and underinsured motorist coverage for the
12 driver and riders shall be offered pursuant to section
13 431:10C-301(b)(3) and (4); and

14 (4) The requirements for the coverage specified in this
15 subsection may be satisfied by any of the following:

16 (A) Motor vehicle insurance maintained by the
17 transportation network company driver; provided
18 that the transportation network company verifies
19 that the policy is maintained by the
20 transportation network company driver and is
21 specifically written to cover the transportation



- 1 network company driver's use of a personal
- 2 vehicle in connection with a transportation
- 3 network company's digital network;
- 4 (B) Motor vehicle insurance maintained by the
- 5 transportation network company; or
- 6 (C) Any combination of paragraphs (1) and (2).
- 7 (d) The following motor vehicle insurance requirements
- 8 shall apply while a transportation network company driver is
- 9 engaged in a prearranged ride:
- 10 (1) Primary motor vehicle liability insurance that
- 11 provides at least \$1,000,000 for death, bodily injury,
- 12 and property damage;
- 13 (2) Personal injury protection benefits that provide the
- 14 minimum \$10,000 coverage amount specified in section
- 15 431:10C-103.5;
- 16 (3) Uninsured and underinsured motorist coverage for the
- 17 driver and riders shall be offered pursuant to section
- 18 431:10C-301(b)(3) and (4); and
- 19 (4) The coverage requirements of this subsection may be
- 20 satisfied by any of the following:



(A) Motor vehicle insurance maintained by the transportation network company driver;

(B) Motor vehicle insurance maintained by the transportation network company; or

(C) Any combination of subparagraphs (A) and (B).

(e) If insurance maintained by a driver pursuant to subsection (c) or (d) has lapsed or does not provide the required coverage, motor vehicle insurance maintained by a transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim and shall have the duty to defend such claim.

(f) Coverage under an insurance policy maintained by the transportation network company shall not be dependent on a personal motor vehicle insurer first denying a claim nor shall a personal motor vehicle insurance policy be required to first deny a claim.

(g) The insurance requirements of this section may be satisfied by insurance placed with an insurer licensed under part II, article 3 of chapter 431 or with a surplus line insurer eligible under section 431:8-301 that has a credit rating of no less than A minus from A.M. Best, a credit rating of A from



1 Demotech, or similar rating from another rating agency
2 recognized by the insurance division of the department of
3 commerce and consumer affairs.

4 (h) Insurance satisfying the requirements of this section
5 shall be deemed to satisfy the financial responsibility
6 requirement for a motor vehicle under chapter 287, the motor
7 vehicle safety responsibility act.

8 (i) A transportation network company driver shall carry
9 proof of coverage that meets the requirements of subsection (c)
10 or (d) at all times during the driver's use of a vehicle in
11 connection with a transportation network company's digital
12 network. In the event of an accident, a transportation network
13 company driver shall provide this insurance coverage information
14 to the directly interested parties, motor vehicle insurers, and
15 investigating police officers, upon request. Upon such request,
16 a transportation network company driver shall also disclose to
17 directly interested parties, motor vehicle insurers, and
18 investigating police officers, whether the driver was logged on
19 to the transportation network company's digital network or
20 engaged in a prearranged ride at the time of an accident.



1 § -9 Motor vehicle insurance; provisions; exclusions;
2 **claims coverage investigation.** (a) Insurers that write motor
3 vehicle insurance may exclude any and all coverage afforded
4 under the policy issued to an owner or operator of a personal
5 vehicle for any loss or injury that occurs while a driver is
6 logged on to a transportation network company's digital network
7 or while a driver provides a prearranged ride. This right to
8 exclude all coverage may apply to any coverage included in a
9 motor vehicle insurance policy including but not limited to:

- 10 (1) Liability coverage for bodily injury and property
11 damage;
12 (2) Personal injury protection coverage as defined in
13 section 431:10C-103.5;
14 (3) Uninsured and underinsured motorist coverage;
15 (4) Medical payments coverage;
16 (5) Comprehensive physical damage coverage; and
17 (6) Collision physical damage coverage.

18 Such exclusions shall apply notwithstanding any requirement
19 under chapter 287. Nothing in this section implies or requires
20 that a personal motor vehicle insurance policy provide coverage
21 while the driver is logged on to the transportation network



1 company's digital network, while the driver is engaged in a
2 prearranged ride, or while the driver otherwise uses a personal
3 vehicle to transport passengers for compensation.

4 (b) Nothing in this chapter shall be construed to require
5 an insurer to use any particular policy language or reference to
6 this chapter to exclude any and all coverage for any loss or
7 injury that occurs while a driver is logged onto a
8 transportation network company's digital network or while a
9 driver provides a prearranged ride.

10 (c) Nothing in this chapter shall be deemed to preclude an
11 insurer from providing primary or excess coverage for the
12 transportation network company driver's vehicle, if the insurer
13 chose to do so by contract or endorsement.

14 (d) Motor vehicle insurers that exclude the coverage
15 described in this section shall have no duty to defend or
16 indemnify any claim expressly excluded thereunder. Nothing in
17 this chapter shall be deemed to invalidate or limit an exclusion
18 contained in a policy, including any policy in use or approved
19 for use in the State prior to the enactment of this chapter,
20 that excludes coverage for vehicles used to carry persons or
21 property for a charge or available for hire by the public.



1 A motor vehicle insurer that defends or indemnifies a claim
2 against a driver that is excluded under the terms of its policy
3 shall have a right of contribution against other insurers that
4 provide motor vehicle insurance to the same driver in
5 satisfaction of the coverage requirements of section -8(c) or
6 -8(d) at the time of loss.

7 (e) In a claims coverage investigation, transportation
8 network companies and any insurer potentially providing coverage
9 under this chapter shall cooperate to facilitate the exchange of
10 relevant information with directly involved parties and any
11 insurer of the transportation network company driver, if
12 applicable, including the precise times that a transportation
13 network company driver logged on and off of the transportation
14 network company's digital network in the twelve hour period
15 immediately preceding and in the twelve hour period immediately
16 following the accident, and disclose to one another a clear
17 description of the coverage, exclusions, and limits provided
18 under any motor vehicle insurance maintained under this chapter.

19 § -10 **Disclosures.** A transportation network company
20 shall disclose in writing to transportation network company
21 drivers, before the drivers are allowed to accept a request for



1 a prearranged ride on the transportation network company's
2 digital network:

3 (1) The insurance coverage, including the types of
4 coverage and limits for each coverage, that the
5 transportation network company provides while the
6 transportation network company driver uses a personal
7 vehicle in connection with a transportation network
8 company's digital network; and

9 (2) That the transportation network company driver's own
10 motor vehicle insurance policy might not provide any
11 coverage while the driver is logged on to the
12 transportation network company's digital network and
13 is available to receive transportation requests or is
14 engaged in a prearranged ride, depending on the terms
15 of the driver's motor vehicle insurance policy.

16 § -11 Zero tolerance for drug or alcohol use. (a) The
17 transportation network company shall implement a zero tolerance
18 policy on the use of drugs or alcohol while a transportation
19 network company driver is providing a prearranged ride or is
20 logged into the transportation network company's digital
21 network, even if not providing a prearranged ride, and shall



1 provide notice of the zero tolerance policy on its website, as
2 well as procedures for reporting a complaint about a driver with
3 whom a rider was matched and who the rider reasonably believes
4 was under the influence of drugs or alcohol during the course of
5 the trip.

6 (b) Upon receipt of a rider complaint alleging a violation
7 of the zero tolerance policy, the transportation network company
8 shall immediately suspend the transportation network company
9 driver's access to the transportation network company's digital
10 network and shall conduct an investigation into the reported
11 incident. The suspension shall last for the duration of the
12 investigation; provided that the investigation shall be
13 conducted in a reasonably expeditious manner.

14 (c) The transportation network company shall maintain
15 records relevant to a reported incident for a period of at least
16 two years from the date that a rider complaint is received by
17 the transportation network company.

18 § -12 **Driver requirements.** (a) Prior to permitting an
19 individual to act as a transportation network company driver on
20 its digital network, the transportation network company shall:



- 1 (1) Require the individual to submit an application to the
2 transportation network company, including information
3 regarding the individual's address, age, driver's
4 license, driving history, motor vehicle registration,
5 motor vehicle insurance, and other information
6 required by the transportation network company;
- 7 (2) Conduct, or have a third party conduct, a local and
8 national criminal background check for each applicant
9 that shall include:
 - 10 (A) Multi-state/Multi-Jurisdiction Criminal Locator
11 or other similar commercial nationwide database
12 with validation (primary source search); and
 - 13 (B) National Sex Offender Registry database;
- 14 (3) Obtain and review a traffic violations bureau
15 certified abstract for the individual; and
- 16 (4) Require the individual to submit evidence of a
17 physical examination to determine the individual's
18 health and fitness to act as a transportation network
19 company driver.



1 (b) The transportation network company shall not permit an
2 individual to act as a transportation network company driver on
3 the transportation network company's digital network who:

4 (1) Has been found to have committed more than three
5 traffic infractions, as defined in section 291D-2, in
6 the prior three-year period, other than traffic
7 infractions involving parking, standing, equipment,
8 and pedestrian offenses;

9 (2) Has been convicted once in the prior three-year period
10 for the offense of resisting an order to stop a motor
11 vehicle, reckless driving, or driving with a suspended
12 or revoked driver license;

13 (3) Has been convicted in the prior seven-year period of
14 driving under the influence of drugs or alcohol;

15 (4) Has been convicted at any time of fraud, any sexual
16 offense, any domestic violence offense, use of a motor
17 vehicle to commit a felony, or a crime involving
18 property damage, theft, acts of violence, or acts of
19 terrorism;

20 (5) Is a match in the National Sex Offender Registry
21 database;



- 1 (6) Does not possess a valid driver's license;
- 2 (7) Does not possess proof of registration or other
- 3 authorization for the motor vehicle used to provide
- 4 prearranged rides;
- 5 (8) Does not possess proof of motor vehicle insurance for
- 6 the motor vehicles used to provide prearranged rides;
- 7 or
- 8 (9) Is not at least twenty-one years of age.

9 § **-13 Vehicle safety.** The transportation network

10 company shall require that any motor vehicle that a

11 transportation network company driver uses to provide

12 prearranged rides meets the inspection requirements of section

13 286-26.

14 § **-14 No street hails.** A transportation network company

15 driver shall only accept rides booked through a transportation

16 network company's digital network and shall not solicit or

17 accept street hails.

18 § **-15 No cash trips.** The transportation network company

19 shall adopt a policy prohibiting solicitation or acceptance of

20 cash payments from riders and notify transportation network

21 company drivers of the policy. Transportation network company



1 drivers shall not solicit or accept cash payments from riders.

2 Any payment for prearranged rides shall be made only

3 electronically, using the transportation network company's

4 digital network.

5 § -16 **No discrimination; accessibility.** (a) The

6 transportation network company shall adopt a policy of non-

7 discrimination on the basis of destination, race, color,

8 national origin, religious belief or affiliation, sex,

9 disability, age, sexual orientation, or gender identity with

10 respect to riders and potential riders and notify transportation

11 network company drivers of the policy.

12 (b) A transportation network company shall not impose any

13 additional charges for providing services to persons with

14 physical disabilities because of those disabilities.

15 (c) A transportation network company shall provide riders

16 an opportunity to indicate whether they require a wheelchair-

17 accessible vehicle. If a transportation network company cannot

18 arrange a wheelchair-accessible prearranged ride in any

19 instance, the transportation network company shall direct the

20 rider to an alternate provider of wheelchair-accessible service,

21 if available.



(d) Transportation network company drivers shall comply with all applicable laws regarding non-discrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

(e) Transportation network company drivers shall comply with all applicable laws relating to accommodation of service animals.

§ -17 Records. (a) A transportation network company shall maintain:

(1) Electronic records of each prearranged ride provided by a transportation network company driver for at least one year from the date each prearranged ride was provided; and

(2) Transportation network company driver records at least until the one year anniversary of the date on which a transportation network company driver's activation on the transportation network company digital network has ended.

(b) Records maintained under this section shall be made readily available for purposes of a claims coverage



1 investigation pursuant to section -9(e) or resolving any
2 other dispute related to transportation network company
3 activity.

4 § -18 **Personally identifiable information.** (a) A
5 transportation network company shall not disclose a rider's
6 personally identifiable information to a third party unless:

7 (1) The rider consents;

8 (2) Disclosure is required by law; or

9 (3) Disclosure is required to protect or defend the terms
10 of use of the service or to investigate violations of
11 those terms.

12 (b) A transportation network company may share a rider's
13 name or telephone number with the transportation network company
14 driver providing a prearranged ride to the rider in order to
15 facilitate correct identification of the rider by the
16 transportation network company driver or to facilitate
17 communication between the rider and the transportation network
18 company driver.

19 § -19 **Controlling authority.** Notwithstanding any other
20 provision of law to the contrary, transportation network
21 companies and transportation network company drivers shall be



1 regulated exclusively by this chapter and any rules adopted
2 pursuant to this chapter by the director pursuant to chapter 91.
3 No county may impose a tax upon, or require a license for, a
4 transportation network company or a transportation network
5 company driver."

6 SECTION 2. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2016-2017 for
9 the purposes of implementing this Act.

10 The sum appropriated shall be expended by the department of
11 commerce and consumer affairs for the purposes of this Act.

12 SECTION 3. This Act shall take effect on July 1, 2016.
13

INTRODUCED BY:

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[Signature]



S.B. NO. 2371

Report Title:

Transportation Network Companies; Transportation Network Company Drivers; Motor Vehicle Insurance; Qualifications; Department of Commerce and Consumer Affairs; Permit; Appropriation

Description:

Requires the department of commerce and consumer affairs to regulate transportation network companies and transportation network company drivers. Establishes insurance requirements and qualifications for persons who operate or serve as drivers for transportation network companies. Appropriates funds to the department of commerce and consumer affairs.

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