

TESTIMONY OF RANDY IWASE  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON  
WAYS AND MEANS

MARCH 5, 2015  
1:30 p.m.

**MEASURE:** S.B. No. 1280, S.D. 1

**TITLE:** Relating to Transportation Network Companies

Chair Tokuda and Members of the Committee:

**DESCRIPTION:**

This measure would add a new chapter to Hawaii Revised Statutes (“HRS”) to regulate transportation network companies (“TNCs”). Under this new chapter, the Public Utilities Commission (“Commission”) would be required to issue a permit to each applicant that meets the requirements for a TNC and pays an annual permit fee of \$5,000.

**POSITION:**

The Commission offers the following comments for the Committee’s consideration.

**COMMENTS:**

The Commission notes that taxicab services are exempt from Commission regulation pursuant to HRS § 271-5(3) and are presently regulated under the authority given to the counties pursuant to HRS § 46-16.5(c). It appears to the Commission that TNCs and their drivers engage in similar activities and provide similar services as taxicabs and taxicab drivers. Therefore, the Commission believes that it is appropriate for the counties to have similar authority to regulate TNCs.

However, if it is the will of the Legislature to place the requirements of this chapter under the Commission’s jurisdiction, then the Commission raises some concerns. First, the new chapter only authorizes the Commission to “issue a permit to each applicant that meets the requirements for a transportation network company[.]” After the initial permit has been

issued by the Commission it is not clear how the Commission would be able to enforce this chapter. There are no provisions authorizing the Commission to revoke the initial permit, levy fines, assess penalties, or issue citations for any violation of this chapter.

Further, some of the requirements that the Commission would be tasked with verifying are unlike anything the Commission currently oversees. For example, under this chapter, the Commission would be required, among other things, to verify whether TNCs have suspended access to their digital platform for certain drivers, whether TNCs have conducted local and national criminal background checks for each applicant, whether TNCs are actually prohibiting cash payments from passengers, and whether global positioning system records for each individual trip have been kept. The Commission will need additional staffing and funding to develop the administrative rules, personnel, and practices to meaningfully enforce this chapter.

Thank you for the opportunity to provide comments on this measure.

**Testimony of  
Gary M. Slovin / Mihoko E. Ito  
on behalf of  
USAA**

DATE: March 4, 2015

TO: Senator Jill Tokuda  
Chair, Committee on Ways and Means  
*Submitted Via [WAMTestimony@capitol.hawaii.gov](mailto:WAMTestimony@capitol.hawaii.gov)*

RE: **S.B. 1280 S.D1 - Relating to Transportation Network Companies**  
**Hearing Date: Thursday, March 5, 2015 at 1:30 p.m.**  
**Conference Room: 211**

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Dear Chair Tokuda and Members of the Committee on Ways and Means:

We submit this testimony on behalf of USAA, a diversified financial services company. USAA is the leading provider of competitively priced financial planning, insurance, investments, and banking products to members of the U.S. military and their families. USAA has over 82,000 members in Hawaii, the vast majority of which are military-based members.

USAA supports S.B. 1280, SD1 which requires the public utilities commission to regulate transportation network companies, and establishes insurance requirements and qualifications for persons who operate or serve as drivers for transportation network companies. We support this measure because it contains the following key elements with respect to TNC insurance coverage:

- **Insurance coverage:** TNCs must have primary insurance coverage that specifically covers TNC activity. Because TNC activity is commercial activity, this activity should not be covered by personal insurance.
- **Definition of TNC activity:** To provide a clear guideline, TNC activity needs to be defined specifically as – the period of time an app is turned on to the time the app is turned off.

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Gary M. Slovin  
Mihoko E. Ito  
C. Mike Kido  
Tiffany N. Yajima

999 Bishop Street, Suite 1400  
Honolulu, HI 96813  
(808) 539-0840

- **Clear Exclusion of Personal Auto Policy:** It must be very clear that personal auto insurance does not provide coverage for TNC activity unless the policy expressly provides for that coverage. It must also be clear that the personal auto policy will not have any duty to defend, which will limit coverage disputes.
- **Claims Cooperation:** TNCs must be required to demonstrate that the required coverage is in place. They should also be required to share data and information in timely fashion to facilitate resolution of any coverage disputes.

USAA believes that innovation should be allowed both in the transportation and insurance marketplace, but only where there are clear guidelines regulating TNCs. The insurance industry needs clear guidelines, such as the ones outlined above and contained in S.B. 1280 SD1, in order to preserve its ability to take rating and underwriting actions for specific populations of insureds, including TNCs.

Thank you very much for the opportunity to testify in support of this bill.



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII  
711 Kapiolani Blvd., Suite 300 ■ Honolulu, HI 96813-5238 ■ Email: [tdayton@geico.com](mailto:tdayton@geico.com)  
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**Senate Committee on Ways and Means**  
Room 211 State Capitol  
Thursday, March 5, 2015 1:30 p.m.

**SB 1280 SD1 - RELATING TO Transportation Network Companies**

Chair Tokuda, Vice Chair Kouchi and Members of the Committee:

My name is Timothy Dayton, General Manager for GEICO, Hawaii's largest auto insurer. **GEICO supports Senate Bill Number 1280 SD1.** GEICO believes that the Senate Draft 1 is a comprehensive effort to clarify insurance considerations, avoid ambiguity and protect the public.

**We respectfully urge the Committee to pass Senate Bill 1280 SD1.**

Sincerely,

Timothy M. Dayton, CPCU

**SENATE COMMITTEE  
ON  
WAYS AND MEANS**

March 5, 2015

Senate Bill 1280, SD1 Relating to Transportation Network Companies

Chair Tokuda and members of the Senate Committee on Ways and Means, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm supports Senate Bill 1280, SD1 Relating to Transportation Network Companies. We respectfully request that the committee pass the bill to ensure that the public is served with appropriate rules and statutes to protect the driving public, pedestrians and others, as well as to properly assign the risks of transportation network drivers. We ask that the measure be passed as is.

Thank you for the opportunity to present this testimony.



To: The Honorable Jill N. Tokuda, Chair  
The Honorable Ronald D. Kouchi, Vice Chair  
Senate Committee on Ways and Means

From: Mark Sektnan, Vice President

Re: **SB 1280 SD1 – Relating to Transportation Network Companies**  
**PCI Position: SUPPORT**

Date: Thursday, March 5, 2015  
1:30 p.m., Room 211

Aloha Chair Tokuda, Vice Chair Kouchi and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is pleased to support the underlying intent of SB 1280 SD1 which sets up a regulatory structure for this new type of passenger transportation. This bill seeks to close the insurance gaps for transportation network companies (TNCs), such as Uber and Lyft, which provide commercial ridesharing services. SB 1280 SD1 was significantly amended in the Senate Committee on Commerce and Consumer Protection to help ensure that TNCs and their drivers have consumer protections in place including appropriate insurance coverage.

In Hawaii, PCI member companies write approximately 42.2 percent of all property casualty insurance written in Hawaii. PCI member companies write 43.2 percent of all personal automobile insurance, 65.2 percent of all commercial automobile insurance and 75 percent of the workers' compensation insurance in Hawaii.

PCI supports the provisions of SB 1280 SD1 which places the responsibility for regulating TNCs with the Public Utilities Commission. This bill also encourages development of new insurance products to meet the needs of the growing commercial ridesharing services. Insurers are responding to the new market by designing new products and making them available in the states that are enacting common sense sound regulatory structures for TNC services.

PCI does, however, have some concerns with specific provisions of the bill and would like to continue working with the author and other stakeholders.

SB 1280 SD1 is a step in the right direction for drivers, passengers and the Aloha state's consumers because it protects Hawaii drivers from subsidizing the insurance costs of TNCs by clearly stating that the personal motor vehicle insurance policy does not cover this commercial activity. It also provides important protections for the passenger, the public and the driver.

PCI asks the committee to support SB 1280 SD1.



**Liberty Mutual Insurance**

Public Affairs – 01A  
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March 4, 2015

Committee on Ways and Means  
Senator Jill N. Tokuda, Chair  
Senator Ronald D. Kouchi, Vice Chair  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

**RE: SENATE BILL 1280 SD1 : TRANSPORTATION NETWORK COMPANIES  
SUPPORT**

Dear Chairman Tokuda and Vice Chair Kouchi,

Liberty Mutual Insurance appreciates the opportunity to offer our support for SB 1280 SD1, a measure that seeks to establish an important statutory framework that will assure that transportation network companies, their drivers and the passengers who utilize this innovative public transportation option are meeting their responsibilities and properly protected.

"Helping people live safer, more secure lives" since 1912, Liberty Mutual Insurance is a diversified global insurer and the third largest property and casualty insurer in the U.S. based on the 2012 direct written premium as reported by the National Association of Insurance Commissioners.

There are a number of important provisions in SB 1280 SD1 that will assure that public safety is maintained. With respect to insurance requirements, we believe the measure includes key provisions adopted in other states that provide for a clear distinction between private and commercial vehicle use, assure that a collaborative exchange of data occurs following an accident and establish clear insurance coverage responsibilities for transportation network companies and drivers. It is also important that SB 1280 SD1 allow for product flexibility for both personal and commercial auto insurance carriers. Similar statutory changes have resulted in the filing of innovative products in a number of states, including California, Colorado, Maryland and Indiana. We hope to continue to work with the author and other stakeholders to make SB 1280 SD1 a model for other states.

Liberty Mutual Insurance operates through 4 strategic business units: Personal Insurance, Commercial Insurance, Liberty International and Global Specialty and proudly provides products and services from 3 Hawaii based offices.

Thank you very much for the opportunity to **SUPPORT SB 1280 SD1**. We respectfully request your aye vote at tomorrow's hearing of the Committee on Ways and Means.

Sincerely,

Kathleen G. Bissell, CPCU  
Assistant Vice President &  
Senior Regional Director

Cc: Gordon Ito, Commissioner of Insurance  
The Honorable Senator Glenn Wakai  
The Honorable Senator Will Espero  
The Honorable Senator Brickwood Galuteria  
The Honorable Senator Lorraine Inouye



TESTIMONY OF BRIAN HUGHES ON BEHALF OF UBER TECHNOLOGIES IN  
OPPOSITION TO S.B. No. 1280 SD 1 RELATING TO TRANSPORTATION  
NETWORK COMPANIES

Thursday, March 5, 2015

To: *Chairperson Jill Tokuda and Members of the Senate Committee on Ways and Means:*

My name is Brian Hughes and I am testifying on behalf of Uber Technologies ( Uber ) in opposition to S.B. 1280 SD1 as we believe it places unnecessary and burdensome requirements on Transportation Network Companies here in Hawaii. Uber supports a new regulatory structure that takes into account the unique differences of app-enabled services and we look forward to continuing the discussion. S.B. 1280 SD1, in its current form, is neither an effective nor appropriate path to that reasonable solution. Uber is not opposed to regulations. In fact, we are strongly in favor of a new framework that would recognize unique aspects of TNCs and create a new solution that embraces this technology. Over two dozen jurisdictions have taken this approach to create new regulatory frameworks that allow for a permanent home for TNCs. We hope to seek the same in Hawaii.

TNCs are a new and unique business model that uses smartphone apps and a driver/rider rating system to connect riders looking for transportation and drivers that provide transportation through an on-demand, safe and cashless transaction. TNCs are technology companies that provide a platform where riders and drivers can connect and individuals with their own personal vehicles can provide a ride to others in the community. Uber does not own or operate any vehicles.

Ridesharing, like other industries in what is often called the Shared Economy, increases the efficiency of an underutilized resource. The Uber platform allows a driver partner to use their

personal vehicle to supplement existing transportation options. Because we can now determine exactly when this transportation activity is taking place, we can make the operating costs of a vehicle for hire much more efficient.

To be clear, most Uber partners drive a few hours a week and use their own personal vehicles (which are inspected by a local, licensed mechanic) to make extra income and provide for their families. They are veterans, students, retirees, teachers, single parents and small business owners. Uber creates a marketplace where these individuals can use their own car to provide a ride to others when, where, and how often they want – a strong contrast to the existing model.

Uber provides end-to-end insurance coverage so that riders are protected from the moment an operator is available to receive a ride request until the moment they safely exit a vehicle. Uber offers \$1,000,000 of commercial liability insurance from the moment the app connects a driver with a rider until they drop them off. This ensures that the robust commercial liability insurance is in place as soon as the driver begins to engage in commercial activity by accepting a ride request.

Taxis in Honolulu, by comparison are only required to carry mandatory liability coverage of \$100,000 per person, \$200,000 in the aggregate and \$50,000 for property damage at all times. There is also \$1,000,000 of uninsured/underinsured motorist coverage to address accidents that aren't the driver's fault but were the fault of an uninsured motorist or hit and run. There is also \$50,000 of contingent comprehensive and collision coverage to protect the driver's own vehicle. During the period when the driver has the app on but before they have accepted a ride from a passenger, the Uber insurance policy with \$50,000/\$100,000/\$25,000 coverage is in effect. This

coverage is provided as contingent, meaning that if the drivers' personal insurance validly denies the claim, the Uber coverage goes into effect. It's important to remember that at this time, there is no passenger in the car, and no money is changing hands.

The Shared Economy departs from the clear-cut boundaries of personal use and commercial use. When a driver has the app on, but has not yet accepted a ride, they may be driving to the grocery store, on the way to the bank, or studying at a coffee shop. There is no reason why insurance cannot be similarly scaled to make sure appropriate coverage is in effect at the appropriate time. Uber wants to make sure that just as users of smartphone technology have moved quickly adapting to the tech-enabled shared economy, public policy around insurance responds in a similarly flexible way. We want to make sure there is not an inadvertent disincentive for the insurance market to bring a TNC related insurance product to the market here in Hawaii. In states where ridesharing regulation has been passed, leading insurance companies such as have developed tailored ridesharing policies. Uber believes there is a solution to ensure a safe future for ridesharing, and we are of the opinion that S.B. 1280 SD1 does not provide the solution.

## **TESTIMONY OF MICHAEL ONOFRIETTI**

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### **COMMITTEE ON WAYS AND MEANS**

Senator Jill N. Tokuda, Chair

Senator Ronald D. Kouchi, Vice Chair

Thursday, March 5, 2015

1:30 p.m.

### **SB 1280, SD 1**

Chair Tokuda, Vice Chair Kouchi, and members of the Committee on Ways and Means, my name is Michael Onofrietti, President of the Hawaii Insurers Council, a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately thirty-six percent of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **supports** the underlying purposes and intent of SB 1280, SD 1, which are (1) to create a separate chapter in the Hawaii Revised Statutes to regulate “transportation network company activity”; (2) to place responsibility and oversight over “transportation network companies” and “transportation network company drivers” with the Public Utilities Commission; (3) to preserve the availability and affordability of personal automobile insurance policies in this State; (4) to protect the public by requiring various background checks, driver requirements, and driver behavior; and (5) to permit “transportation network companies” and their drivers to offer an innovative transportation option to the public.

However, the Hawaii Insurers Council **opposes** certain provisions of SB 1280, SD 1, which creates a new chapter in the Hawaii Revised Statutes to address regulation of a “transportation network company,” “transportation network company activity,” a “transportation network company driver,” and “transportation network company service.”

### **Hawaii Insurers Council's Opposition**

The three primary concepts in SB 1280, SD 1 that the Hawaii Insurers Council **opposes** are as follows:

#### **Insurance Concepts**

The Hawaii Insurers Council objects to those portions of SB 1280, SD 1 (primarily § -8 of SD 1), which creates a two-stage system of insurance coverage for a motor vehicle that is used, at any time, in “transportation network company service.”

The first stage encompasses all times (a) while the vehicle is being used by the transportation network company driver for purely personal activities; (b) while the vehicle is being used by the driver to prepare for “transportation network company activity,” but the driver has yet to log onto the transportation network company’s digital network or software application; and (c) after the driver has logged off the transportation network company’s digital network or software application or the passenger has exited the vehicle, whichever is later. During this first stage, encompassing at least three different time frames and scenarios, SB 1280, SD 1 contemplates that the vehicle owner’s own personal automobile insurance policy will apply.

The second stage created by SB 1280, SD 1 is called “transportation network company activity” and it encompasses the period of time beginning when the transportation network company driver logs onto the transportation network company’s digital network or software application, and ending when the driver logs off the system or platform or the passenger exits the vehicle, whichever is later. During this second stage, SB 1280, SD 1 requires primary commercial motor vehicle insurance of \$100,000 per person and \$200,000 per accident for bodily injury liability; \$50,000 per accident for property damage liability; uninsured and underinsured motorist coverages equal to the bodily injury liability limits; and other coverages comparable to the personal automobile insurance policy maintained by the vehicle’s owner.

The Hawaii Insurers Council agrees with the coverage limits applicable to “transportation network company activity.” However, this two-stage approach to insurance coverage is unnecessarily complex and duplicative, will be confusing to the consuming public, would result in disputes between transportation network drivers and their personal automobile insurers, and will no doubt lead to increased insurance coverage litigation between the first-stage insurer and the second-stage insurer. More specifically:

- a. The standard commercial motor vehicle insurance policy provides coverage on a 24/7 basis. In other words, personal use of a commercial vehicle generally is not an excluded activity. Taxicabs, motor carriers, other for-hire vehicles, and commercial vehicles all are required (by county ordinance, state statute or regulation) to be insured under commercial motor vehicle insurance policies. They are not required to also maintain personal automobile insurance to provide coverage if and when the otherwise commercial vehicle is being used for personal purposes. The coverage under the commercial motor vehicle insurance policy is seamless – applying regardless of use – and much simpler and straightforward. Therefore, the insurance provisions in SB 1280, SD 1 for a transportation network company and its drivers would be less complex and not duplicative if they simply mandate commercial motor vehicle insurance coverage at all times.
- b. If a passenger or pedestrian is, unfortunately, injured in an accident involving a transportation network company driver, the claimant would have a difficult time navigating the various insurance coverage issues under SB 1280, SD 1. Not only will the claimant have to investigate issues common to all motor vehicle accidents (such as liability, damages, and insurance coverage for the at-fault driver), but the claimant will also have to consider whether the driver was logged on or off the transportation network company’s digital network or software application, whether the ride was unauthorized under company rules and statute

(e.g., street hails), whether the transportation network company properly advised the driver of insurance coverage issues, and other confounding questions.

- c. In the event of disputes as noted in paragraph b., innocent injured passengers or pedestrians may be able to recover from their own personal automobile insurance policies. Personal Injury Protection coverage may apply if no other insurance is available, and Uninsured Motorist Coverage could apply in the event of severe injuries. This appears to violate one of the goals of this legislation, namely, protecting against breaching the personal automobile insurance system for any “transportation network company activity.”
- d. Transportation network company drivers, whether intentionally or not, may misrepresent the use of their vehicles while engaging in transportation network company activity, in general or at the specific time of an accident or loss (e.g., physical damage to their vehicles). This misrepresentation would then shift the insurance burden away from the transportation network company or driver’s commercial motor vehicle insurance policy, where it should lie, onto the driver’s personal automobile insurance policy, which this legislation seeks to, and public policy ought to, protect. The inevitable resulting confusion over insurance coverages will no doubt result in disputes between insurers, costly litigation, and delay in claim resolution. Ultimately, these unfortunate consequences of the two-stage insurance requirement will hurt the consuming public.

### Confusing Concepts

The Hawaii Insurers Council has serious concerns regarding all provisions in SB 1280, SD 1 that use the similarly phrased, yet different, concepts of “transportation network company *activity*” and “transportation network company *service*.” The former phrase – “transportation network company activity” – is defined to start at “log on” and to end at either “log off” or when the passenger exits the vehicle, whichever is later. The latter phrase – “transportation network company service” – means the prearranged

transportation of a passenger between points chosen by the passenger. The similarity of the terms and the nuanced difference in the meaning will confuse consumers and, ultimately, will lead to expensive and time-consuming litigation.

#### Recording Keeping and Production Requirements

The Hawaii Insurers Council believes that the recording keeping time frames set forth in SB 1280, SD 1 are inadequate. Section -15(a)(1) of SB 1280, SD 1 only requires a transportation network company to maintain global positioning system records and electronic records of transportation network company activity for one year.

Section -15(a)(2) only requires a transportation network company to maintain driver records for one year after the driver's activation on the digital network.

Given that the general statute of limitations for bodily injury claims is two years, and the more specific statute of limitations for motor vehicle accident claims is two years after the last payment of Personal Injury Protection Benefits, a one-year recordkeeping requirement is inadequate. The Hawaii Insurers Council proposes that § -15(a)(1) and -15(a)(2) be amended to require transportation network companies to maintain all records for at least five years.

Additionally, § -15(b) requires that records be made "readily available" for purposes of a claims coverage investigation. However, the term "readily available" is not defined, and SB 1280, SD 1 does not specify a date certain by which the records must be made "available." The Hawaii Insurers Council proposes that § -15(b) be amended to require transportation network companies to produce their records no later than 10 days after receipt of a written request for those records. This will allow all insurers and parties to investigate the coverage issues on a timely basis.

#### **Hawaii Insurers Council's Support**

The Hawaii Insurers Council supports other concepts in SB 1280, SD 1, which seek to regulate the operation of transportation network companies (for example, §§ -3 and -4),



and to protect the consuming public (for example, §§ -6, -7, -9, -10, -11, -12, -13, -14, and -16).

### **Hawaii Insurers Council's Proposals**

In order to expedite and simplify accident and claims investigations, to assure continued availability and affordability of personal motor vehicle insurance policies, to reduce the delays and costs of protracted coverage litigation, and to protect the consuming public, the Hawaii Insurers Council advocates that SB 1280, SD 1 be amended to provide that:

1. The insurance coverages for transportation network company drivers must be applicable **at all times**, rather than only during “transportation network company activity.”
2. At the option of the transportation network company or the transportation network company driver, the required insurance coverages may be obtained through either (a) a commercial motor vehicle insurance policy, or (b) a personal automobile policy that includes an endorsement or amendment explicitly providing equivalent coverages as the commercial motor vehicle insurance policy for transportation network company activity, **at all times**, for an additional premium.

However, in the event this Committee decides to retain the two-stage insurance provisions in SB 1280, SD 1, the Hawaii Insurers Council proposes amendments that (a) clarify the insurance requirements; (b) eliminate the confusion between the terms “transportation network company activity” and “transportation network company service”; (c) lengthen the recordkeeping time frame for transportation network companies; (d) impose a time certain for transportation network companies to make available information during a claims investigation; (e) add a penalty provision similar to the general penalty provision set forth in Public Utilities Commission statute, specifically HRS § 269-28; and (f) make technical changes.

The proposed amendments, assuming this Committee's retention of the two-stage insurance provisions, are attached.

Therefore, while the Hawaii Insurers Council opposes certain provisions of SB 1280, SD 1, it welcomes the opportunity to work with this Committee and stakeholders on revising the Draft. Thank you for the opportunity to testify.

# A BILL FOR AN ACT

RELATING TO TRANSPORTATION NETWORK COMPANIES.

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

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

## **"CHAPTER**

### **TRANSPORTATION NETWORK COMPANIES**

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

"Transportation network company" means an entity that uses a digital network or software application service to connect passengers to ~~transportation network company services provided by~~ transportation network company drivers; provided that the entity:

- (1) Does not own, control, operate, or manage the vehicles used by transportation network company drivers; and
- (2) Is not a taxicab association or a for-hire vehicle owner.

"Transportation network company activity" means the period of time when the transportation network company driver logs onto the transportation network company's ~~online-enabled application or platform~~ digital network or software application service until

the moment the transportation network company driver logs off the ~~online-enabled application or platform~~ digital network or software application service or until the ride is complete and the passenger exits the transportation network company driver's vehicle, whichever is later.

"Transportation network company driver" means an individual who operates a motor vehicle used to transport a passenger between points chosen by the passenger and prearranged through a transportation network company, and that is:

- (1) Owned, leased, or otherwise authorized for use by the individual;
- (2) Not a taxicab or for-hire vehicle; and
- (3) Used to provide in transportation network company services activity.

~~"Transportation network company service" means the transportation of a passenger between points chosen by the passenger and prearranged with a transportation network company driver through the use of a transportation network company digital network or software application, and does not include a taxicab, for-hire vehicle, or street hail service.~~

§ -2 **Relation to other laws.** Neither a transportation network company nor a transportation network company driver shall be deemed to be a common carrier by motor vehicle, a

contract carrier by motor vehicle, a motor carrier as defined in section 271-4, a taxicab, or a for-hire vehicle service.

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

(b) The public utilities commission shall issue a permit to each applicant that meets the requirements for a transportation network company as set forth in this chapter and pays an annual permit fee of \$5,000 to the commission.

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

**§ -5 Duration of service; fare charged for services.** (a) Transportation network company ~~service~~activity shall be deemed to:

- (1) Commence when a transportation network company driver ~~accepts a request for transportation received through~~logs onto the transportation network company's digital network or software application service;
- (2) Continue while the transportation network company driver transports the passenger in the transportation network company's ~~is~~ driver's vehicle; and
- (3) Conclude when the transportation network company driver logs off the transportation network company's digital network or software application service or

when the passenger exits the transportation network company driver's vehicle, whichever is later.

(b) A transportation network company may charge a fare for a transportation network company ~~service provided to~~ driver's transportation of passengers while the transportation network company driver is engaged in transportation network company activity; provided that, if a fare is charged, the transportation network company shall disclose to passengers the fare calculation method on its website or within the software application service. The transportation network company shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the transportation network company driver's vehicle.

**§ -6 Identification of vehicles and drivers.** The transportation network company's software application or website 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~~ in transportation network company ~~service~~ activity,

before the passenger 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

network company shall transmit an electronic receipt to the passenger that specifies:

- (1) The origin and destination of the trip;
- (2) The beginning and ending times of the trip in Hawaii Standard Time;

- (23) The total time and distance of the trip;
- (34) An itemization of the total fare paid, if any; and
- (45) The information required by section -6.

**§ -8 Transportation network company and transportation network company driver; insurance requirements.** (a) A

transportation network company shall disclose in writing to transportation network company drivers, as part of the transportation network company's agreement with those drivers:

- (1) The insurance coverage and limits of liability that the transportation network company provides while the transportation network company driver uses a vehicle during transportation network company activity; and
- (2) That the transportation network company driver's personal automobile insurance policy will not provide any required or optional coverage because while the transportation network company driver uses a vehicle during transportation network company activity; and
- (3) That the insurance that the transportation network company provides and the transportation network

company driver's personal automobile insurance policy will not provide any required or optional coverage if the driver solicits or accepts street hails in violation of section -12 or solicits or accepts cash payments from passengers in violation of section -13.

(b) A transportation network company ~~and~~ any transportation network company driver shall maintain a primary commercial motor vehicle insurance policy that shall be in effect during transportation network company activity. The primary commercial motor vehicle insurance required under this subsection shall include:

- (1) Primary liability coverage of not less than \$100,000 per person, with an aggregate limit of \$200,000 per accident, for all damages arising out of accidental harm sustained as a result of any one accident and arising out of ownership, maintenance, use, loading, or unloading of a motor vehicle;
- (2) Primary liability coverage of not less than \$50,000 for all damages arising out of damage to or destruction of property including motor vehicles and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident



arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle;

- (3) Uninsured and underinsured motorist coverage<sup>s</sup> for the transportation network company driver and passengers that shall be equal to the primary liability limits specified in paragraphs (1) and (2);
- (4) Personal injury protection coverage in an amount that meets the requirements of section 431:10C-103.5 and shall be equal to or greater than the coverage limits for the personal automobile insurance maintained by the vehicle's owner and reported to the transportation network company; and
- (5) Collision and comprehensive coverages<sup>s</sup> ~~limits~~ for the transportation network company driver's vehicle ~~that shall be~~ with deductibles equal to or ~~greater~~ lower than the ~~coverage limits for deductibles applicable to those coverages under~~ the personal automobile insurance maintained by the vehicle's owner and reported to the transportation network company.

(c) The requirements for the coverage specified in subsection (b) may be satisfied by any of the following:

- (1) Motor vehicle insurance maintained by a transportation network company driver, but only if the transportation network company verifies that the policy is maintained

by the transportation network company driver and is specifically written to cover the transportation network company driver's use of a vehicle ~~in connection with a transportation network company's online-enabled application or platform~~ during transportation network company activity;

(2) Motor vehicle insurance maintained by a transportation network company; or

(3) Any combination of paragraphs (1) and (2).

(d) The insurer providing insurance under ~~this~~ subsection (b) shall have the duty to defend and indemnify the insured.

(e) Coverage under a ~~transportation network company insurance policy~~ motor vehicle insurance policy maintained by a transportation network company shall not be dependent on a personal automobile ~~insurance policy~~ insurer first denying a claim nor shall a personal automobile ~~insurance policy, including insurer or~~ a personal liability umbrella policy, insurer be required to first deny a claim.

(f) In every instance where motor vehicle insurance maintained by a transportation network company driver to fulfill the insurance obligations of ~~this~~ subsection (b) has lapsed or ceased to exist, the transportation network company shall provide the coverage required by ~~this~~ subsection (b) beginning with the first dollar of a claim.

(g) Nothing in this section shall be construed to require a personal automobile insurance policy to provide primary or excess coverage during transportation network company activity, or if a driver solicits or accepts street hails in violation of section -12 or solicits or accepts cash payments from passengers in violation of section -13. During transportation network company activity, and notwithstanding any other law to the contrary, the following shall apply:

- (1) The transportation network company driver's or the vehicle owner's personal automobile insurance policy shall not be required to provide, nor shall it provide, any coverage to any person or entity unless the policy expressly provides for that coverage during transportation network company activity, with or without a separate charge, or the policy contains an amendment or endorsement to provide coverage for transportation network company activity, for which a separately stated premium is charged; and
- (2) The transportation network company driver's or the vehicle owner's personal automobile insurance policy shall not have the duty to defend or indemnify ~~for the driver's activities in connection with the transportation network company~~ the transportation network company driver, the vehicle owner, or the

transportation network company, unless the policy expressly provides otherwise for transportation network company activity, with or without a separate charge, or the policy contains an amendment or endorsement to provide coverage for transportation network company activity, for which a separately stated premium is charged.

(h) ~~Notwithstanding any other law to the contrary, a personal automobile insurer may, at its discretion, offer an automobile liability insurance policy, or an amendment or endorsement to an existing policy that covers a private passenger vehicle, station wagon type vehicle, sport utility vehicle, or similar type of vehicle with a passenger capacity of eight persons or less, including the driver, while used in connection with a transportation network company activity if the policy expressly provides for the coverage of transportation network company activity, with or without a separate charge, or the policy contains an amendment or an endorsement to provide coverage for transportation network company activity, for which a separately stated premium may be charged.~~ A transportation network company or transportation network company driver may satisfy the primary commercial motor vehicle insurance requirement in subsection (b) by, alternatively, maintaining a personal automobile insurance policy that is endorsed or

otherwise amended to expressly provide for coverage of transportation network company activity and that includes the same coverages and coverage limits as the commercial motor vehicle insurance policy required in subsection (b). The personal automobile insurer may charge an additional premium for coverage provided under this subsection.

(i) In a claims coverage investigation, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred that involved a transportation network company driver and the precise times that the transportation network company driver logged on and off the transportation network company's online-enabled application or platform. The transportation network company shall provide the information requested no later than ten days after receipt of a written request.

(j) A transportation network company driver of a transportation network company shall carry proof of insurance coverage as required by this section within the vehicle at all times when the vehicle is being used in connection with transportation network company service or transportation network company activity. In the event of an accident, a transportation network company driver shall provide this insurance coverage

information to any other party involved in the accident, and to a police officer, upon request.

(k) Notwithstanding any other law affecting whether one or more policies of insurance that may apply with respect to an occurrence is primary or excess, this section shall determine the obligations under insurance policies issued to transportation network companies and, if applicable, transportation network company drivers using a vehicle in connection with a transportation network **company** activity.

**§ -9 Zero tolerance for drug or alcohol use.** (a) The transportation network company shall implement a zero tolerance policy on the use of drugs or alcohol while a transportation network company driver is **providingengaged in** transportation network company **servicesactivity** ~~or is logged into the transportation network company's digital network, even if not providing transportation network company services~~, and shall provide notice of the zero tolerance policy on its website, as well as procedures for reporting a complaint about a driver with whom a passenger was matched and who the passenger reasonably believes was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, the transportation network company shall immediately suspend the transportation

network company driver's access to the transportation network company's digital ~~platform~~ network or software application service and shall conduct an investigation into the reported incident. The suspension shall last for the duration of the investigation; provided that the investigation shall be conducted in a reasonably expeditious manner.

(c) The transportation network company shall maintain records relevant to a reported incident for a period of at least ~~two~~ five years from the date that a passenger complaint is received by the transportation network company.

**§ -10 Driver requirements.** (a) Prior to permitting an individual to act as a transportation network company driver on its digital platform, the transportation network company shall:

- (1) Require the individual to submit an application to the transportation network company, including information regarding the individual's address, age, driver's license, driving history, motor vehicle registration, motor vehicle insurance, and other information required by the transportation network company;
- (2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

- (A) Multi-state/Multi-Jurisdiction Criminal Locator or other similar commercial nationwide database with validation (primary source search); and
- (B) National Sex Offender Registry database;
- (3) Obtain and review a traffic violations bureau certified abstract for the individual; and
- (4) Require the individual to submit evidence of a physical examination to determine the individual's health and fitness to act as a transportation network company driver.

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

- (1) Has been found to have committed more than three traffic infractions, as defined in section 291D-2, in the prior three-year period, other than traffic infractions involving parking, standing, equipment, and pedestrian offenses;
- (2) Has been convicted once in the prior three-year period for the offense of resisting an order to stop a motor vehicle, reckless driving, or driving with a suspended or revoked driver license;
- (3) Has been convicted in the prior seven-year period of driving under the influence of drugs or alcohol;



- (4) Has been convicted at any time of fraud, any sexual offense, any domestic violence offense, use of a motor vehicle to commit a felony, a crime involving property damage, theft, acts of violence, or acts of terrorism;
- (5) Is a match in the National Sex Offender Registry database;
- (6) Does not possess a valid driver's license;
- (7) Does not possess proof of registration or other authorization for the motor vehicle used ~~to provide in~~ transportation network company ~~services~~ activity;
- (8) Does not possess proof of motor vehicle insurance for the motor vehicles used ~~to provide in~~ transportation network company ~~services~~ activities; or
- (9) Is not at least twenty-one years of age.

§ **-11 Vehicle safety.** The transportation network company shall require that any motor vehicle that a transportation network company driver uses ~~to provide in~~ transportation network company ~~services~~ activity meets the inspection requirements of section 286-26.

§ **-12 No street hails.** A transportation network company driver shall only accept rides booked through a transportation network company's digital network or software application service and shall not solicit or accept street hails.

§ -13 **No cash trips.** The transportation network company shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify transportation network company drivers of the policy. Transportation network company drivers shall not solicit or accept cash payments from passengers. Any payment for transportation network company ~~services~~activity shall be made only electronically, using the transportation network company's digital network or software application.

§ -14 **No discrimination; accessibility.** (a) The transportation network company shall adopt a policy of non-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 passengers and potential passengers and notify transportation network company drivers of the policy.

(b) A transportation network company shall not impose any additional charges for providing services to persons with physical disabilities because of those disabilities.

(c) A transportation network company shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a transportation network company cannot arrange for a transportation network company driver with a wheelchair-accessible ~~transportation network~~

~~company service~~vehicle in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

(d) Transportation network company drivers shall comply with all applicable laws regarding non-discrimination against passengers or potential passengers 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.

**§ -15 Records.** (a) A transportation network company shall maintain:

- (1) Global positioning system records and electronic records of transportation network company activity for each individual trip provided by a transportation network company driver for at least ~~one~~five years from the date each trip was provided; and
- (2) Transportation network company driver records at least until the ~~one~~five 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 ~~to~~ this section shall be made readily available, and shall be provided no later than ten days after receipt of a written request for information, for purposes of a claims coverage investigation pursuant to section -8(i) or resolving any other dispute related to transportation network company activity.

**§ -16 Personally identifiable information.** (a) A transportation network company shall not disclose a passenger's personally identifiable information to a third party unless:

- (1) The passenger consents;
- (2) Disclosure is required by law; or
- (3) Disclosure is required to protect or defend the terms of use of the service or to investigate violations of those terms.

(b) A transportation network company may share a passenger's name or telephone number with the transportation network company driver ~~providing~~ engaged in transportation network company ~~services~~ activity to the passenger in order to facilitate correct identification of the passenger by the transportation network company driver or to facilitate communication between the passenger and the transportation network company driver.

**§ -17 Penalty.** (a) A transportation network company or transportation network company driver violating or neglecting or

failing to conform to or comply with this chapter or any lawful order of the public utilities commission shall be subject to a civil penalty not to exceed \$25,000 for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91. The commission may order the transportation network company or transportation network company driver to cease carrying on transportation network company activity while the violation, neglect, or failure continues.

(b) Notwithstanding the provisions of subsection (a), any person operating a transportation network company in the State without having a permit required by section -3 may be subject to a civil penalty not to exceed \$5,000 for each such offense, and, in the case of a continuing violation, \$5,000 for each day that unpermitted operation continues.

(c) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper.

(d) If any civil penalty imposed pursuant to this section is not paid within such period as the commission may direct, the attorney general shall institute a civil action for recovery of same in circuit court.

§ ~~17~~<sup>18</sup> **Controlling authority.** Notwithstanding any other provision of law, transportation network companies and transportation network company drivers shall be regulated exclusively by this chapter and any rules adopted pursuant to this chapter by the public utilities commission pursuant to chapter 91. No county may impose a tax upon, or require a license for, a transportation network company or a transportation network company driver."

SECTION 2. This Act shall take effect upon its approval.

**Report Title:**

Transportation Network Companies; Transportation Network Company Drivers; Motor Vehicle Insurance; Qualifications; Public Utilities Commission; Permit

**Description:**

Requires the public utilities commission 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. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



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March 4, 2015  
1:30 PM  
Conference Room 211

**To: Committee on Ways and Means**  
**Senator Jill N. Tokuda, Chair**  
**Senator Ronald D. Kouchi, Vice Chair**

**From: Grassroot Institute of Hawaii**  
**Joe Kent, Research and Development**

**RE: SB 1280 SD1 -- RELATING TO TRANSPORTATION NETWORK COMPANIES**  
***Comments Only***

Dear Chair and Committee Members:

Hawaii lawmakers are on track to add new insurance requirements to the ride-sharing services Uber and Lyft. The bill, SB 1280 attempt to address what many see as an “insurance gap”.

However, Uber and Lyft drivers are already double insured.

These drivers are already required by Hawaii law to purchase their own car insurance policies<sup>1</sup>. They are also insured up to \$1 million<sup>2</sup> by Uber or Lyft.

By contrast, Honolulu requires that taxi companies only carry insurance of \$100,000 per person, \$200,000 for more than one person, and \$50,000 for property damage<sup>3</sup> -- far less than the \$1 million in commercial liability insurance that Uber and Lyft provide.

The Uber and Lyft insurance also covers accidents that aren't the driver's fault, also up to \$1 million. In addition, the insurance covers \$50,000 of collision coverage for the driver's vehicle, and \$10,000 of personal injury protection on top of that.

The proposed bill also add more regulations for background checks and car inspections. However, Uber and Lyft already go above and beyond the regulations. The ride-sharing companies do not accept any driver with a criminal record within the past seven years, which is crosschecked with the National Sex Offender Registry, and other accredited third parties<sup>4</sup>.

Taxi companies, by contrast, are only required to go back two years for their background checks<sup>5</sup>.

The companies also require their cars to pass a 19 point vehicle inspection by a licensed mechanic, and the cars must be less than 10 years old<sup>6</sup>.

As far as safety goes, Uber and Lyft drivers score better than most taxi companies. A study by a driving analytics company called Zendrive<sup>7</sup> in San Fransico found that ride-sharing drivers were the least likely to speed, compared to taxi drivers, or regular drivers.

The incentive for this level of safety may come from the innovative rating system used by Uber and Lyft. After a passenger is dropped off, he or she can give the driver between 1 to 5 stars. If any driver dips below 4.6 stars<sup>8</sup>, they may be suspended.

Ride-sharing programs are not only safer for the passengers, they're also safer for the drivers -- which is good news. Data from the Bureau of Labor Statistics shows that taxi drivers are one of the most dangerous jobs in America<sup>9</sup> <sup>10</sup>. A taxi driver is 20 times more likely to be murdered while on the job than any other worker<sup>11</sup>.

According to the Occupational Health and Safety Administration, promoting the use of credit card payments instead of cash payments would help to discourage taxi robberies and violent crime<sup>12</sup>.

In some ways then, Uber and Lyft rides may be safer for the passengers and drivers, as the drivers do not deal with cash. A study by the National Bureau of Economic Research<sup>13</sup> provides evidence that crime drops for companies like Uber and Lyft that deal with electronic payment systems rather than wads of cash.

The ride-sharing companies also only pick up known customers who have registered with their credit card and contact information, making the whole process far from anonymous, which is a useful strategy in reducing crime according to the Center for Problem-Oriented Policing<sup>14</sup>.

With so much safety, some may wonder why anyone should worry about the proposed bill, given that Uber and Lyft are already voluntarily going above and beyond the proposed insurance and safety requirements.

However, the bill adds more than just insurance requirements. It also attempts to add \$5,000 permitting fees<sup>15</sup> <sup>16</sup>.

But a permitting fee of \$5,000 is much more than the mere \$120 that the taxi companies are required to pay<sup>17</sup>.



Uber has already left Nevada<sup>18</sup>, Portland<sup>19</sup>, and Auburn<sup>20</sup> because of “burdensome regulations”. Putting more regulations on the ride-sharing companies may only serve to drive them away from Hawaii.

The real problem may not be under-regulation, but years of over-regulation of licensed taxi companies. The solution is not to drive the new guy away, but to lessen business the hurdles for the existing cabs. This would open up more competition for the consumer, so Honolulu’s citizens could enjoy lower priced, better, and safer transportation.

Thank you for the opportunity to submit comments,

Joe Kent

Research and Development

Grassroot Institute of Hawaii

<sup>1</sup> <http://dui.drivinglaws.org/haiawi-sr22.php>

<sup>2</sup> <http://blog.uber.com/ridesharinginsurance>

<sup>3</sup> [https://www.honolulu.gov/rep/site/ocs/roh/ROH\\_Chapter\\_12.pdf](https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12.pdf)

<sup>4</sup> <http://blog.uber.com/driverscreening>

<sup>5</sup> [https://www.honolulu.gov/rep/site/ocs/roh/ROH\\_Chapter\\_12.pdf](https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12.pdf)

<sup>6</sup> <http://blog.uber.com/driverscreening>

<sup>7</sup> <https://www.zendrive.com/references/taxi-rideshare-12-2014/>

<sup>8</sup> <http://www.thedailybeast.com/articles/2015/01/27/the-mysterious-way-uber-bans-drivers.html>

<sup>9</sup> <http://www.bls.gov/iif/oshcfoi1.htm#2012>

<sup>10</sup> <http://stewardsofsafety.com/how-dangerous-is-your-job-firefighters-and-taxi-drivers>

<sup>11</sup> <https://www.osha.gov/Publications/taxi-driver-violence-factsheet.pdf>

<sup>12</sup> <https://www.osha.gov/Publications/taxi-driver-violence-factsheet.pdf>

<sup>13</sup> <http://www.nber.org/papers/w19996>

[14](http://www.popcenter.org/learning/60steps/index.cfm?stepNum=40) <http://www.popcenter.org/learning/60steps/index.cfm?stepNum=40>

[15](http://www.capitol.hawaii.gov/session2015/bills/SB1280_SD1_.pdf) [http://www.capitol.hawaii.gov/session2015/bills/SB1280\\_SD1\\_.pdf](http://www.capitol.hawaii.gov/session2015/bills/SB1280_SD1_.pdf)

[16](http://www.capitol.hawaii.gov/session2015/bills/HB1463_HD1_.pdf) [http://www.capitol.hawaii.gov/session2015/bills/HB1463\\_HD1\\_.pdf](http://www.capitol.hawaii.gov/session2015/bills/HB1463_HD1_.pdf)

[17](https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12.pdf) [https://www.honolulu.gov/rep/site/ocs/roh/ROH\\_Chapter\\_12.pdf](https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12.pdf)

[18](http://skift.com/2014/11/28/uber-leaves-nevada-future-is-up-to-state-lawmakers/) <http://skift.com/2014/11/28/uber-leaves-nevada-future-is-up-to-state-lawmakers/>

[19](http://www.nola.com/business/index.ssf/2014/12/uber_leaves_portland_in_battle.html) [http://www.nola.com/business/index.ssf/2014/12/uber\\_leaves\\_portland\\_in\\_battle.html](http://www.nola.com/business/index.ssf/2014/12/uber_leaves_portland_in_battle.html)

[20](http://www.al.com/news/index.ssf/2015/01/uber_leaves_auburn_because_of.html) [http://www.al.com/news/index.ssf/2015/01/uber\\_leaves\\_auburn\\_because\\_of.html](http://www.al.com/news/index.ssf/2015/01/uber_leaves_auburn_because_of.html)