

# SB1280

**Measure Title:** RELATING TO TRANSPORTATION NETWORK COMPANIES.

**Report Title:** Transportation Network Companies; Service; Drivers

**Description:** Requires the PUC to regulate transportation network companies.  
Establishes requirements for persons who operate or serve as drivers for transportation network companies.

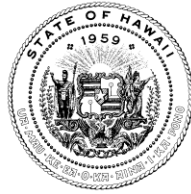
**Companion:** [HB1287](#)

**Package:** None

**Current Referral:** CPN/TRA, WAM

**Introducer(s):** WAKAI, Espero, Galuteria, Inouye

<a href="#">Sort by Date</a>		Status Text
1/29/2015	S	Introduced.
1/29/2015	S	Passed First Reading.
1/29/2015	S	Referred to TRA/PSM, CPN.
2/4/2015	S	Re-Referred to CPN/TRA.
2/5/2015	S	Re-Referred to CPN/TRA, WAM.
2/10/2015	S	The committee(s) on CPN/TRA has scheduled a public hearing on 02-13-15 9:00AM in conference room 229.



DAVID Y. IGE  
GOVERNOR  
  
SHAN S. TSUTSUI  
LT. GOVERNOR

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**TO THE SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION  
AND TRANSPORTATION**

**TWENTY-EIGHTH LEGISLATURE**  
**Regular Session of 2015**

**Friday, February 13, 2015**  
**9:00 a.m.**

**TESTIMONY ON SENATE BILL NO. 1280 – RELATING TO TRANSPORTATION  
NETWORK COMPANIES.**

**TO THE HONORABLE ROSALYN H. BAKER AND CLARENCE K. NISHIHARA,  
CHAIRS, AND MEMBERS OF THE COMMITTEES:**

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department provides the following comments.

The purpose of this bill is to regulate transportation network companies and their drivers. Clarification is needed on page 8, line 17 regarding "the owner's insurance policy". It is not clear whether a personal automobile policy or a commercial automobile policy is being referenced. Further, as proposed § 9(b) is written, insurers do not have to provide coverage, nor do they have a duty to defend, when either a personal or commercial automobile policy is in place.

We thank this Committee for the opportunity to present testimony on this matter.

TESTIMONY OF RANDY IWASE  
CHAIR, PUBLIC UTILITIES COMMISSION  
TO THE  
SENATE COMMITTEES ON  
COMMERCE AND CONSUMER PROTECTION  
AND TRANSPORTATION

FEBRUARY 13, 2015  
9:00 a.m.

**MEASURE:** S.B. No. 1280

**TITLE:** Relating to Transportation Network Companies

Chair Baker, Chair Nishihara and Members of the Committees:

**DESCRIPTION:**

This measure would add a new chapter to Hawaii Revised Statutes ("HRS") to regulate transportation network companies ("TNCs").

**POSITION:**

The Public Utilities Commission ("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.

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

**AMENDED  
TESTIMONY OF MICHAEL ONOFRIETTI**

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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair

COMMITTEE ON TRANSPORTATION

Senator Clarence K. Nishihara, Chair  
Senator Breene Harimoto, Vice Chair

Friday, February 13, 2015  
9:00 a.m.

**SB 1280**

Chair Baker, Vice Chair Taniguchi, and members of the Committee on Commerce and Consumer Protection, and Chair Nishihara, Vice Chair Harimoto, and members of the Committee on Transportation, 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 **opposes** certain provisions of SB 1280, which creates a new chapter in the Hawaii Revised Statutes to address regulation of “transportation network companies” and “transportation network company drivers.”

The Hawaii Insurers Council opposes all provisions of SB 1280 (for example, § -1 and § -2) stating that a transportation network company, a transportation network company driver, and transportation network company service do not include, nor are they deemed, a taxicab, a for-hire vehicle, a street hail service, a common carrier by motor vehicle, a contract carrier by motor vehicle, or a motor carrier as defined in section

271-4. While transportation network companies and their drivers may operate under a different business model to connect drivers to passengers, their essential services are the same as more traditional common carriers – the transportation of passengers and property for compensation.

The Hawaii Insurers Council also opposes the insurance requirements section of SB 1280 (§ -8). This section creates a two-tiered system of insurance:

1. When the transportation network company driver is logged into the transportation network company's digital network and available to received requests for transportation, but is not then providing transportation network company services, only the minimum motor vehicle insurance limits are required (\$20,000 per person and \$40,000 per accident for bodily injury, and \$10,000 per accident for property damage). This insurance may be provided under a personal motor vehicle insurance policy.
2. Only when the transportation network company driver is actually providing transportation network company services (i.e., "the transportation of a passenger between points chosen by the passenger . . . ."), the driver must be protected by primary insurance coverage of at least \$1,000,000 for death, personal injury, and property damage. This insurance may be provided under a personal motor vehicle insurance policy, a commercial motor vehicle insurance policy, or a combination of both.

While it is laudable that the Bill requires \$1,000,000 in insurance coverage for the period that the passenger is actually being transported in the vehicle, the minimum insurance requirements for the period before the passenger is actually being transported in the vehicle is insufficient and against public policy.

The transportation network company's insurance policy will not provide collision and comprehensive coverages as a primary insurer even when there is a passenger for hire in the vehicle. The differing levels of coverage and having different insurers involved for the same vehicle will only lead to disputes and litigation. If there is coverage forced upon the personal motor vehicle insurer while the driver is conducting a commercial activity, costs will be borne by consumers who are driving for transportation network companies.

Once the transportation network company driver is logged into the transportation network company's digital network, he or she is already engaging in a commercial activity, being distracted by the digital device, traveling on perhaps unfamiliar roads, and looking out for the intended passenger. All of these and other activities increase the risk to the public. They also increase the exposure to the personal motor vehicle insurance carrier, and are more appropriately placed with a commercial motor vehicle insurance carrier.

In addition, § -9(d) of the Bill notwithstanding, the tiered insurance system would no doubt result in increased disputes between insurers, increased costs to investigate the timing and location of accidents, and increased costs in claims handling and litigation.

Accordingly, in order to expedite accident and claims investigations, to assure continued availability and affordability of personal motor vehicle insurance policies, and to protect the consuming public, the Hawaii Insurers Council advocates that SB 1280 be amended to state that:

1. All transportation network company drivers be required to maintain, at all times, a commercial motor vehicle insurance policy with minimum limits of \$100,000 per person and \$200,000 per accident for bodily injury liability, and \$50,000 per accident for property damage liability. These limits are the same as those required of

taxicabs under county ordinances and of motor carriers under regulations of the Public Utilities Commission (PUC).

2. No personal motor vehicle insurance policy be required to provide coverage for a transportation network company or transportation network company driver.

The Hawaii Insurers Council does agree with various other provisions of SB 1280 dealing with the PUC's regulation of transportation network companies and transportation network company drivers for the protection of the public.

Therefore, while the Hawaii Insurers Council opposes SB 1280, it welcomes the opportunity to work with these Committees and stakeholders on revising the Bill. Thank you for the opportunity to testify.



February 13, 2015

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION  
ON SB 1280 RELATING TO TRANSPORTATION NETWORK COMPANIES**

Thank you Chair Baker, Chair Nishihara, and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

HTA opposes this bill.

The Public Utilities Commission (PUC) regulates common and contract motor carriers, and this bill proposes to have the PUC regulate a TNC without it being defined as a motor carrier nor being subject to rules that motor carriers follow. This is not even placed in chapter 271.

All PUC motor carriers pay an annual fee which is calculated on a percentage of all regulated revenue. This bill proposes a flat fee. I am sure all the carriers would like an opportunity to write in their own flat rate fee.

Furthermore we are unable to ascertain who the regulating agency is. A fee paid to the PUC is mentioned, but these regulations fall under an unknown chapter, rather than chapter 271.

Thank you.



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Hawaii State Legislature  
Senate Committee on Commerce and Consumer Protection  
Senate Committee on Transportation  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

February 12, 2015

*Filed via electronic testimony submission system*

**RE: TNC bills (SB 1280 and SB 1351) - NAMIC's Written Testimony for Committee Hearing**

Dear Senator Baker, Chair; Senator Taniguchi, Vice Chair; and members of the Senate Committee on Commerce and Consumer Protection, and Senator Nishihara, Chair; Senator Harimoto, Vice Chair; and members of the Senate Committee on Transportation:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 13, 2015, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members appreciate the importance of business innovation and we support the development and growth of transportation network companies (TNCs) and other "sharing-economy" business endeavors.

NAMIC believes that TNCs, like all other business operations, need to take full responsibility for the legal liability exposure and public safety risks posed by their business activities. Since the TNCs are engaged in a new form of commercial transportation, it is reasonable and appropriate for them to be required by state law to be responsible for all the commercial transportation liability issues created by their business activities.

The TNC commercial transportation model requires TNC drivers to transport TNC passengers for hire in the TNC driver's private vehicle. Since the TNC driver's activities are clearly commercial in nature, the TNC driver's private passenger automobile insurance policy is most likely not going to provide a duty to defend or any insurance coverage for the commercial transportation use of the TNC driver's personal automobile. Consequently, the TNC commercial transportation model creates an "insurance coverage gap" which poses a legal liability exposure problem and public safety risk for the TNC service driver, TNC passengers, and the general public.

State Legislatures throughout the nation have been working on passing pro-consumer protection legislation to address this "insurance coverage gap", in a way that is pro-business innovation, pro-consumer-protection, and pro-business responsibility. In the two states that have enacted laws to date (California and Colorado) and in all the states evaluating proposed legislation, elected officials have focused their attention upon making sure that there is a clear demarcation between commercial auto activities and private passenger auto activities, so that TNC activities don't become an unnecessary insurance rate cost-driver for private passenger auto insurance consumers.

NAMIC appreciates the fact that there are presently seven TNC bills pending before the Hawaii State Legislature, and that a number of these proposed bills offer different legislative and regulatory approaches to address the "insurance coverage gap" issue. NAMIC is confident that the Legislature will properly decide which proposed legislation best promotes "responsible" transportation business development, best preserves the availability and affordability of private passenger auto insurance coverage, and best facilitates consumer safety. NAMIC welcomes an opportunity to work with the Legislature to help craft appropriate legislation that thoroughly addresses all of the legal and public policy issues created by TNC activities.

In regard to the two bills before this committee for public hearing, NAMIC respectfully submits the following comments for consideration by the Senate Committee on Commerce and Consumer Protection and the Senate Committee on Transportation.

From a public policy standpoint, NAMIC believes that TNC legislation should set forth clear and specific insurance coverage requirements for TNC commercial activities, expressly acknowledge the legal and practical distinction between private passenger use of a motor vehicle and commercial transportation use, and protect private passenger auto insurance consumers from having to subsidize the standard business operational costs of TNC commercial activities. Regulation by a state agency, like the Public Utilities Commission (PUC), is reasonable and appropriate, because TNC activities are commercial in nature. Additionally, state regulation of TNC activities is also administratively practical, because state regulation of the TNC industry will facilitate statewide uniformity in consumer protection.

NAMIC is encouraging State Legislatures across the country to pass legislation that thoroughly addresses the following TNC insurance coverage public policy elements:

- 1) “Sharing economy” business innovation, like the TNC industry, should be encouraged, but it must be thoughtfully regulated to address liability exposure created by these evolving business models. Clear guidelines for TNC insurance requirements are necessary to protect consumers and facilitate the growth of a healthy and sustainable “sharing-economy” business sector.
- 2) Legislation should safeguard private passenger automobile insurance products and consumers from legal uncertainty created by the TNC business model, by expressly protecting the enforceability of private passenger automobile policy language that excludes insurance coverage and the duty to defend for “livery” or “for hire” operations of a motor vehicle, and which preserves the ability of auto insurers to engage in appropriate risk-based insurance rating and underwriting practices.
- 3) Legislation should clearly define the TNC activity and TNC insurance requirements, so that there is no legal ambiguity that could lead to costly litigation for private passenger automobile insurers and their consumers. TNC activity, like other commercial transportation endeavors, have a higher risk of loss exposure so there should be a “bright-line” standard that defines the scope and duration of TNC activities. Both the California and Colorado laws, and the clearly emerging national trend defines the TNC activity as being tied to the TNC driver logging on/off the TNC app. NAMIC suggests that the TNC activity definition should be “the period of time when a driver is logged onto the TNC’s app to the time the driver logs off the app or the ride is completed and the passenger has exited the vehicle, whichever is later.” This “bright-line” approach provides reasonable clarity for all interested parties, and a practical and discernable legal standard to resolve disputes over whether the driver was engaged in a TNC activity at the time of the accident/incident.

As for the specific TNC insurance requirement, in an effort to reduce the potential for protracted and costly insurance coverage litigation, NAMIC recommends that TNCs and/or TNC drivers be expressly required to have in effect *primary* insurance coverage that specifically covers the TNC activity as defined in the legislation, including the *sole* duty to defend the TNC driver for accidents/incidents arising out of or relating to the TNC activity. The TNC insurance coverage and/or TNC driver’s insurance coverage should be primary without requiring any denial of coverage from the TNC driver’s private passenger automobile insurer.

In regard to specific coverage limits, NAMIC believes that coverage limits should be left to the sound discretion of the Public Utilities Commission and the Legislature, but we suggest that they should be at least equivalent to and similar to other livery requirements, and at a minimum comparable to private passenger automobile financial responsibility coverage limits.

- 4) TNCs should be required to disclose to TNC drivers that the TNC driver's private passenger automobile insurance may not provide any insurance coverage or a duty to defend for TNC activities, and disclose to consumers information about TNC and/or TNC driver's insurance coverage and coverage limits. TNCs should be required to provide proof to consumers and regulators that the TNC and/or the TNC drivers are in compliance with the required TNC activity insurance coverages. NAMIC believes that TNCs should be required to maintain commercial coverage in case the TNC driver's insurance coverage for TNC activities fails to comply with state law, or is cancelled, non-renewed or lapses.
- 5) The legislation should require TNCs to promptly cooperate with the TNC driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities, if there is an incident/accident arising out of or relating to the TNC activity, and that TNCs should be required to retain all TNC activity records and digital logs for the length of the state civil statute of limitations, plus two years for evidentiary purposes in automobile accident civil lawsuits. TNCs should also be required to provide timely copies of information and documentation relating to the TNC driver's TNC activities and any accidents/incidents during the TNC activities to the driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities.

In light of the aforementioned TNC insurance coverage public policy elements, NAMIC is concerned that neither SB 1280 nor SB 1351 fully address all of the essential "insurance coverage gap" issues raised by the TNC business model.

NAMIC's concerns with SB 1280 –

- 1) The proposed legislation defines the TNC activity as commencing once the "driver accepts a request for transportation". This creates an "insurance coverage gap" for the TNC driver during the time that the driver is engaged in a commercial transportation activity but has yet to be matched to a passenger. TNC insurance coverage should begin when the TNC driver logs on to the app, so that there is no ambiguity as to whether the driver's commercial activities are covered by the TNC insurance coverage. Clarity on this issue is in the best interest of all stakeholders and the general public;
- 2) The proposed legislation creates arguably a situation where the TNC insurance coverage doesn't become operative until the TNC driver's private passenger auto insurer formally denies the TNC driver's insurance claim. The language specifically states, "the insurer shall notify an insured after receiving a notice of loss within the time required by section 431:13-103(a) (11) that the insurer has no duty to defend or indemnify any person or organization for liability for a loss that is properly excluded pursuant to the terms of the applicable primary or excess insurance policy." NAMIC is concerned that this will create an unreasonable delay in the settlement of insurance claims to the detriment of TNC drivers, passengers, and injured parties. Additionally, this formal coverage and duty to defend denial requirement will create an unnecessary

administrative burden and cost (and possible legal expense) for private passenger auto insurers, which could act as an insurance rate cost-driver;

3) Although NAMIC supports the proposed requirement that the TNC disclose to the driver that engaging in TNC services may triggers the “livery exclusion” in the driver’s private passenger auto policy, the bill does so in a way that also creates an affirmative duty on private passenger auto insurers to disclose in the private passenger auto insurance application whether or not the insurance policy covers TNC activities. The “livery exclusion” in the private passenger auto insurance policy already addresses this issue, so why should the insurer have to replicate this information? Moreover, since the number of TNC drivers is relatively small compared to the number of private passenger auto drivers, the proposed changes to the form private passenger auto insurance applications would impose a costly and unnecessary administrative burden that would provide limited informational value to a small number of insurance consumers (those interested in engaging in TNC activities); and

4) The proposed legislation also fails to require the TNC to retain TNC driver activity records and digital logs necessary to resolve liability and coverage disputes.

#### NAMIC’s concerns with SB 1351 –

1) Although the proposed legislation states that TNC drivers are to procure commercial insurance coverage consistent with the “motor carrier” law in an amount in amounts required by the financial responsibility statute (Section 431:1OC-301(b) or “in such greater amounts as the [public utilities] commission may require”, NAMIC is concerned that this commercial insurance coverage requirement fails to address a number of important “insurance coverage gap” legal issues. For example, the proposed legislation still leaves open to legal dispute whether the “motor carrier” coverage requirement for TNC drivers is primary insurance coverage, and whether the “motor carrier” coverage requirement for TNC drivers provides the sole duty to defend the TNC driver.

2) The proposed legislation also fails to require necessary and appropriate insurance coverage disclosures to the TNC driver, and fails to require the TNC to retain TNC driver activity records necessary to resolve liability and coverage disputes.

In essence, the fundamental problem with SB 1351 is that it fails to recognize that TNC activities, although clearly commercial in nature, are somewhat different from the traditional “motor carrier” commercial activity, and TNCs retain the services of many drivers who are not traditional “motor carrier” drivers, i.e. they may not fully appreciate the legal implications and liability exposure associated with commercial transportation. Therefore, these “motor carrier” statutes need to be amended to address more than just the inclusion of a reference to TNCs within the purview of the statute, they also need to include provisions necessary to address TNC business model created “insurance coverage gap” legal issues.

Consequently, NAMIC believes that the Senate Committee on Commerce and Consumer Protection and the Senate Committee on Transportation should consider all of the various TNC

bills introduced and available for introduction, and then select the bill that best addresses all of the “insurance coverage gap” legal issues that need to be properly resolved in order to preserve the availability and affordability of private passenger auto insurance coverage, address public safety concerns created by the TNC model, and establish a sound public policy and legal framework for the growth of the TNC industry and the development of new “sharing economy” business models.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC’s written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

Christian John Rataj, Esq.  
NAMIC Senior Director – State Affairs, Western Region



To: The Honorable Rosalyn Baker, Chair  
Senate Committee on Commerce and Consumer Protection

The Honorable Clarence Nishihara, Chair  
Senate Committee on Transportation

From: Mark Sektnan, Vice President

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

Date: Friday, February 13, 2015  
9:00 a.m., Conference Room 229

Aloha Chairs Baker and Nishihara, Vice Chairs Taniguchi and Harimoto and Members of the Committees:

The Property Casualty Insurers Association of America (PCI) is opposed to SB 1280, which sets up a regulatory structure for this new type of passenger transportation. 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 the bill which require the Public Utility Commission to regulate the operation of transportation network companies (TNC) to protect the driver engaged in TNC services and the public. PCI **opposes**, however, the language that treats TNC services different than other common carriers because it ignores the fact that these businesses are engaged in the same activity – the transportation of passengers and property for compensation.

PCI believes the “duration of service” standard created in Section 5 of the bill is too narrow. The bill says TNC services begins at “match” when the driver accepts a ride request from a passenger and concludes when the passenger exits the vehicle. The language in the bill fails to consider that most personal auto policies exclude any coverage while the driver makes them self-available for hire. That would include the period when the driver has logged on to the system and “announced” to the system they are ready to accept rides. Many TNC passengers will look on the company’s app and note the number of rides that are available to pick up rides. Indeed, the

TNC companies market their business on the fact that drivers are constantly available. This time period is similar to a cab “trolling” for fares. The driver may be driving around after a game at Aloha Stadium looking for rides or driving outside bars in a neighborhood they are not familiar with. The bill should include these activities within the definition of “duration of services” and require appropriate insurance.

As mentioned earlier, personal automobile insurance policies typically include a “livery” exclusion “for hire” commercial activity. This provision protects the vast majority of drivers who use their cars for personal use as intended from having to subsidize those drivers who engage in this commercial activity. TNC drivers should have insurance that is written specifically to cover all TNC activity. It is also important that the bill reduce potential conflicts between the personal auto policy and the TNC specific insurance policy. The TNC insurance must be primary during the entire time the driver is available to provide TNC services and there should be no requirement that the personal auto policy cover TNC activity or be required to deny coverage before the TNC specific insurance will cover the claim.

The TNC specific insurance policy should also protect their drivers and avoid gaps in coverage by providing the same coverages as the driver’s personal auto policy. Under the requirements of this bill, a driver who gets into an accident and incurs an injury or damage to their vehicle will have no coverage.

The bill requires TNC companies to provide a notice to their drivers that their personal auto policy most likely will not provide coverage while the driver engages in TNC services. This disclosure is appropriate since it is the driver engaging in TNC services that triggers the livery exclusion in the personal auto policy. The bill then requires insurers to disclose on the insurance application whether or not the insurance policy covers TNC drivers. Disclosures like these incur costs, costs that are borne by all drivers, so it’s important that they provide relevant information that provides a benefit to the most policyholders. Since the vast majority of policyholders will never become driver for a TNC, there is little value to policyholders to justify the expense. Even for drivers the disclosure is completely out of context. The disclosure, that personal auto policies rarely cover TNC activities, is most relevant when someone is signing up to become a TNC driver. PCI supports clear disclosures to drivers about insurance coverage as part of their agreement with the TNC, the proper context for providing useful information to the potential drive.

PCI is opposed to SB 1280 in its current form but welcomes the opportunity to work with this Committee and stakeholders on crafting a bill that supports innovation in both the transportation and insurance market place by providing clear guidelines for TNC insurance. Thank you for the opportunity to provide our comments.



**Testimony of  
Mihoko E. Ito  
on behalf of  
USAA**

DATE: February 12, 2015

TO: Senator Roz Baker  
Chair, Committee on Commerce and Consumer Protection

Senator Clarence Nishihara  
Chair, Committee on Transportation  
*Submitted Via [CPNTestimony@capitol.hawaii.gov](mailto:CPNTestimony@capitol.hawaii.gov)*

RE: **S.B. 1280 - Relating to Transportation Network Companies**  
**Hearing Date: Friday, February 13, 2015 at 9:00 a.m.**  
**Conference Room: 229**

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Dear Chair Baker and Chair Nishihara, and Members of the Joint Committees:

We submit this testimony on S.B. 1280 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 offers the following **comments** regarding this measure. Fundamentally, USAA believes that any proposal to regulate TNCs must include:

- **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

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- **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.

The insurance industry needs clear guidelines, such as the ones outlined above, in order to preserve its ability to take rating and underwriting actions for specific populations of insureds, including TNCs. Several specific concerns that USAA has with S.B. 1280 include the following:

- 1) **Approval of Exclusion Language** (page 8, line 20-page 9, line 1): This bill provides that the Insurance Commission must approve any language that excludes the personal auto insurance policy and the duty to defend. The Insurance Division already has a process in place to approve insurance rates and policy forms, and this added approval does not seem necessary.
- 2) **Disclosure of Exclusion of TNC on Application** (page 9, line 19-page 10, line 6): The bill requires insurers to prominently disclose to an applicant for an insurance policy that a personal policy includes an exclusion for ridesharing. The majority of Hawaii residents will not be TNC drivers – this information will not help the average applicant and will make the process more complicated. It is also not clear how this type of disclosure would be implemented when a policy is renewed.
- 3) **TNC Coverage Period** (page 5, line 7 – page 6, line 4): The bill requires TNCs to have only secondary coverage in basic minimum amounts during the time an app is turned on to the time a rider is matched with the driver. This poses an uncertainty for the insurance coverage, and does not fully reflect “app-on, app off” insurance. This means that, during the initial period an app is on, coverage disputes could arise regarding whether the personal policy or the TNC policy is in effect.
- 4) **TNC Claims Cooperation** (page 10, lines 7-16): This bill does not provide for adequate record maintenance or cooperation by TNCs and their drivers. TNCs should be required to maintain log on/log off data; instead, this bill only requires them to keep data about actual rides given. Failure to include a requirement that log on/log off data be kept will make claims coverage disputes difficult and will not provide for true cooperation. In addition, the bill requires that data may not be disclosed without the driver’s consent. This will ultimately prevent cooperation in claims disputes, because for an at-fault driver, it is against their self-interest to agree to release data.

USAA believes that innovation should be allowed both in the transportation and insurance marketplace, but only if there are clear guidelines regulating TNCs. If the Committee is inclined to move this measure, we would ask that the bill be amended to address the issues outlined above. USAA is happy to work with the Committee and provide language that embodies these comments.

Thank you very much for the opportunity to testify.

**SENATE COMMITTEE  
ON  
COMMERCE AND CONSUMER PROTECTION**

**and**

**SENATE COMMITTEE  
ON  
TRANSPORTATION**

February 13, 2015

Senate Bill 1280 Relating to Transportation Network Companies

Chair Baker, Chair Nishihara, members of the Senate Committee on Commerce and Consumer Protection, and members of the Senate Committee on Transportation, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm offers the following comments about Senate Bill 1280 Relating to Transportation Network Companies. We believe that Transportation Network Companies (hereinafter TNCs) should be subject to certain basic insurance principles.

- TNCs need to provide insurance coverage to protect the public, passengers, and their drivers.
- This is a commercial activity that should not be covered by the private passenger auto policy (PPAP). To do so would affect the rates of all purchasers of individual personal auto policies to subsidize the cost of doing business for TNCs.

**Liability Coverage:** the **primary** coverage should be with the TNC from time the app is turned on by the TNC's driver.

- There should be an affirmative duty to defend under the primary TNC coverage **once the app is turned on**. This provides a bright line and clarity so that there can be no disputes. At this point, the law should provide that the driver's PPAP does not provide coverage.
- All businesses are subject to liability for negligence, and they protect themselves with insurance coverage. TNCs should be no different and there should be no limit to their potential liability, which they can insure against.
- The liability coverage should match livery coverage limits required by law:

Hawaii Revised Statutes § 271-17 (Security for Protection of Public) gives the Public Utility Commission the authority to determine the amount of insurance, and this is provided for in Hawaii Administrative Rules § 6-62-8.

Although we believe the limits should be sufficient to protect the public, State Farm believes required limits should be left to the sound discretion of the Public Utilities Commission and the Legislature, but we suggest that they should be at least equivalent to and similar to other livery requirements.

- TNCs should disclose to their drivers their coverage and limits of liability, and that the driver's personal policy might not provide any coverage in the event of an accident while the vehicle is driven by a TNC driver.
- The law should be clear that the PPAP shall not provide any coverage and has no duty to defend, unless the coverage is expressly stated in the policy language or an endorsement. This will allow the private insurance market to develop products for TNC drivers to purchase, if they so choose, and will prevent the costs of this coverage from being borne by consumers that do not act as TNC drivers.

### **Claims Cooperation**

- The law should provide that TNCs and their insurers must cooperate with the claims investigation by providing data of when their app is turned off and on.
- TNCs should be required to maintain records for at least 1 year past the statute of limitations.

**1st Party Coverages** for TNC drivers from the time the app is turned on should at a minimum be as follows:

- Property Damage Coverage equal to but not less than those in driver's own PPAP.
- UM/UIM coverage for the driver and passengers equal to but not less than those in driver's own PPAP.
- PIP Coverage for driver and passengers equal to but not less than those in driver's own PPAP and sufficient to meet Hawaii's minimum requirements.

### **SB 1280 as drafted lacks the following elements:**

- There is no clear statement that the TNC insurance policy must provide primary coverage and has the sole duty to defend from app on.
- There is no requirement for the TNC to notify its drivers of the coverage it provides.
- There is no requirement for record retention for claims purposes.
- There is no requirement for any first party coverages.

If the proposed measure is to move forward we believe that these principles should be embodied in it. We would be willing to provide a draft bill containing these elements to the Committee, if it so desires.

Thank you for the opportunity to present this testimony.



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

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TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII  
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**Senate Committee on Commerce and Consumer Protection**  
**Senate Committee on Transportation**  
Room 229 State Capitol  
Friday, February 13, 2015, 9:00 a.m.

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

Chair Nishihara, Chair Baker, Vice-Chair Harimoto, Vice-Chair Taniguchi and Members of the Committees:

My name is Timothy Dayton, Branch Manager of the Hawaii GEICO office, Hawaii's largest auto insurer. **GEICO opposes Senate Bill Number 1280.** Senate Bill 1280 would allow Transportation Network Companies' (TNC) Drivers to satisfy their insurance requirements with minimum financial responsibility limits during the period where the driver is logged into the electronic application and available for hire but before being matched with a passenger; additionally, the measure does not require that a TNC maintain individual trip records for a long enough period of time; finally, it does not provide sufficient requirements for a TNC company to cooperate with insurers, who must complete a liability investigation after an accident.

It is a particular risk of driving passengers for compensation that the behavior after a driver has logged onto the application but before the driver accepts the request for a ride that the driver's behavior is altered; this change in behavior is an increased risk that should be covered at a higher insurance limit than minimum limits. It is likely that a TNC driver will drive at an accelerated speed in order to reach a public event such as a sports event that has an increased likelihood of desirable fares, or be distracted in an attempt to accept a ride on the electronic device or in response to a "street hail." It is the TNC's position that street hails are against its

policies and that their drivers do not engage in them. However, anecdotal evidence overwhelmingly corroborates that street hails do occur. Finally, it is well known that serious and fatal accidents have and will occur during this period. It is sound public policy to require that the insurance limits required during this period reflect the increased risk of changed driver behavior.

Secondly, SB 1280 only requires a TNC to maintain individual trip records for one year after an accident. This is not in line with the statute of limitations for an action to be brought in Hawaii and would result in vital evidence being destroyed before the deadline to commence a lawsuit after an accident.

Finally, the measure would prohibit a TNC from disclosing personally identifiable information to an insurer after an accident. An insurer must complete a liability investigation after an accident, and there should be an exception that a TNC must provide information to cooperate with a post-accident liability accident.

It is GEICO's position that the failure to require adequate financial responsibility limits of insurance during the period after a TNC driver has logged into the application and is available to provide a ride, the failure to require the maintenance of records for at least the period of the statute of limitations to bring an action, and to create an exception to the prohibition on disclosure of personally identifying information for cooperation with an insurance liability investigation warrant that this measure is insufficient to provide adequate protection for TNC activity in Hawaii. GEICO appreciates the ability to present and your consideration of this testimony. We **respectfully urge the committee to hold Senate Bill 1280.**

Sincerely,



Timothy M. Dayton, CPCU



February 12, 2015

Re: Written Testimony in Opposition to SB 1280

Chair and Committee Members:

I strongly oppose SB1280 for the simple reason that it fails to protect the public safety. While it does address minimal (but inadequate) insurance, the responsibility of our elected leaders is to first put in place regulation designed to prevent and minimize the dangers to the public. Insurance only comes into play after an accident occurs.

The Motor Carrier Act is not regulation for the sake of regulation. It recognizes the cost and benefit of commercial transportation activity and it has been developed over decades of experience in carefully weighing both.

A smart phone app is new technology that efficiently dispatches and coordinates transportation. However, it is NOT A PANACEA to all the danger presented in the activity of driving for profit.

HAWAII'S MOTOR CARRIER ACT INTELLIGENTLY AND EFFECTIVELY REGULATES  
A DANGEROUS BUT NECESSARY ACTIVITY WITH THE PURPOSE OF PROTECTING  
THE PUBLIC

**Vehicular death is the no. 1 cause of accidental death in the United States.** While driving provides us with mobility and independence that is necessary for economic growth and quality of life, it is nevertheless an **INHERENTLY DANGEROUS ACTIVITY that needs to be regulated for public safety.** Accordingly, every driver in Hawaii, personal or commercial, must be licensed by the state, and pass a written and road test administered by the city. **For those of us making a living and getting paid driving others (whether part time or full time), the standards are necessarily increased.** The additional requirements have been carefully legislated over decades to protect the safety of the public. A sample of just a few of the many safety regulations aimed at protecting the public are:

1. ALL DRIVERS FOR HIRE in Hawaii (whether part-time or full-time) are required to pass a **physical exam** that tests,
  - a) the drivers' blood pressure and diabetes level to insure that drivers do not pass out while driving passengers,
  - b) peripheral vision and hearing to minimize accidents through greater awareness of surrounding,
  - c) hernia to insure that drivers can physically assist a passenger if necessary (e.g. carrying them out of a burning vehicle or other emergency events, or just simply helping with bags).
2. Taxi drivers, because our services are on-demand (much like the TNCs) and not required to be pre-arranged, are **tested on road knowledge** of the 40 main points of interest in Honolulu that include the court houses, social service buildings, tax offices, emergency rooms of hospitals



etc. This insures that in case of emergency, all drivers know where the emergency rooms of each of the hospitals are, and the poor, disabled and elderly have ready access to our social services.

3. Vehicles to be purchased for commercial purposes are provided a one year **inspection** even when purchased new.

4. In the case of taxi, the state, not Google or Uber, **calibrates and inspects every meter every year**.

5. And to further protect our consumer, our state and city law requires a **fair and predictable rate that will best allow even the poor access to the service** - i.e. no **SURGE PRICING** during high demand including **STATE OF EMERGENCIES that favor the rich over the more vulnerable POOR**.

6. All vehicles for hire are required to be not just registered as a commercial vehicle, but clearly marked and numbered for **identification** so that, in part, law enforcement and witnesses can easily identify our vehicles **in case of accidents**.

7. All vehicles for hire also pay additional fees to both the state and city to pay for the administrative cost of regulation AND to **offset the additional wear and tear and use of public roads and facilities**. In cases of airport and harbors, there's also need to **screen access against potential terrorism**. It seems natural that if you're using public roads and facilities to make a living, you should **pay for the additional use of public roads and facilities**.

I CAME, I SAW, I CONQUERED; GREAT ATTITUDE IF YOU'RE CEASAR CONQUERING ANOTHER NATION, NOT SO IF YOU'RE COMING INTO A STATE AND ASKING ITS PEOPLE TO ENTRUST THEIR LIVES AND SAFETY

**UberX and Lyft have entered every city and state, including Hawaii, by ignoring the existing transportation regulations (public safety) under the defense that they are SELF-REGULATED.** Quite frankly, when I first heard from Uber the "self-regulated" argument, I thought they were joking, but they were dead serious. Uber and Lyft are venture capital led mainland companies **worth, in the case of Uber, \$40 Billion dollars**. Their meteoric valuation has led them to feel that they're **above the law**. This is reflected on how they launch their business and how they treat others. Uber, as they've done in Hawaii, simply **ignores all regulations** regarding transportation for hire and dares the regulators and legislators to go against them, and they've **threatened reporters** with "digging up dirt" against them if they dare to provide negative coverage of Uber. Uber, high on venture capitalist steroid (money), has become the **school yard bully on a national scale**.

So far the regulators and legislators in California, Seattle, Chicago and D.C. have caved in to Uber's bullying tactics to varying degree. **Recent trend, however, is for regulators and legislators to stand their ground.** The regulators and legislators in Nevada who are used to dealing with threats and bullying from real gangsters (not the wanna be Wall Street type like Uber) has required Uber to comply with all of their existing transportation laws and shut them down for non-compliance when they refused. Uber has been suspended in Portland, and they

have also been required to follow existing transportation laws in San Antonio and Miami-Dade. Perhaps the biggest change has been in Asia. The entire country of China, India (following a rape of passenger) and Korea have all recognized Uber to be a "transportation for hire business" with a fancy and modern dispatching system, and required that their drivers fully comply with all existing laws governing "transportation for hire business". In all 3 countries, Uber has agreed to work towards full compliance of the country's regulations and laws. **If they're so compliant with foreign legislation, why are they so defiant of ours?**

TOTAL DISRESPECT FOR THE RULE OF LAW; UBER'S POSITION IS THAT IF YOU CAN'T BEAT'EM, IGNORE'EM

**In Miami, Uber simply, unbelievably, notoriously and famously operate illegally. They coach drivers on how best to circumvent laws AND reimburse drivers for fines and cost for having vehicles impounded by law enforcement. In Portland where Uber has voluntarily suspended their activities to provide Portland's council an opportunity to pass "appropriate" legislation, Uber has warned the City that if they fail to pass the law authorizing them to operate by April, they'll terminate their "voluntary" suspension and just begin operation - talk about disrespecting the rule of law and government.**

CONCLUSION

I hope that our legislators and leaders have the **intestinal fortitude** to "dare" go against such a powerful mainland interest, and **the integrity** to put Hawaii's public safety over politics and money.

B.T. Trans, LLC dba EcoCab

By: /s/ David Jung  
David H. Jung  
Its General Manager

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

Friday, February 13, 2015

9:00 a.m.

To: Chairpersons Rosalyn Baker and Clarence Nishihara and Members of the Senate Committee on Commerce and Consumer Protection and the Senate Committee on Transportation:

Thank you so much for allowing me the time to testify today. My name is Brian Hughes from Uber Technologies (Uber), and I am the general manager for the business here in Hawaii.

We appreciate that the committees have taken an interest in ridesharing services, often called Transportation Network Companies (TNCs). As we are seeing all over the country, this is an opportunity to put into place a regulatory framework that works for these exciting and emerging new technologies.

At Uber, we are supportive of reasonable requirements for TNCs that ensure rider safety, adequate insurance, and driver and vehicle inspection requirements. The most important thing we can point out to the committee this morning, is that the technology and business model developed by these companies necessitates a new regulatory framework that doesn't necessarily look like the transportation regulations of the last 50 years.

I'd like to first explain briefly how the system works and the choices that Uber offers, and then touch on a few of the benefits that Uber provides for a community. Here in Hawaii, Uber provides three main options: UberBlack, uberTaxi and uberX.

UberBlack connects riders with traditional active motor carrier limo companies, and uberTAXI connects riders to a traditional metered taxi. Finally, uberX is our extremely popular ridesharing option.

Ridesharing, like other industries in what is often called the Shared Economy, increases the efficiency of an underutilized resource. The Uber platform occasionally makes a personal vehicle into a commercial one. Because we can now determine exactly when commercial activity is taking place, we can make the operating costs of a vehicle for hire much more efficient.

At Uber, we took a simple idea – press a button on your phone and get a ride when you need it – and leveraged technological advances to make it a reality. When you sign up for Uber, you enter your credit card information so you never need cash. When you request a ride through the Uber app on a smartphone or a desktop computer, you are connected to the nearest driver who is offering services using their own personal vehicle. Once the ride is accepted, the screen displays the driver's name and photograph, the vehicle make and model, and the license plate number, so that a rider knows who is picking them up ahead of time.

After a ride is completed, the rider receives a receipt delivered via email, along with a map and record of the route taken. After every ride, a two-way rating system allows drivers and riders to rate one another, bringing an unprecedented level of accountability to the transportation industry.

Safety is Uber's top priority. Uber uses a nationally accredited third party to perform local county, multi-state, and federal criminal background checks going back

seven years for every potential driver. We also use a Social Security trace, cross-check the National Sex Offender Registry, and review DMV driving record reports.

Likewise, providing appropriate insurance coverage is also very important to Uber. 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. 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. The policy also provides \$50,000 of contingent comprehensive and collision coverage to protect the driver's own vehicle. Additionally, the Uber policy provides for the mandatory Personal Injury Protection (PIP) coverage of \$10,000.

During the period when the driver has the app on but before they have accepted a ride from a passenger, an 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. This is more than twice the required amount that Hawaii requires which is \$20,000/\$40,000/\$10,000 for personal vehicles. It's important to remember that at this time, there is no passenger in the car, and no money is changing hands.

Regarding the vehicles used by Uber partners, all vehicles authorized for use on

the Uber platform are inspected by third party mechanics before they are able to receive ride requests and annually thereafter. The vehicles must be 2005 or newer and pass a 19 point vehicle inspection performed by a licensed mechanic. Uber partners with shops like Goodyear, JiffyLube, Firestone, and Midas to complete the inspections.

I'd finally like to mention some of the incredible benefits Uber provides to the communities where we operate. Because driver partners can set any type of schedule they prefer, we are offering entrepreneurial opportunities for thousands of people with flexible hours. These are parents whose kids are in school, transitioning veterans, people in between jobs and entrepreneurs saving up while they work on their dream. The flexibility offered by the Uber platform has allowed one veteran to balance pursuing his Bachelors degree with raising a newborn daughter. It has allowed a social worker to take his wife on their first trip together to the mainland. Ridesharing has enabled a recent immigrant to build his own small business in Honolulu without being weighed down by unwieldy startup costs. These stories are plenty, and the data is more compelling.

Data suggests that when Uber enters a market, DUIs actually decrease. We tested this theory in Seattle and found a causal relationship between the arrival of Uber and a roughly 10 percent decline in DUI rates. We can tell that a huge percentage of Uber's requests come late on weekend nights, when DUIs peak just after bar closing time, suggesting that bar-goers are trying to use Uber as a safe, reliable way to get home after drinking. Readily available driver-partners and the affordable pricing of ridesharing help lower the hurdle for Hawaii residents to make the right decision.

Uber is thrilled to have received incredible support from Hawaii residents and we

continue to strive for ways that we can improve our service here. We look forward to continuing the conversation around developing a reasonable framework for this exciting new model for the citizens of this State.

Thank you for allowing me to present this testimony and I will be happy to answer any questions that you may have.