

Testimony of
Hawaii Passenger and Property Carriers Association
on
S.B. No. 2808
Relating to Transportation Network Companies
Committee on Commerce, Consumer Protection and Health
Thursday, February 20, 2020, 10:00 a.m.
Room 229

My name is Deems Narimatsu, representing the Hawaii Passenger and Property Carriers Association (HIPPCA), testifying in support of S.B. No. 2808, with suggested amendments. S.B. No. 2808, proposes to establish a regulatory structure for transportation network companies (TNC). However, that regulatory structure needs clarification and revision for the protection of consumers.

S.B. No. 2808, however, discriminates in favor of transportation network company drivers and grants them special treatment or privilege, which may be considered as "special law." *"A law is a "special law" not a general law, if it operates upon and affects only a fraction of persons or a portion of the property encompassed by a classification, granting privileges to some and not others." ...special legislation discriminates in favor of a person or entity by granting them a special or exclusive privilege. A statute relating to particular persons, places, or things is a special law, not a general law."* (Attorney General Op. 2007-2)

Under the Motor Carrier Law (Chapter 271), "contract carrier by motor vehicle" means any person that engages in transportation by motor vehicle of passengers... for compensation ...under continuing contracts with one person or a limited number of persons either: for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served..." A transportation network company driver is a motor carrier.

Further, like motor carriers and taxis, TNCs engage in the transportation by motor vehicle of passengers for compensation. S.B. No. 2808, however, declares that transportation network company drivers are "independent contractors" that do not have an employer-employee relationship with the company. They, therefore, are independent businesses which should have a general excise tax license, and be regulated like a contract carrier by motor vehicle.

HIPPCA requests that the following amendments be made to S.B. No. 2808 to clarify ambiguities that the bill creates and to strengthen the regulatory requirements.

1. Section -3 declares that: *"Solely for the purposes of this chapter, 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."*

However, under the Motor Carrier Law (Chapter 271), a "*contract carrier by motor vehicle*" means any person that engages in transportation by motor vehicle of passengers... for compensation ...under continuing contracts with one person or a limited number of persons either: for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served..." S.B. No. 2808 declares that a TNC driver is "*an independent contractor, and not an employee of a transportation network company*" As an independent contractor, the driver would be considered "*contract carrier by motor vehicle*" under the Motor Carrier Law and is required to have a general excise tax license and be regulated by the PUC.

Section -3 should be deleted or it and Chapter 271 revised to remove any ambiguities and conflict that S.B. No. 2808 may be considered special law.

2. Add to the requirements for a TNC driver listed in S.B. No. 2808:
 - A copy of the applicant's current general excise tax license;
 - The individual's certified abstract from the traffic violations bureau; and
 - A certificate from a physician who is selected by the individual which attests that the individual is free of any known medical condition that would put a passenger at risk.
3. Require a TNC to conduct a criminal history background check of each driver applicant in accordance with section 846-2.7, which provides for the performance of criminal history background checks by the Hawaii Criminal Justice Data Center, and allows the TNC to pass on the cost of the criminal history record checks to the applicant. Section 846-2.7 requires the TNS to notify the driver applicant that the applicant is subject to a criminal history record check, which includes retention of fingerprints by the criminal justice data center and submission to the Federal Bureau of Investigation for national criminal history record check.
4. Authorize the transportation director to:
 - Establish a procedure for an aggrieved consumer to file a written complaint for any violation by a TNC or TNC driver;
 - Conduct investigations, examinations, and hearings of any violations or complaints that may arise; and
 - Retain attorneys, accountants, or other professionals and specialists to conduct or assist in the investigations.

With these amendments, we support S.B. No. 2808.

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

Testimony of
Roberts Hawaii, Inc
on
S.B. No. 2808
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My name is Roy Pfund, President of Roberts Hawaii and I am testifying in strong opposition to S.B. No. 2808, which proposes to establish a statewide permitting process for transportation network companies.

We need to step back and take a comprehensive look at what this legislation is attempting to create for the TNC companies, namely Uber and Lyft. These two TNC companies want to monopolize the taxi and ride sharing transportation market in Hawaii by passing legislation that effectively provides them with privileged operating advantages that the taxis and PUC regulated passenger carriers do not have.

What are these privileged operating advantages?

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

Uber and Lyft's IPO's have provided them with billions of dollars to further expand their hold on Hawaii's transportation market. This money will be used to continual squeeze the local taxi and PUC companies out of business with the proposed unfair privileged operating advantages. How will Uber and Lyft pay back their investors? Clearly, this will come from the monopoly pricing and profits that they will be able to derive from markets like Hawaii once they have driven the local companies out of business. We need to prevent TNC's from gaining privileged operating advantages by opposing this bill.

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



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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 19, 2020

TO: Senator Rosalyn Baker
Chair, Committee on Commerce, Consumer Protection & Health
Submitted Via Capitol Website

FROM: Mihoko Ito

RE: **S.B. 2808 - Relating to Transportation Network Companies**
Hearing Date: Thursday, February 20, 2020 at 10:00 a.m.
Conference Room: 229

Dear Chair Baker and Members of the Committee:

We offer this testimony on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is the international trade association that represents more than 100 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment screening, tenant screening and collection services.

CDIA **submits comments** on S.B. 2808, Relating to Transportation Network Companies. CDIA has concerns with the language relating to background checks on page 6, line 20 to page 7, line 4, which references the Professional Background Screening Association and requests that it be removed as follows:

2) The transportation network company shall each year conduct, ~~or have a third-party commercial background check company accredited by the Professional Background Screening Association (PBSA) conduct~~, national and local criminal background checks for each applicant and for each driver

The current language is problematic because it limits the availability to do background checks to members of PBSA, which is a trade association and not a regulatory body. All background screeners are governed by the Fair Credit Reporting Act (FCRA) and must be compliant with the FCRA. An accreditation by PBSA does not make background screening companies any more compliant with the federal law, so background checks should not be limited to only those affiliated with a trade organization.

For these reasons, we would respectfully request that the bill be amended as set forth above. Thank you very much for the opportunity to testify on this measure.