

ACT 236

H.B. NO. 260

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that transportation network companies are entities that use a digital network or software application service to connect passengers with transportation network company drivers. The legislature further finds that concerns have been raised about potential gaps in motor ve-

hicle insurance coverage associated with transportation network companies. In response, by the end of 2015, twenty-nine states had enacted legislation to establish insurance requirements covering transportation network company drivers engaged in prearranged rides, thereby protecting transportation network company drivers, their passengers, and the public.

Accordingly, the purpose of this Act is to close the insurance gaps associated with transportation network companies by establishing motor vehicle insurance requirements for transportation network companies and transportation network company drivers.

SECTION 2. Chapter 431, article 10C, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . TRANSPORTATION NETWORK COMPANIES

§431:10C-A Definitions. As used in this part:

“Personal vehicle” means a vehicle that is:

- (1) Used by a transportation network company driver to provide a prearranged ride;
- (2) Owned, leased, or otherwise authorized for use by the transportation network company driver; and
- (3) Not a taxicab, limousine, or other for-hire vehicle.

“Prearranged ride” means the provision of transportation by a transportation network company driver to a passenger, beginning when a transportation network company driver accepts a passenger’s request for a ride through a digital network or software application service controlled by a transportation network company, continuing while the transportation network company driver transports the requesting passenger, and ending when the requesting passenger, or the last passenger from the requesting passenger’s party, departs from the personal vehicle. A prearranged ride shall not include transportation provided through a ridesharing arrangement, as defined in section 279G-1; use of a taxicab, limousine, or other for-hire vehicle; or a regional transportation provider.

“Transportation network company” means an entity that uses a digital network or software application service to connect passengers to transportation network company drivers; provided that the entity:

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

“Transportation network company driver” means an individual who operates a personal 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 prearranged rides to passengers.

§431:10C-B Relation to other laws. Solely for the purposes of this article, 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.

§431:10C-C Transportation network company and transportation network company driver; disclosure; limitations; insurance requirements. (a) Upon entering into an agreement with a transportation network company driver, a transportation network company shall immediately disclose the following in writing to the transportation network company driver:

- (1) The insurance coverage and limits of liability that the transportation network company provides when the transportation network company driver uses a personal vehicle while engaged in a prearranged ride; and
 - (2) That the transportation network company driver's personal motor vehicle insurance policy might not provide any required or optional coverage when the transportation network company driver uses a personal vehicle while engaged in a prearranged ride.
- (b) On or before September 1, 2016, and thereafter, a transportation network company driver or transportation network company on the transportation network company driver's behalf shall maintain a primary motor vehicle insurance policy that recognizes that the transportation network company driver is a transportation network company driver or otherwise uses a personal vehicle to transport passengers for compensation and covers the transportation network company driver:
- (1) While the transportation network company driver is logged onto the transportation network company's digital network or software application service; and
 - (2) While the transportation network company driver is engaged in a prearranged ride.
- (c) The following motor vehicle insurance requirements shall apply while a participating transportation network company driver is logged onto the transportation network company's digital network or software application service and is available to receive transportation requests but is not engaged in a prearranged ride:
- (1) Primary motor vehicle liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per accident, and \$25,000 for property damage per accident, costs of defense outside of all such limits;
 - (2) Personal injury protection coverage that meets the minimum coverage amount where required by section 431:10C-103.5; and
 - (3) The coverage requirements of this subsection may be satisfied by any of the following:
 - (A) A motor vehicle insurance policy maintained by the transportation network company driver;
 - (B) A motor vehicle insurance policy maintained by the transportation network company; or
 - (C) Any combination of subparagraphs (A) and (B).
- (d) The following motor vehicle insurance requirements shall apply while a transportation network company driver is engaged in a prearranged ride:
- (1) Primary motor vehicle liability insurance that provides at least \$1,000,000 for death, bodily injury, and property damage per accident, costs of defense outside such limits;
 - (2) Personal injury protection coverage that meets the minimum coverage amount where required by section 431:10C-103.5; and
 - (3) The coverage requirements of this subsection may be satisfied by any of the following:
 - (A) A motor vehicle insurance policy maintained by the transportation network company driver;

(B) A motor vehicle insurance policy maintained by the transportation network company; or

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

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

(f) Insurers providing the motor vehicle insurance policies pursuant to this section shall offer the following optional coverages, which any named insured may elect to reject or purchase:

(1) Uninsured and underinsured motorist coverages for the transportation network company driver and passengers, as provided in section 431:10C-301, which shall be equal to the primary liability limits specified in subsections (c) and (d); provided that uninsured and underinsured motorist coverage offers shall also provide for written rejection of the coverages as provided in section 431:10C-301;

(2) Uninsured and underinsured motorist coverage stacking options as provided in section 431:10C-301; provided that the offer of the stacking options shall also provide for written rejection as provided in section 431:10C-301; and

(3) An offer of required optional additional insurance coverages as provided in section 431:10C-302.

(g) In the event the only named insured under the motor vehicle insurance policy issued pursuant to this section is the transportation network company, the insurer or the transportation network company shall:

(1) Disclose the coverages in writing to the transportation network company driver;

(2) Disclose to the transportation network company driver in writing that all optional coverages available may not have been purchased under sections 431:10C-301 and 431:10C-302; and

(3) Obtain a written acknowledgment from the transportation network company driver of receipt of the written disclosures required in paragraphs (1) and (2).

The standard disclosure forms used in paragraphs (1) and (2), and every modification of such forms intended to be used, must be filed with the commissioner within fifteen days of providing such disclosure to the transportation network company driver. The insurer shall also send to the transportation network company driver every modified disclosure form within fifteen days of the filing of such modified disclosure form and comply with paragraph (3). Such disclosures and acknowledgment may be sent and received by electronic means.

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

(i) Insurance required by this section may be placed with an insurer licensed under section 431:3-203 or with a surplus lines insurer eligible under section 431:8-301 that has a credit rating of no less than A minus from A.M. Best or A from Demotech or similar rating from another rating agency recognized by the insurance division.

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

(k) A transportation network company driver shall carry proof of coverage that meets the requirements of subsections (c) and (d) at all times dur-

ing the transportation network company driver's use of a personal vehicle in connection with a transportation network company's digital network or software application service. In the event of an accident, a transportation network company driver shall provide this insurance coverage information to the directly interested parties, motor vehicle insurers, and investigating police officers, upon request. Upon such request, a transportation network company driver shall also disclose to directly interested parties, motor vehicle insurers, and investigating police officers whether the transportation network company driver was logged on to the transportation network company's digital network or software application service or engaged in a prearranged ride at the time of the accident.

(l) Unless specified in the personal motor vehicle insurance policy or endorsement, nothing in this section shall be construed to require a personal motor vehicle insurance policy maintained by a transportation network company driver to provide primary or excess coverage while engaged in a prearranged ride. While the transportation network company driver is engaged in a prearranged ride, 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 motor vehicle insurance policy shall not be required to provide any coverage to any person or entity unless the policy expressly provides for that coverage while the driver is engaged in a prearranged ride, with or without a separate charge, or the policy contains an amendment or endorsement to provide coverage while the driver is engaged in a prearranged ride, for which a separately stated premium may be charged; and

(2) The transportation network company driver's or the vehicle owner's personal motor vehicle insurance policy shall not be required to provide a duty to defend or indemnify the driver's activities in connection with the transportation network company, unless the policy expressly provides otherwise while the driver is engaged in a prearranged ride, with or without a separate charge, or the policy contains an amendment or endorsement to provide coverage while the driver is engaged in a prearranged ride, for which a separately stated premium may be charged.

(m) This section shall not restrict any motor vehicle insurance policy coverage applicable to a passenger or pedestrian, other than the limitations in the transportation network company driver's or the vehicle owner's personal motor vehicle insurance policy described in subsection (l).

(n) Notwithstanding any other law to the contrary, a personal motor vehicle insurer may, at its discretion, offer a motor vehicle 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 the driver is logged onto the transportation network company's digital network or software application service, or while engaged in a prearranged ride, if the policy expressly provides for coverage while the driver is logged onto the transportation network company's digital network or software application service or engaged in prearranged rides, with or without a separate charge, or the policy contains an amendment or an endorsement to provide coverage while the driver is logged onto the transportation network company's digital network or software application service or engaged in a prearranged ride, for which a separately stated premium may be charged.

(o) Notwithstanding any other law affecting whether one or more policies of insurance that may apply with respect to an occurrence is primary or ex-

cess, this section shall determine the obligations under insurance policies issued to transportation network companies and, if applicable, transportation network company drivers.

§431:10C-D Records. (a) A transportation network company shall maintain:

- (1) Global positioning system records and electronic records for each period while a transportation network company driver is logged onto the transportation network company's digital network or software application service or is engaged in a prearranged ride for at least five years from the date each prearranged ride was provided; and
 - (2) Transportation network company driver records at least until the five year anniversary of the date on which a transportation network company driver's activation on the transportation network company digital network or software application service has ended.
- (b) Records maintained under this section shall be made readily available for purposes of an accident investigation pursuant to section 431:10C-C(k) or resolving any other dispute related to transportation network company drivers while they are logged onto the transportation network company's digital network or software application service or while they are engaged in a prearranged ride, no later than ten days after receipt of a written request for such record.

§431:10C-E Disclaimers, waiver of liability, and indemnity agreements invalid. None of the following agreements between a transportation network company or transportation network company driver and a passenger shall be valid or enforceable in this State:

- (1) A disclaimer of liability of a transportation network company or transportation network company driver;
- (2) A waiver, before the occurrence of an accident, of any claim or right to file a lawsuit by a passenger against a transportation network company or transportation network company driver; or
- (3) An agreement by the passenger to defend, indemnify, or hold harmless a transportation network company or transportation network company driver."

SECTION 3. The insurance commissioner shall conduct an annual study on the impact of this measure on personal motor vehicle insurance policy rates in the State and shall submit a written report of findings and recommendations, including any necessary proposed legislation, to the legislature no later than twenty days prior to the convening of the regular sessions of 2017, 2018, 2019, 2020, and 2021.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. This Act shall take effect upon its approval; provided that section 2 of this Act shall take effect on September 1, 2016; provided further that this Act shall be repealed on September 1, 2021.

(Approved July 12, 2016.)