

JAN 23 2015

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# A BILL FOR AN ACT

RELATING TO TRANSPORTATION NETWORK COMPANIES.

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

1           SECTION 1. The legislature finds that transportation  
2 network companies are operating across the country, including in  
3 Hawaii, and that the public is receptive to this innovation in  
4 transportation. Transportation network companies have expanded  
5 transportation options for the benefit of society. They have  
6 also inspired persons providing more traditional modes of public  
7 transportation to modernize and enhance their delivery of  
8 transportation services to the public.

9           The legislature further finds that consumers must be  
10 afforded the protection of law when doing business with  
11 transportation network companies. Currently, transportation  
12 network companies are not licensed or regulated in Hawaii.  
13 Although transportation network companies may operate under a  
14 different business model for connecting customers with drivers,  
15 their primary service is that of a motor carrier - to transport  
16 passengers or property for compensation. Accordingly,  
17 transportation network companies must be subject to the same



1 regulations and governmental oversight applicable to other  
2 traditional motor carriers.

3 The legislature further finds that ensuring the  
4 availability and affordability of personal motor vehicle  
5 insurance policies and assigning the insurance risk where it  
6 belongs are of utmost importance. Because transportation  
7 network drivers provide transportation for compensation, they  
8 engage in commercial activity. Therefore, motor vehicles used  
9 by transportation network drivers must be insured under  
10 commercial motor vehicle insurance policies, at limits higher  
11 than the statutory minimum liability limits.

12 The purpose of this Act is to regulate transportation  
13 network companies and require transportation network drivers to  
14 obtain commercial motor vehicle insurance.

15 SECTION 2. Section 271-4, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§271-4 Definitions. As used in this chapter:

18 [~~(1) "Chapter" means the Motor Carrier Law.~~

19 ~~(2) "Commission" means the public utilities commission.~~

20 ~~(3) "Person" or "persons" means any individual, firm,~~  
21 ~~copartnership, corporation, company, association, or~~



1           ~~joint stock association, and includes any trustee,~~  
 2           ~~receiver, assignee, or personal representative~~  
 3           ~~thereof.~~

4           (4)] "Certificate" means a certificate of public  
 5 convenience and necessity issued under this chapter to common  
 6 carriers by motor vehicle.

7           "Chapter" means the Motor Carrier Law.

8           "Commission" means the public utilities commission.

9           "Common carrier by motor vehicle" means any person,  
 10 including a transportation network company or a transportation  
 11 network driver, which holds itself out to the general public to  
 12 engage in the transportation by motor vehicle of passengers or  
 13 property or any class or classes thereof for compensation.

14           "Contract carrier by motor vehicle" means any person,  
 15 including a transportation network company or a transportation  
 16 network driver, which engages in transportation by motor vehicle  
 17 of passengers or property for compensation (other than  
 18 transportation referred to in the definition of "common carrier  
 19 by motor vehicle") under continuing contracts with one person or  
 20 a limited number of persons either: for the furnishing of  
 21 transportation services through the assignment of motor vehicles



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1 for a continuing period of time to the exclusive use of each  
2 person served; or for the furnishing of transportation services  
3 designed to meet the distinct need of each individual customer.

4 "Enforcement officer" means any person employed and  
5 authorized by the commission to investigate any matter on behalf  
6 of the commission. The term also means a motor vehicle safety  
7 officer employed and assigned, pursuant to section 271-38, by  
8 the department of transportation to enforce sections 271-8, 271-  
9 12, 271-13, 271-19, and 271-29 through the assessment of civil  
10 penalties as provided in section 271-27(h), (i), and (j).

11 "Highway" means the public roads, highways, streets, and  
12 ways in this State.

13 "Motor carrier" includes both a common carrier by motor  
14 vehicle and a contract carrier by motor vehicle.

15 "Motor vehicle" means any vehicle, machine, tractor,  
16 trailer, or semitrailer propelled or drawn by mechanical power  
17 and used upon the highways in the transportation of passengers  
18 or property, or any combination thereof determined by the  
19 commission, but does not include any vehicle, locomotive, or car  
20 operated exclusively on a rail or rails or a trolley bus  
21 operated by electric power derived from a fixed overhead wire,



1 furnishing local passenger transportation similar to street-  
2 railway service.

3 [~~5~~] "Permit" means a permit issued under this chapter to  
4 contract carriers by motor vehicle.

5 "Person" or "persons" means any individual, firm,  
6 copartnership, corporation, company, association, or joint stock  
7 association; and includes any trustee, receiver, assignee, or  
8 personal representative thereof.

9 "Private carrier of property by motor vehicle" means any  
10 person not included in the terms "common carrier by motor  
11 vehicle" or "contract carrier by motor vehicle", who or which  
12 transports by motor vehicle property of which the person is the  
13 owner, lessee, or bailee, when such transportation is for the  
14 purpose of sale, lease, rent, or bailment, or in the furtherance  
15 of any commercial enterprise.

16 "Rates" includes rates, fares, tolls, rentals, and charges  
17 of whatever kind and nature unless the context indicates  
18 otherwise.

19 [~~6~~] "Transportation of persons" includes every service  
20 in connection with or incidental to the safety, comfort, or



1 convenience of persons transported and the receipt, carriage,  
2 and delivery of these persons and their baggage.

3       ~~[(7)]~~ "Transportation of property" includes every service  
4 in connection with or incidental to the transportation of  
5 property, including in particular its receipt, delivery,  
6 elevation, transfer, carriage, ventilation, refrigeration,  
7 icing, dunnage, storage in transit, handling, and its  
8 consolidation for the purposes of forwarding within the State.

9       ~~[(8)]~~ ~~"Motor vehicle" means any vehicle, machine, tractor,~~  
10 ~~trailer, or semitrailer propelled or drawn by~~  
11 ~~mechanical power and used upon the highways in the~~  
12 ~~transportation of passengers or property, or any~~  
13 ~~combination thereof determined by the commission, but~~  
14 ~~does not include any vehicle, locomotive, or car~~  
15 ~~operated exclusively on a rail or rails or a trolley~~  
16 ~~bus operated by electric power derived from a fixed~~  
17 ~~overhead wire, furnishing local passenger~~  
18 ~~transportation similar to street railway service.~~

19       ~~(9)~~ ~~"Highway" means the public roads, highways, streets,~~  
20 ~~and ways in this State.~~



- 1       ~~(10) "Rates" includes rates, fares, tolls, rentals, and~~  
2       ~~charges of whatever kind and nature unless the context~~  
3       ~~indicates otherwise.~~
- 4       ~~(11) "Common carrier by motor vehicle" means any person~~  
5       ~~which holds itself out to the general public to engage~~  
6       ~~in the transportation by motor vehicle of passengers~~  
7       ~~or property or any class or classes thereof for~~  
8       ~~compensation.~~
- 9       ~~(12) "Contract carrier by motor vehicle" means any person~~  
10      ~~which engages in transportation by motor vehicle of~~  
11      ~~passengers or property for compensation (other than~~  
12      ~~transportation referred to in paragraph (11)) under~~  
13      ~~continuing contracts with one person or a limited~~  
14      ~~number of persons either (A) for the furnishing of~~  
15      ~~transportation services through the assignment of~~  
16      ~~motor vehicles for a continuing period of time to the~~  
17      ~~exclusive use of each person served, or (B) for the~~  
18      ~~furnishing of transportation services designed to meet~~  
19      ~~the distinct need of each individual customer.~~
- 20      ~~(13) "Motor carrier" includes both a common carrier by~~  
21      ~~motor vehicle and a contract carrier by motor vehicle.~~



1       ~~(14) "Private carrier of property by motor vehicle" means~~  
2       ~~any person not included in the terms "common carrier~~  
3       ~~by motor vehicle" or "contract carrier by motor~~  
4       ~~vehicle", who or which transports by motor vehicle~~  
5       ~~property of which the person is the owner, lessee, or~~  
6       ~~bailee, when such transportation is for the purpose of~~  
7       ~~sale, lease, rent, or bailment, or in the furtherance~~  
8       ~~of any commercial enterprise.~~

9       ~~(15) "Enforcement officer" means any person employed and~~  
10       ~~authorized by the commission to investigate any matter~~  
11       ~~on behalf of the commission. The term also means a~~  
12       ~~motor vehicle safety officer employed and assigned,~~  
13       ~~pursuant to section 271-38, by the department of~~  
14       ~~transportation to enforce sections 271-8, 271-12, 271-~~  
15       ~~13, 271-19, and 271-29 through the assessment of civil~~  
16       ~~penalties as provided in section 271-27(h), (i), and~~  
17       ~~(j).]~~

18       "Transportation network company" means any person that  
19       provides, coordinates, or maintains an online-enabled  
20       application or digital network used to connect customers with  
21       drivers of motor vehicles for the purpose of providing





1 prearranged transportation of persons or prearranged  
2 transportation of property for compensation.

3 "Transportation network driver" means any person who, at  
4 any time, uses a motor vehicle in connection with a  
5 transportation network company, and who is not regulated by the  
6 counties in accordance with section 46-16.5(c)."

7 SECTION 3. Section 271-5, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§271-5 Exemptions, generally. Notwithstanding any other  
10 provisions of this chapter, its contents shall not apply to:

11 (1) Persons transporting their own property where the  
12 transportation is in furtherance of a primary business  
13 purpose or enterprise of that person, except where the  
14 transportation is undertaken by a motor carrier to  
15 evade the regulatory purposes of this chapter;

16 (2) Persons operating motor vehicles when engaged in the  
17 transportation of school children and teachers to and  
18 from school, and to and from school functions;  
19 provided that these persons may engage in providing  
20 transportation at special rates for groups of persons  
21 belonging to an eleemosynary or benevolent



1 organization or association domiciled in this State  
2 where the organization or association sponsors or is  
3 conducting a nonregular excursion; provided that  
4 whenever the persons engage in the transportation of  
5 persons other than those exempted in this paragraph,  
6 that portion of their operation shall not be exempt  
7 from this chapter. Nothing in this paragraph shall be  
8 construed to authorize any person to engage in the  
9 transportation of persons, other than the  
10 transportation of persons exempted by the terms of  
11 this paragraph, without a permit or certificate issued  
12 by the commission authorizing such transportation;

13 (3) Persons operating taxicabs [~~or other motor vehicles~~  
14 ~~utilized in performing a bona fide taxicab service~~].

15 "Taxicab" includes:

16 (A) Any motor vehicle used in the movement of  
17 passengers on the public highways under the  
18 following circumstances, namely the passenger  
19 hires the vehicle on call or at a fixed stand,  
20 with or without baggage for transportation, and



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1 controls the vehicle to the passenger's  
2 destination;

3 (B) Any motor vehicle for hire having seating  
4 accommodations for eight or fewer passengers used  
5 in the movement of passengers on the public  
6 highways that may, as part of a continuous trip,  
7 pick up or discharge passengers from various  
8 unrelated locations; provided that they shall be  
9 regulated by the counties in accordance with  
10 section 46-16.5(c); and provided further that  
11 this subparagraph shall not apply to any  
12 exclusive rights granted by the department of  
13 transportation for taxicab services at facilities  
14 under the department's control; and

15 (C) Any motor vehicle having seating accommodations  
16 for eight or fewer passengers used in the  
17 movement of passengers on the public highways  
18 between a terminal, i.e., a fixed stand, in the  
19 Honolulu district, as defined in section 4-1 and  
20 a terminal in a geographical district outside the  
21 limits of the Honolulu district, and vice versa,



1 without picking up passengers other than at the  
2 terminals or fixed stands; provided that the  
3 passengers may be picked up by telephone call  
4 from their homes in the rural area or may be  
5 unloaded at any point between the fixed stands or  
6 may be delivered to their homes in the rural  
7 area;

8 "Taxicab" does not include a motor vehicle while being  
9 operated by a transportation network driver.

10 (4) Persons operating motor vehicles in the transportation  
11 of persons pursuant to a franchise from the  
12 legislature and whose operations are presently  
13 regulated under chapter 269;

14 (5) Nonprofit agricultural cooperative associations to the  
15 extent that they engage in the transportation of their  
16 own property or the property of their members;

17 (6) Persons operating motor vehicles specially constructed  
18 for the towing of disabled or wrecked vehicles but not  
19 otherwise used in the transportation of property for  
20 compensation or hire;



- 1           (7) Persons operating motor vehicles in the transportation  
2           of mail, newspapers, periodicals, magazines, messages,  
3           documents, letters, or blueprints;
- 4           (8) Persons operating funeral cars or ambulances;
- 5           (9) Persons operating motor vehicles in the transportation  
6           of garbage or refuse;
- 7           (10) Persons operating the type of passenger carrying motor  
8           vehicles known as "sampan buses" within the radius of  
9           twenty miles from the city of Hilo, Hawaii;
- 10          (11) Persons transporting unprocessed pineapple to a  
11          cannery, seed corn to a processing facility, or  
12          returning any containers used in such transportation  
13          to the fields;
- 14          (12) Sugar plantations transporting sugarcane, raw sugar,  
15          molasses, sugar by-products, and farming supplies for  
16          neighboring farmers pursuant to contracts administered  
17          by the United States Department of Agriculture;
- 18          (13) Persons engaged in the ranching or meat or feed  
19          business who transport cattle to slaughterhouses for  
20          hire where such transportation is their sole  
21          transportation for hire and where their earnings from



- 1 the transportation constitute less than fifty per cent  
2 of their gross income from their business and the  
3 transportation for hire;
- 4 (14) Persons transporting unprocessed raw milk to  
5 processing plants and returning any containers used in  
6 such transportation to dairy farms for reloading;
- 7 (15) Persons transporting animal feeds to animal husbandry  
8 farmers and farming supplies directly to animal  
9 husbandry farmers and returning any containers used in  
10 such transportation to these sources of such feeds and  
11 supplies for reloading;
- 12 (16) Persons engaged in transporting not more than fifteen  
13 passengers between their places of abode, or termini  
14 near such places, and their places of employment in a  
15 single daily round trip where the driver is also on  
16 the driver's way to or from the driver's place of  
17 employment[+], but not including transportation  
18 network drivers;
- 19 (17) Persons transporting passengers without charge in  
20 motor vehicles owned or operated by such person, where  
21 such transportation is provided in conjunction with



1 and in furtherance of a related primary business  
2 purpose or enterprise of that person, and such  
3 transportation is provided only directly to and from  
4 the place of business of such person, except that this  
5 exemption shall not apply to persons making any  
6 contract, agreement, or arrangement to provide,  
7 procure, furnish, or arrange for transportation as a  
8 travel agent or broker or a person engaged in tour or  
9 sightseeing activities, nor shall this exemption apply  
10 where the transportation is undertaken by a person to  
11 evade the regulatory purposes of this chapter; and

12 (18) Persons conducting the type of county-regulated  
13 passenger carrying operation known as "jitney  
14 services". For the purposes of this paragraph,  
15 "jitney services" means public transportation services  
16 utilizing motor vehicles that have seating  
17 accommodations for six to twenty-five passengers,  
18 operate along specific routes during defined service  
19 hours, and levy a flat fare schedule."

20 SECTION 4. Section 271-17, Hawaii Revised Statutes, is  
21 amended to read as follows:

1           "§271-17 Security for protection of public. No  
2 certificate or permit shall be issued to a motor carrier or  
3 remain in force unless such carrier complies with such  
4 reasonable rules and regulations as the public utilities  
5 commission shall prescribe governing the filing and approval of  
6 surety bonds, policies of insurance, qualifications as a self-  
7 insurer, or other securities or agreements, in amounts required  
8 by section 431:10C-301(b) or in such [reasonable] greater  
9 amounts as the commission may require, [~~conditioned to pay~~  
10 ~~within the amount of the surety agreements moneys finally~~  
11 ~~recovered against the motor carrier]~~ for bodily injuries to or  
12 the death of any person resulting from the negligent operation,  
13 maintenance, or use of motor vehicles under the certificate, or  
14 permit or for loss or damage to property of others. The  
15 commission may, in its discretion and under such rules and  
16 regulations as it shall prescribe, require any such carrier to  
17 file a surety bond, policies of insurance, qualifications as a  
18 self-insurer, or other securities or agreements in a sum to be  
19 determined by the commission to be conditioned upon the carrier  
20 making compensation to shippers or consignees for all property  
21 belonging to shippers or consignees, and coming into the





1 possession of such carrier in connection with its transportation  
2 service. Any common carrier which may be required by law to  
3 compensate a shipper or consignee for any loss, damage, or  
4 default for which a connecting motor common carrier is legally  
5 responsible shall be subrogated to the rights of such shipper or  
6 consignee under any such bond, policies of insurance, or other  
7 securities or agreements, to the extent of the sum so paid."

8 SECTION 5. Section 271-29, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§271-29 Identification of carriers. (a) The public  
11 utilities commission is authorized, under such rules and  
12 regulations as it shall prescribe, to require the display of  
13 suitable identification number or numbers, upon any motor  
14 vehicle used in transportation subject to this chapter, and to  
15 provide for the issuance of numbers. Any substitution,  
16 transfer, or use of any identification number or numbers, except  
17 such as may be duly authorized by the commission, is prohibited  
18 and shall be unlawful.

19 (b) Any motor vehicle being operated by a transportation  
20 network driver shall display the name or other mark of the



1 transportation network company in a conspicuous place on the  
2 motor vehicle at all times."

3 SECTION 6. Section 431:10C-301, Hawaii Revised Statutes,  
4 is amended to read as follows:

5 "§431:10C-301 Required motor vehicle policy coverage. (a)

6 An insurance policy covering a motor vehicle shall provide:

- 7 (1) Coverage specified in section 431:10C-304; and  
8 (2) Insurance to pay on behalf of the owner or any  
9 operator of the insured motor vehicle using the motor  
10 vehicle with a reasonable belief that the person is  
11 entitled to operate the motor vehicle, sums which the  
12 owner or operator may legally be obligated to pay for  
13 injury, death, or damage to property of others, except  
14 property owned by, being transported by, or in the  
15 charge of the insured, which arise out of the  
16 ownership, operation, maintenance, or use of the motor  
17 vehicle; provided that in the case of a U-drive motor  
18 vehicle, insurance to pay on behalf of the renter or  
19 any operator of the insured motor vehicle using the  
20 motor vehicle with the express permission of the  
21 renter or lessee, sums which the renter or operator



1           may be legally obligated to pay for damage or  
2           destruction of property of others (except property  
3           owned by, being transported by, or in the charge of  
4           the renter or operator) arising out of the operation  
5           or use of the motor vehicle unless the motor vehicle  
6           is reported stolen by the owner within three days of  
7           notification of the incident; provided that the  
8           insurer and owner of a U-drive vehicle shall have the  
9           right of subrogation against the renter and operator  
10          for breach of the rental contract between owner and  
11          renter; and provided further that, in the event that  
12          any motor vehicle offered for rental or lease is  
13          involved in an accident, the lessor shall provide all  
14          information it has or obtains relevant to the accident  
15          to all other involved parties upon their request,  
16          including but not limited to information about the  
17          lessee, and the driver of the vehicle if other than  
18          the lessee.

- 19          (b) A motor vehicle insurance policy shall include:
  - 20               (1) Liability coverage of not less than \$20,000 per
  - 21               person, with an aggregate limit of \$40,000 per



1 accident, for all damages arising out of accidental  
2 harm sustained as a result of any one accident and  
3 arising out of ownership, maintenance, use, loading,  
4 or unloading of a motor vehicle; provided that, in the  
5 case of any taxicab or motor carrier, as defined in  
6 chapter 271, liability coverage under a commercial  
7 motor vehicle insurance policy of not less than  
8 \$100,000 per person, with an aggregate limit of  
9 \$200,000 per accident, for all damages arising out of  
10 accidental harm sustained as a result of any one  
11 accident and arising out of ownership, maintenance,  
12 use, loading, or unloading of a motor vehicle;

- 13 (2) Liability coverage of not less than \$10,000 for all  
14 damages arising out of damage to or destruction of  
15 property including motor vehicles and including the  
16 loss of use thereof, but not including property owned  
17 by, being transported by, or in the charge of the  
18 insured, as a result of any one accident arising out  
19 of ownership, maintenance, use, loading, or unloading,  
20 of the insured vehicle; provided that, in the case of  
21 any taxicab or motor carrier, as defined in chapter



1           271, liability coverage under a commercial motor  
2           vehicle insurance policy of not less than \$50,000 for  
3           all damages arising out of damage to or destruction of  
4           property including motor vehicles and including the  
5           loss of use thereof, and including property being  
6           transported by or in the charge of the insured, as a  
7           result of any one accident arising out of ownership,  
8           maintenance, use, loading, or unloading, of the  
9           insured vehicle;

- 10           (3) With respect to any motor vehicle registered or  
11           principally garaged in this State, liability coverage  
12           provided therein or supplemental thereto, in limits  
13           for bodily injury or death set forth in paragraph (1),  
14           under provisions filed with and approved by the  
15           commissioner, for the protection of persons insured  
16           thereunder who are legally entitled to recover damages  
17           from owners or operators of uninsured motor vehicles  
18           because of bodily injury, sickness, or disease,  
19           including death, resulting therefrom; provided that  
20           the coverage required under this paragraph shall not



1 be applicable where any named insured in the policy  
2 shall reject the coverage in writing; and

3 (4) Coverage for loss resulting from bodily injury or  
4 death suffered by any person legally entitled to  
5 recover damages from owners or operators of  
6 underinsured motor vehicles. An insurer may offer the  
7 underinsured motorist coverage required by this  
8 paragraph in the same manner as uninsured motorist  
9 coverage; provided that the offer of both shall:

10 (A) Be conspicuously displayed so as to be readily  
11 noticeable by the insured;

12 (B) Set forth the premium for the coverage adjacent  
13 to the offer in a manner that the premium is  
14 clearly identifiable with the offer and may be  
15 easily subtracted from the total premium to  
16 determine the premium payment due in the event  
17 the insured elects not to purchase the option;  
18 and

19 (C) Provide for written rejection of the coverage by  
20 requiring the insured to affix the insured's



1 signature in a location adjacent to or directly  
2 below the offer.

3 (c) The stacking or aggregating of uninsured motorist  
4 coverage or underinsured motorist coverage is prohibited, except  
5 as provided in subsection (d).

6 (d) An insurer shall offer the insured the opportunity to  
7 purchase uninsured motorist coverage and underinsured motorist  
8 coverage by offering the following options with each motor  
9 vehicle insurance policy:

10 (1) The option to stack uninsured motorist coverage and  
11 underinsured motorist coverage; and

12 (2) The option to select uninsured motorist coverage and  
13 underinsured motorist coverage, whichever is  
14 applicable, up to but not greater than the bodily  
15 injury liability coverage limits in the insured's  
16 policy.

17 These offers are to be made when a motor vehicle insurance  
18 policy is first applied for or issued. For any existing  
19 policies, an insurer shall offer such coverage at the first  
20 renewal after January 1, 1993. Once an insured has been  
21 provided the opportunity to purchase or reject the coverages in



1 writing under the options, no further offer is required to be  
2 included with any renewal or replacement policy issued to the  
3 insured.

4 (e) If uninsured motorist coverage or underinsured  
5 motorist coverage is rejected, pursuant to section 431:10C-  
6 301(b):

7 (1) The offers required by section 431:10C-301(d) are not  
8 required to be made;

9 (2) No further offers or notice of the availability of  
10 uninsured motorist coverage and underinsured motorist  
11 coverage are required to be made in connection with  
12 any renewal or replacement policy; and

13 (3) The written rejections required by section 431:10C-  
14 301(b) shall be presumptive evidence of the insured's  
15 decision to reject the options.

16 (f) A personal motor vehicle insurance policy issued or  
17 renewed after July 1, 2015, shall not include coverage of any  
18 kind under this article for a taxicab or a motor vehicle used by  
19 a motor carrier, as defined in chapter 271, or their owners or  
20 operators."





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1 SECTION 7. This Act does not affect rights and duties that  
 2 matured, penalties that were incurred, and proceedings that were  
 3 begun before its effective date.

4 SECTION 8. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect upon its approval.

7

INTRODUCED BY: Randy H Baker  
 Clarence K. Dickerson  
 Will Egan  
~~SC. Keith Adams~~  
D. D. Bigler  
Thomas C. Clark  
John B.  
John D. ...  
 Michelle L. ...  
 ...  
Lawrence J. ...

# S.B. NO. 732

**Report Title:**

Transportation Network Companies; Common Carriers; Motor Carriers; Motor Vehicle Insurance

**Description:**

Regulates transportation network companies under the motor carrier law. Requires transportation network drivers to carry certain levels of commercial motor vehicle insurance. Prohibits personal motor vehicle insurance policies issued or renewed after July 1, 2015, from including coverage for taxicabs or motor vehicles used by motor carriers.

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