

Chairman and Members of the Committee

My name is Noah Ernst. I am the operations manager at Radio Cab Co. in Portland, Oregon. Thank you for taking the time to consider legislation on for-hire transportation in Oregon. It is a very important issue. I hope that you will work to pass legislation that fairly balances the needs of all stakeholders.

Unfortunately, the Transportation Network Companies (“TNCs”) have introduced a bill that creates a playing field in the for-hire transportation industry so unfair that no other companies can compete and that takes away the ability of local jurisdictions to take action on the congestion, pollution, infrastructure, safety, and other social costs of unlimited TNC activity, HB 3023. I hope you will vote against it.

An alternative to HB 3023 has been introduced, HB 3379. It is the product of collaborative effort of all the stakeholders. Of course, Uber and Lyft abandoned the process when it became apparent that they would not get everything they wanted. While house bill HB 3379 has some problems, that I will discuss further, it is a far better piece of legislation. It sets minimums and allows local jurisdictions to continue to regulate the for-hire transportation industry within their jurisdictions to meet local needs and concerns. With some simple amendments it could garner strong support.

### **Discussion of HB 3023**

HB 3023 was introduced by Lyft after the TNCs abandoned the collaborative process to put together regulations to govern for-hire transportation state-wide. It is the worst kind of special interest legislation, drafted by out-of-state corporations for their own benefit. It would give the TNCs everything they want: no meaningful oversight; virtually no cost to operate; no limitation on the number of TNC vehicles, and fines so low that the cost of paying the fines would be lower than the cost of complying with the law. It expands the types of prior criminal offenders who would be allowed to drive for TNCs beyond what is currently allowed in Oregon cities, including allowing some with prior sexual offenses, violent crimes against people, and people who committed felonies out of state. It prevents regulators from viewing any data that identifies a particular individual driver, making it impossible for regulators to ever know if TNC drivers actually meet the limited criminal restrictions provided. It allows unlimited TNC vehicles while it takes away the ability of local jurisdictions to deal with the very real consequences of TNC vehicles on their streets such as congestion, pollution, infrastructure damage, safety, and ensuring transportation options for people with disabilities.

The TNCs argue that HB 3023 is the type of legislation that has been passed in other jurisdictions. They fail to tell you that similar legislation has only been passed in places with existing regulations that govern for-hire transportation. What they propose has not been adopted as the only regulations to govern their activities but has been added to existing regulations to allow them to operate.

Even if similar legislation had been passed elsewhere, it is still bad policy. Oregon has a history of doing the right thing and leading the way. The bottle bill, our system of land use planning, and public beaches are examples of Oregon leading the way that Oregonians are rightfully proud of. Oregon should not adopt HB 3023 because it is bad legislation. We should continue our tradition of doing the right thing, even if no one else is or, more importantly, even when others are doing something else. Please don't

bow to the pressure from a couple of massively funded companies who don't care about Oregon just because they say, "everyone else is doing it". Vote against HB 3023!

At the end of this testimony I have included a more detailed analysis of the many problems of HB 3023.

### **Discussion of HB 3379**

HB 3379 was introduced as an alternative to HB 3023. It is far better legislation that addresses many of the problems of HB 3023.

It sets minimum standards and allows local jurisdictions to continue to regulate TNCs. This is important because local governments are in a far better position to know the problems caused by TNC vehicles. There is no state-wide policy that could meet the need of all the diverse communities that make up Oregon. There should be local control, subject to minimum requirements, and that is what HB 3023 provides.

Additionally, it provides for more stringent requirements regarding who can drive for a TNC than does HB 3023. For-hire transportation providers give rides to the public, including very vulnerable people such as intoxicated people, children, people with disabilities, single women, etc. Because they cannot determine the background of the driver themselves, they rely on government to ensure that the person who is picking them up will not harm them. Those standards should be as strict as possible to protect the public and should not be lowered to benefit the TNCs by making it easier for them to find drivers willing to work for them.

While HB 3379 is far better than HB 3023. It does have some provision that could be improved. I hope it can be amended to make these changes.

Several of the changes have to do with insurance. An issue that is extremely important.

First, HB 3379 appears to allow either the TNC itself or the individual TNC driver to provide the required insurance. Section (6)(3). If the individual TNC driver is allowed to provide the insurance, then the individual TNC driver should be required to provide to state regulators a certificate of insurance from their insurance company showing that they have the required insurance prior to driving for a TNC. There should be no doubt that the insurance requirements have been met prior to the TNC vehicle being on the road, not after. A member of the public cannot check the insurance of a TNC vehicle until after an accident has occurred, and then it is too late.

Second, the insurance requirements of HB 3379 contained in Section (6)(3) are unnecessarily complex. There should simply be \$1,000,000 of coverage for a TNC vehicle from the moment the TNC driver logs onto the TNC App until the TNC driver logs off. It really is that simple. A victim injured in an accident by a TNC driver does not care what "period" the TNC driver is in. They want and expect to be fully completely compensated for their injury. If you were run over in a crosswalk, would you care what "period" the TNC driver was in? All other for-hire transportation providers such as taxis have the same level of coverage 24 hours a day 7 days a week. So should TNCs. The only one who benefits from confusingly different levels of coverage are TNCs. Everyone else, especially accident victims, suffers.

Additionally, Section (9)(b) provides that a TNC driver must disclose to a police officer, if a police officer asks, whether, at the time of an accident, the driver was providing a ride or signed in to a TNC app. In EVERY ACCIDENT a TNC driver should be required to disclose to the other party whether at the time of

the accident the TNC driver was providing a ride for hire or was signed into a TNC app. How else can the injured party know what insurance limits apply or even whether they should be seeing the TNCs proof of insurance? Police officers do not attend the scene of most accidents. This provision only serves to allow TNC driver to refuse to disclose their TNC status in most accidents. They may even give their personal auto insurance rather than disclose that they are working for a TNC and risk having their personal auto insurance drop them. That is something that Radio Cab Co. has experienced every time one of our taxis has been hit by a TNC vehicle, with only one exception.

Not related to insurance, but an important change that should be made is to remove the requirement in Section 4(1)(e) that a TNC enter into an agreement with a local government or a state agency to supply data. TNCs should simply be required to provide relevant data to local governments and state agencies. I know of no other provision in law that makes providing data to regulators subject to an agreement. In Portland, these agreements have been used by TNCs to keep their activities secret from the public. Even the number of vehicles they operate, the number of drivers they have, and who those drivers are is kept secret. Without such basic information, how can the public make informed decisions about the TNCs and issues such as congestion and public safety. They can't. As companies that do business on the public streets, the public has a right to know how many vehicles the TNCs are operating and who their drivers are. There is an old expression that "cockroaches run from the light." We need to shine a light on the operations of all entities who operate on the public streets, not allow them to operate in the shadows.

HB 3379 is not perfect, but with these simple changes it could create a minimum set of standards to effectively regulate the TNCs statewide while allowing local jurisdictions to address their specific issues with TNC operations. Keep insurance simple and require appropriate disclosure. Keep relevant information about TNC activities public so the people of Oregon can make informed decisions about how business is conducted on public roads.

Thank you

Noah Ernst

Radio Cab Co.

Operations Manager

## HB 3023 Feedback

This proposed legislation, prepared by Lyft, does not provide for regulation of the TNCs so much as to take away any serious oversight, either by the State of Oregon or the public, and make the consequences of failure to comply so low, that what little regulation is provided for is likely to be ignored by the TNCs anyway.

### Section 2

(1) This bill pre-empts local jurisdictions from regulating transportation companies (“TNCs”) or participating drivers. Local jurisdictions are far better situated to understand the impact of TNCs on traffic congestion, pollution, and safety in their jurisdiction as well as the impact of TNCs on their overall transportation plans. No statewide regulation should limit the ability of local jurisdictions to regulate the number of TNC vehicles operating in their jurisdictions to ensure public safety, to control congestion and pollution, to require a certain number or percentage of wheelchair accessible vehicles, and to plan local transportation systems. Additionally, municipalities should be able to regulate TNC rates to ensure a living wage for drivers (something which may be different in each jurisdiction depending on cost of living), and to protect the public from price gouging as well as for other public policy reasons that local jurisdictions may have. TNCs adjust prices locally depending on demand. Local jurisdictions are therefore far better situated to assess the impact of TNC rates and determine if regulation is needed.

(2)(a) This subsection is unclear. Without a definition of what it means for an ordinance, resolution or other law to “apply generally,” “regulate traffic,” or “provide for public safety” it would be left to the courts to determine whether a local jurisdiction’s regulation complies. This would create an incentive for TNCs to contest every action of a local jurisdiction that has any impact on their activities creating unnecessary expense and confusion for local jurisdictions.

(2)(b) This section essentially acknowledges that TNCs provide the same service and cause the same issues at airports and other transportation hubs and should be charged the same fee. If they provide the same service and cause the same issues, why treat them differently in any other situation?

### Section 3

(3)(a)(B) A fee of \$5,000 per TNC to operate in Oregon is far too low. It costs the City of Portland hundreds of thousands if not millions of dollars annually to oversee transportation issues in its jurisdiction alone. The costs will be much higher to do so on a state-wide level. \$5,000 per year will not cover the cost to administer the licensing program, let alone regulate the industry, ensure compliance with all applicable law, and protect public safety. It will not cover the cost to the State of Oregon for increased use and degradation of its public roads, increased pollution, increased congestion, or other costs not directly spent by the State of Oregon to oversee TNCs. It is a transparent bid by the TNCs to shift the burden of the public cost of their business activities to the State of Oregon and escape all responsibility themselves.

(4)(1)(c) Inspections of TNC vehicles should be provided to the regulatory body, not to the TNCs. Inspections should be done by ASE certified master mechanics and should be

conducted by an independent third-party, not by the TNCs themselves. In Portland TNCs certify “inspections” that last less than a minute and never lift the vehicle off the ground. These “inspections” endanger public safety.

(4)(e)(b) This provision is unnecessary. There should be no time during which the TNC vehicle is providing rides or is connected to the TNC’s network that the TNC’s insurance does not cover the TNC vehicle. From the moment a TNC driver connects to the TNC’s network until the time the driver logs off, the TNC vehicle should be covered by the TNC’s insurance.

## Section 5

(1) This section allows the TNCs to regulate themselves and license their own drivers. Given the nationwide problems with TNC drivers assaulting, robbing, raping, and even killing passengers, the TNCs should not license their own drivers. If the State of Oregon is going to regulate TNCs, then the State of Oregon, not the TNCs should license TNC drivers. The State of Oregon should obtain and review the all data required from applicants and should issue permits to them verifying that the TNC drivers have met all the requirements. If ODOT is going to regulate the TNCs, then the permits to operate as a TNC driver could be issued through the already existing DMVs.

(1)(a) The TNCs’ insurance should cover the TNC vehicle at all times that the TNC driver is connected to a TNCs’ network. TNC drivers should also provide to the State of Oregon a certificate from the TNCs driver’s personal auto insurance company verifying that the TNC driver’s personal auto insurance company is aware that the TNC driver is driving for a TNC and the limits of the TNC driver’s coverage.

(2)(a)(A) The background check should be conducted by an independent third-party and should be a fingerprint background check to verify the identity of the person on whom the background check is being run.

(2)(b) If ODOT is going to regulate the TNCs then surely ODOT would be in the best position to obtain and review the driving records of TNC drivers.

(3) ODOT should revoke the TNC license of TNC drivers who do not meet the requirements. This should not be left to the TNCs.

(3)(d) As set forth above, proof of insurance should be provided to the State of Oregon.

(3)(f) This section is far to complex and would allow TNC drivers with multiple moving violations to remain on the road. It should simply say, that a TNC driver may not have three moving violations in one year.

(3)(g)(A) This section would allow felons to keep driving for a TNC in Oregon as long as they committed the felony in another jurisdiction. It should preclude drivers with felonies from driving for a TNC in Oregon regardless of where they committed the felony.

(3)(g)(B) This section would allow violent criminals to drive for TNCs. No one who has been convicted of a violent crime against a person, whether a felony or a misdemeanor, especially not sex offenses, should be providing transportation to the public. Already, TNCs

have a problem with their drivers assaulting, robbing, raping, and even killing passengers. Why allow people already convicted of any of those offenses to drive for TNCs. Passengers alone in a vehicle with a TNC driver are especially vulnerable. TNC passengers are often intoxicated or otherwise not able to defend themselves. They need additional protection not less.

#### Section 6

(1)(b)(F) This section provides that TNCs may not discriminate based on disability, however, TNCs have no wheelchair accessible vehicles. TNCs have been, and currently are, the subject of lawsuits across the country regarding their failure to comply with the Americans with Disabilities Act. It is important that any regulator require concrete actions by TNCs to ensure they provide equal service to disabled passengers.

#### Section 8

(1) The TNC should provide insurance coverage and not the participating driver. This section would allow the driver to provide the insurance but would not require the participating driver to provide proof of the driver's coverage to the State of Oregon. This Section does not address whose insurance is primary if a TNC driver is logged into more than one TNC network at the same time. Both TNC insurance policies should be primary and jointly and severally liable. The TNCs should have to fight with each other regarding coverage, the victim of an accident should not have to fight with both TNCs when they both deny coverage claiming the other TNC's insurance is primary.

(2)(a) This section provides different coverage requirements depending on the states of the TNC driver. \$1 million of coverage should be required for a TNC vehicle at all times the TNC trade dress is displayed in the vehicle. A member of the public has no way of knowing if a TNC driver is logged into the TNC network and should be able to rely on the public display of the TNC trade dress as to what insurance information should be produced. In any event, \$1 million of coverage should be required at all times a TNC driver is logged into the TNC network. More accidents happen for for-hire transportation drivers when the driver is waiting to be matched to a passenger and not when a passenger is in the vehicle. Additionally, it does not matter to a person who was hit by a TNC vehicle whether the vehicle had a passenger in the car. The victim is not less injured because the TNC vehicle had not yet been matched to an order.

(4) This section allows a participating driver's personal insurance policy to be primary. The TNCs insurance should always be primary at any time the TNC driver is logged into the TNC network.

(6) This section allows the TNC or the participating driver to provide the insurance. The insurance should be provided by the TNC. If the participating driver is allowed to provide the insurance, the participating driver should be required to provide the State of Oregon with a certificate from the participating driver's insurance company showing the participating driver's insurance meets the insurance requirements.

(9)(b) TNC driver should be required to disclose to any directly involved party whether they are logged into a TNC network at the time of an accident, regardless of whether they are asked, but certainly if they are asked. Police officers do not come to most accident scenes. This

subsection serves no purpose other than to allow TNC drivers to provide their personal auto insurance policy even when logged into a TNC network by allowing them to withhold that are driving for a TNC. This type of insurance fraud is already rampant.

## Section 10

(1) This subsection allows TNCs to exclude from records subject to inspection anything that identifies a particular participating driver. This prevents the State of Oregon from every verifying that the TNCs have actually removed drivers with disqualifying criminal or driving records. This subsection also requires the TNC and the State to agree with the TNC on a method for choosing a sample. The State should be allowed to inspect as much or as little of a TNC's records as it deems necessary to insure compliance. The TNC should not be allowed to dictate or negotiation with the State regarding what the State needs to ensure compliance with law.

(2) Confidentiality is bad public policy. It is bad public policy at the local jurisdictional level, and it is bad public policy at the state level. The State should not make the same mistake that the City of Portland made by allowing TNCs to keep driver and vehicle data secret. Since most TNC drivers driver for UBER and Lyft and sometimes additional companies at the same time, the argument that they might lose drivers to the competition if their identities were made public is without merit. No other companies operating business on the public roadway are allowed to keep secret who is driving for them or how many vehicles they are operating.

No one wants to force TNCs to disclose actual trade secrets. However, the number of vehicles a TNC has and who their drivers are should not be considered "trade secrets." That information is not considered a "trade secret" in any other transportation business and has always been disclosed.

Very simply, **the public has a right to know how many TNC vehicles and drivers are operating on the public streets and who those drivers are.** Truck drivers, taxi drivers, limo drivers, bus drivers, and every other commercial drivers' identity are a public record, as are the vehicles those fleets operate. When the State allows a company such as a TNC to provide rides to individuals (especially when those individuals may be intoxicated when they get the ride) the information provided to those individuals should be comprehensive as possible, so they have as much information as possible to protect themselves.

The TNCs want confidentiality because they know that if the public knew how many vehicles they are operating and who some of their drivers are, the public would object and would seek additional regulation of their business. They also know that if the actual number of vehicles is a "secret" then they can make misleading statements publicly about how many vehicles they operate, as UBER has done at Portland City Council meetings, and no one will be able to contradict them.

The number of vehicles and the identities of the drivers has never been considered a "trade secret" for for-hire transportation companies. That information has always been a public record because making it public protects the public and allows informed decision making by the public and regulators.

The City of Portland says that they “aggregate and anonymize TNC data” to provide information to the public. However, they refuse to provide any information to the public regarding the number of for-hire transportation vehicles operating in Portland, for example, because the public might be able to determine how many TNC vehicles are on the roads. Without even that most basic information how can the public make any informed decisions regarding TNC operations? There is an old expression that “roaches scatter when the lights are turned on.” The State of Oregon should not conspire with the TNCs to keep the public in the dark about the drivers and vehicles that operate as commercial vehicles on the streets with them.

#### Section 11

The previous sections in this proposed legislation would make it almost impossible for any state regulators to discover whether the TNC’s were violating the law. This section sets the penalties so low that the TNC would have very little incentive to avoid them anyway. \$100 per violation would hardly even qualify as a cost of doing business write-off to a TNC like UBER that is willing to lose \$2+ billion per year to buy the for-hire transportation market.