

NetChoice Promoting Convenience, Choice, and Commerce on the Net

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Senator Lou Ann Linehan, Chair
Revenue Committee
Nebraska Legislature
Lincoln, NE

RE: Opposition to LB 233 - New Tax on Car Sharing Services.

Dear Chair Linehan and members of the committee:

We write to you to express our **opposition** to LB 233 because it:

- ▶ Shields Big Rental from competition;
- ▶ Punishes innovation;
- ▶ Discriminates against average citizens; and
- ▶ Is vulnerable to constitutional challenge.

No matter how well intentioned LB 233 may be, is neither necessary nor fair. Indeed, the LB 233 picks winners (rental-car companies) and losers (residents who use peer-to-peer car sharing platforms).

LB 233's harm extends to average residents looking to supplement their incomes and to consumers looking for affordable transportation options. In other words, it hurts the very people it allegedly seeks to protect. Even worse, LB 233 inflicts this harm during a time of economic uncertainty and suffering.

We respectfully ask that you **not advance** LB 233.

1. LB 233 protects incumbents by shielding them from competition

Rather than innovate, Big Rental is running the same playbook that has worked well in the past: get the locals to pass laws that benefit its bottom line at the expense of others. Digital newcomers threaten established firms that have spent decades—and untold money—forcing out competition and creating barriers to entry for newcomers. When it succeeds, this behavior results in higher prices for consumers and fewer jobs for Nebraskans.

Big Rental's fear of car-sharing platforms is not surprising. Indeed, a recent survey of rental-car operators revealed that "Competition from peer-to-peer networks (Turo, GetAround)" ranked as one of the top self-reported "threats" in 2020.¹ It's not hard to see why. Peer-to-peer car sharing offers better service and deals than Big Rental does. First, they give consumers better choices, including specialty and antique cars. Second, they offer 24/7 roadside assistance. And third, they are more affordable than Big Rental—and they don't come with hidden fees.

¹ Auto Rental News, 2020 Fact Book 15 (2020), <http://digital.autorentalnews.com/factbook2020#&pageSet=6>.

To be sure, Big Rental's rent-seeking efforts are not unique. The hotel industry, for example, has been pushing LB 233 to crush Airbnb's growing popularity. Like Big Rental now, Big Hotels have pushed for unnecessary and harmful regulations under the guise of consumer protection. So, too, with taxi cabs toward ridesharing apps like Uber and Lyft. In all these cases, incumbents turned to the state for protection. And in all these cases, they used consumer protection to mask their true intent of stifling competition.

2. LB 233 is anti-innovation and therefore anti-consumer

The rise of digital platforms, especially peer-to-peer ones, has threatened incumbents in all industries. This disruptive technology has proven popular with consumers. So much so that incumbents have been caught so off guard that rather than invest in their own research and development, or rather than adapt to changing consumer preferences, they have instead sought to squash innovation and strangle competition.

LB 233 is no different. By forcing innovative platforms to assume liability for their drivers' actions, LB 233 will drive many platforms from the market. And it sends a signal to other incumbents threatened by innovative peers: the way to succeed in Nebraska is not by winning on the merits, but by legislating against competition.

These efforts should not succeed. The peer-to-peer economy helps average Americans supplement their incomes by letting them rent assets they already own. Here, for example, car-sharing platforms let Nebraskans earn from their own cars, which they can then use to make car payments, pay insurance premiums, or cushion the financial blow from coronavirus.

3. LB 233 discriminates against average citizens hoping to stay afloat during coronavirus, while favoring Big Rental companies

Although LB 233 is ostensibly aimed at carsharing platforms, it really targets average citizens who seek to earn extra income. Because LB 233 would make it cost-prohibitive for these platforms to operate in the state, these car owners will be robbed of this opportunity. Indeed, Big Rental's real competitors are not the platforms, but the car owners themselves. These are people who supply the cars for others to use; these are the people who give consumers a choice. The platforms merely coordinate the arrangement.

And even if LB 233 does not force the platforms from the market entirely, it will force them to revise their contracts with car owners to protect themselves from untold liability. Those revisions would likely require car owners to maintain insurance policies beyond what's necessary, and therefore make it cost-prohibitive for the most financially strapped car owners to compete.

This is unacceptable. If LB 233 were truly necessary to protect car owners and consumers, then its theory of liability would apply equally to Big Rental and to carsharing platforms. Unlike Big Rental, carsharing platforms require car owners to maintain car insurance. Big Rental does not require renters to have car insurance. In fact, Big Rental specifically offers car insurance as an add-on that consumers can buy. If they don't buy it, then those consumers must pay for accidents out of pocket. It's hard to see why Big Rental's consumers should be exempt from LB 233.

In fact, Big Rental has already proved that it is unnecessary for companies to assume liability for individuals. Rental-car companies have been in business for decades. And they continue to be one of the most popular forms of transportation. Yet, they've managed to go all this time without the type of liability regulations that LB 233 would force on carsharing platforms.

4. LB 233 invites litigation, uncertainty, and inefficiency

Although the U.S. Supreme Court eliminated the “physical presence rule” in *Wayfair v. South Dakota*, the Court suggested that a “substantial nexus” must exist between states and the businesses they require to collect and remit taxes from.² However, the *Wayfair* decision was about sellers of record for physical product - not marketplaces who merely facilitate transactions. LB 233 ignores this key distinction and reads into the *Wayfair* decision factors that are clearly not there.

Thus, LB 233 will invite litigation and, as seen in the *Wayfair* case, that litigation can take years to sort out. In the meantime, businesses—of **all sizes** and of **all revenues**— will be left with uncertainty and unnecessary costs as they try to make sense of what’s required. That is an inefficient and wasteful use of capital.

Thank you for considering our views and please let us know if we can provide further information.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice³

² 585 U.S. ___ at 22-23. (2018)

³ The views of NetChoice do not necessarily represent the views of each of its members.