

# SB827

Measure Title:	RELATING TO CONSUMER PROTECTION.
Report Title:	Merchandise; Returns; Unfair and Deceptive Trade Practices; Warranty Policy; Repair; Replacement; Refund
Description:	Prohibits a merchant from adopting a warranty policy that requires a purchaser to pay an additional fee to obtain a repair, replacement, or refund for goods returned pursuant to the warranty.
Companion:	<a href="#">HB68</a>
Package:	None
Current Referral:	CPH
Introducer(s):	BAKER, S. CHANG, Ruderman



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Friday, February 22, 2019  
9:35 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 827, RELATING TO CONSUMER PROTECTION**

Chair Baker and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department supports this bill.

The purpose of this bill is to prohibit a merchant from adopting a warranty policy that requires a purchaser to pay an additional fee to obtain a repair, replacement, or refund for goods returned pursuant to a warranty.

Some merchants charge consumers a "warranty processing fee" even when a warranted product is being returned because of a manufacturer's defect. This is fundamentally unfair. No consumer should have to bear the expense of processing the return, replacement, or refund of a defective product. It should be the seller's responsibility.

It is axiomatic that a business should not profit from selling a defective product to a consumer. In this context, it is patently unreasonable for a merchant to pass on its

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costs to process a return or refund. A merchant, not the consumer, should bear the costs. It is improper to set as a precondition the payment of specious fees before a merchant will agree to fulfill the merchant's contractual and statutory obligations under applicable warranty law.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 827, RELATING TO CONSUMER PROTECTION.

**BEFORE THE:**

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

**DATE:** Friday, February 22, 2019

**TIME:** 9:35 a.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Mana Moriarty, Deputy Attorney General, or  
Max Levins, Deputy Attorney General

**LATE**

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Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to prohibit merchants from adopting warranty policies that require a purchaser to pay an additional fee to obtain a repair, replacement, or refund for goods returned pursuant to the warranty. However, the wording of this bill limits the prohibition to a “merchant in the State.”

To whom the prohibition on additional fees applies is unclear because this bill uses the undefined term “merchant in the State.” Section 481B-5.5(a), Hawaii Revised Statutes (HRS), defines the term “merchant” to mean “any person engaged in the business of offering goods for sale to purchasers at retail.” It does not, however, define the term “merchant in the State.”

If the prohibition is intended to apply to merchants who do not have a physical presence in the State, and who do business in the State via electronic commerce, the law may be subject to a Commerce Clause challenge. The Commerce Clause, article I, section 8, clause 3, of the United States Constitution, grants Congress power to regulate interstate commerce and implicitly restricts states from enacting laws that unduly burden interstate commerce. Under Commerce Clause jurisprudence, when the effect of a state statute is to favor in-state economic interests over out-of-state interests, the state statute will generally be struck down as an unconstitutional burden on

interstate commerce. *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579 (1986).

In this case, it could be argued that the “additional fees” in this bill are a reference to shipping fees, and shipping fees are higher for out-of-state merchants as compared to in-state merchants. It could be argued, then, that prohibiting shipping fees has a disproportionately severe economic impact on out-of-state merchants as compared to in-state merchants. As discussed above, if the effect of a state statute is to favor in-state economic interests over out-of-state interests, the state statute will generally be struck down as a violation of the Commerce Clause.

To avoid a Commerce Clause challenge, the bill could be amended by prohibiting only merchants that have a physical presence in the State from charging “additional fees.” If that change is consistent with the Legislature’s intention, then we would recommend amending HRS § 481B-5.5(a), to add a new definition to read as follows:

“Merchant in the State,” means any merchant that (1) is created under the laws of the State of Hawaii, including but not limited to chapter 414, 414D, 415A, 425, 425E, or 428; (2) is authorized to transact business in the State of Hawaii; or (3) possesses a current unexpired Hawaii general excise tax license.

Thank you for the opportunity to provide comments.



**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
February 22, 2019**

**Re: SB 827 Relating to Consumer Protection**

Good morning Chairperson Baker and members of the Senate Committee on Commerce, Consumer Protection and Health. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

We are opposed to SB 827 Relating to Consumer Protection. This measure prohibits a merchant from adopting a warranty policy that requires a purchaser to pay an additional fee to obtain a repair, replacement, or refund for goods returned pursuant to the warranty.

Federal law requires that warranties be available for the customers to read before they purchase at the store, by catalogs or online. Warranties do vary.

Retail has changed over the years were more and more people are purchasing online, expecting free shipping and no less than 2 day delivery. Last year alone, nationwide online shoppers returned more than \$369 billion worth of merchandise for various reasons.

**Reputable online retailers as a whole and in good faith DO NOT intentionally or knowingly try to deceive their customers by sending them defective or damaged items unless noted sold “as is”.** At least 30% of all products ordered on line are returned as compared to 9% in brick and mortar stores. Many retailers in good faith also try to resolve the issue by replacing the item and often offer free return shipping. **Often times, retailers have no way of knowing if the item contains a manufactures defect or was damaged during shipping – or more often than not it is the customer who damages the item themselves in an effort to return it.**

**Retailers are also very concerned that this measure will have an adverse increase in return abuse by customers.** Retailers are seeing this more often and it a form of “friendly fraud abuse” where someone purchases products without intending to keep them. Perhaps the most well-known form of this abuse is “wardrobing” or “free renting” – in which the person makes a purchase, uses the product(s), and then returns the merchandise. This is done

not only with clothing, but electronics, household items and more. People would not intentionally damage to goods to insure free shipping and a total guaranteed full refund, even for ALL SALES FINAL items.

We would also like to point out that there is a difference between a manufactures warranty and that of the retailer. Manufacturer warranties may include the lifetime of the product. A Retailers warranty could be shorter – less than a year - to bring the product back to be repaired or returned. Often times the retailer may no longer be under warranty of the product by is an authorized dealer and takes in a product to be sent back to the manufacture to be repaired as it is covered under the manufacturer warranty

Sales on the worldwide web are global. Customers purchasing in store or online need to have due diligence in reading and understanding the warranties and return policies as they vary from store to store and especially internationally as well.

Government mandates like this does drive up the cost of doing business that in turn drives up the cost of living in Hawaii. We urge you NOT to impose another government mandate on business and ask that you **DEFER** this measure.

Mahalo again for this opportunity to testify.