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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce
Friday, March 23, 2021
2:00 p.m.**

**On the following measure:
S.B. 562, S.D. 1, H.D. 1, RELATING TO DECEPTIVE TRADE PRACTICES**

Chair Johanson and Members of the Committee:

My name is Stephen H. 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 establish that charging shipping and delivery charges that exceed the actual cost to ship or deliver a commodity to a consumer in Hawaii shall constitute an unfair and deceptive practice.

Hawaii consumers are often unfairly treated by online merchants' imposition of shipping costs. Many of these retailers impose an arbitrary shipping cost to Hawaii residents that does not correlate with their actual cost of shipping. H.D. 1 addresses this improper practice by amending Hawaii Revised Statutes chapter 481B to help ensure that Hawaii consumers are not unfairly bilked on shipping charges and are assessed only the actual cost of shipping, instead of a bogus rate that has nothing to do with the actual cost. Requiring a merchant to apply the actual shipping cost will facilitate transparency in consumer transactions and will help ensure that Hawaii

Testimony of DCCA
S.B. 562, S.D. 1, H.D. 1
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consumers will no longer fall victim to the arbitrary whims of online merchants in assessing shipping charges.

Thank you for the opportunity to testify on this bill.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Consumer Protection & Commerce
Tuesday, March 23, 2021 at 2:00 P.M.
Written Testimony**

RE: SB 562, SD 1, HD 1, RELATING TO DECEPTIVE TRADE PRACTICES

Chair Johanson, Vice Chair Kitagawa, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **raises concerns** on SB 562, SD 1, HD 1 which establishes that charging shipping and delivery charges that exceed the actual cost to ship or deliver a commodity to a consumer in Hawaii shall constitute an unfair and deceptive practice.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

While we understand that shipping and delivery of goods and commodities to our island state may be unique compared to contiguous 48 states, it is far more common that sales prices of commodities already include the disclosure of shipping and handling for the exchange, sale, trade, or transaction of items. Final sale prices are required and disclosed at the time of ordering or processing of goods or commodities, and it is left up to purchasers to agree to the final price along with limitations, handling costs, or other terms of the sale which would be clearly indicated.

We believe consumers in Hawaii are already protected either through existing state statutes or through the Federal Trade Commission. Given that most sale of goods or commodities occur online and paid using a credit card, additional form of consumer credit protection would also be available.

Finally, as currently drafted, the measure would impose the requirement for both interstate and intrastate commerce. For instance, goods or commodities shipped within the islands would also be obligated and would unnecessarily expose local retailers and businesses to a private right of action.

We appreciate the opportunity to testify.



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TO:
Committee on Consumer Protection and Commerce
Rep. Aaron Ling Johanson, Chair
Rep. Lisa Kitagawa, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: March 23, 2021
TIME: 2pm
PLACE: Via Videoconference

RE: SB562 SD1 HD1 Relating to Deceptive Trade Practices

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA is in opposition to this measure. Shipping to and from Hawaii can present unique challenges. Currently those who sell goods for shipment can set fair terms and prices and buyers are free to accept them or buy products elsewhere. In many cases flat rate shipping is the most cost effective, consistent, and reliable shipping method for sellers and consumers.

Existing laws already protect consumers from deceptive trade practices, without adding additional unnecessary complications to the process of shipping goods.

Because this measure applies not only to items shipped from the mainland, but also to goods shipped around the state from one island to another, it would add an additional burden to our local businesses serving interisland customers.

This measure is not the right choice and we ask that it be held.

Testimony of Ku'uhaku Park
On Behalf of Matson Navigation Company, Inc.
Comments on SB562, SD1, HD1
Before the Committee on Consumer Protection & Commerce
March 23, 2021

Dear Chair Johanson, Vice Chair Kitagawa, and Members of the Committee:

Matson Navigation Company, Inc. appreciates the opportunity to provide comments on SB562, SD1, HD1, which establishes that charging shipping and delivery charges that exceed the actual cost to ship or deliver a commodity to a consumer in Hawaii shall constitute an unfair and deceptive practice.

The Chamber appreciates that this measure seeks to create parity for our local businesses by reducing mainland businesses' ability to charge our Hawaii consumers additional, arbitrary, and high fees or costs under the guise of shipping. We respectfully request an amendment to clarify that any additional shipping fees imposed by the seller are only a pass through fee of the actual cost the seller is charged for shipping or delivery. We believe this language ensures the measure's intent is implemented.

"§481B- **Shipping charges.** In the sale or purchase of any commodity to be shipped or delivered to a consumer in this State, if a **seller imposes** a separate charge for shipping or delivery to a consumer, that charge shall not exceed the actual cost **charged to the seller** to ship or deliver the commodity to a consumer in this State."

Thank you for considering our proposed amendments.



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 23, 2021**

Re: SB 562 SD1 HD1 RELATING TO DECEPTIVE TRADE PRACTICES

Good morning Chair Johanson and members of the House Committee on Consumer Protection & Commerce. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

While we understand the want for equality in shipping charges from national and international sellers, RMH is Strongly Opposed to SB 562 SD1 HD1 Relating to Deceptive Trade Practices. This measure establishes that charging shipping and delivery charges that exceed the actual cost to ship or deliver a commodity to a consumer in Hawaii constitutes an unfair and deceptive practice.

We want to be able to offer Hawaii the ability to shop from various merchants online. We caution that measures like this may have national and international online sellers no longer shipping items to Hawaii.

Since the pandemic we have seen spike in online shopping. Customers are very price conscious and base their purchasing decision not only the price of the product but also the shipping cost and how fast the delivery will be. Consumers will compare prices on not only the items but also the shipping and handling fees. **Because of the high competition many sites offer FREE shipping as that is what attracts the customer. Other sites have a shipping and handling fee – that could include the cost of the packing materials and 3rd party delivery to the mailing service as small businesses have to pass the cost along as they are not able to absorb the cost. When checking out, the price of the shipping, taxes and handling fee (if any) are shown to the customer who will either accept (buy purchasing the items) or declining and finding another site that offers the same product.**

This bill could be challenged under the Federal Commerce Clause on interstate commerce. Sellers who charge a higher shipping rate would be penalized. We need to remain cognizant that in many cases shipping to Hawaii is more expensive. For example, if a seller on the mainland offers shipping via Ground because it is one of the cheapest forms of shipment where shipments typically travel by truck, Hawaii would not be able to take advantage since we are an island state. The seller would have to send it via air. We also are concerned of how the state is going to monitor and regulate the millions of online sites that ship to Hawaii.

We are very concerned that sellers may no longer ship to Hawaii and that would leave us with less choices. Unlike the United States Postal Service who offers flat rate shipping, 3rd party shipping companies also charge more to ship to Hawaii as opposed to locations on the continental United States. This is again due to not being able to truck the shipment from point A to point B. This measure would also expose proprietary information on the shipping cost contractual agreement each seller has with the 3rd party shipper. It would give some companies unfair advantage of knowing what deal their competitor received.

We also want to point out that to list the shipping rates to Hawaii may place an undue burden on the retailer if the shipping per item needs to be listed up front. What about if people purchase multiple items, the shipping rate may change depending on the size and weight of the items and how many can be placed in a box. Many small business sellers do not have an app on their sites that would calculate the cost to ship to Hawaii. And if Hawaii's shipping rate is included, what about the if other 49 states and foreign counties pass a similar law who may also want their shipping rates included. This would impact local sellers as well since they ship within the island or to neighbor islands and would have to list the rates. This may place a burden on our local sellers.

Mahalo again for this opportunity to testify.

