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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Judiciary
Thursday, February 23, 2023
Conference Room 016 & Videoconference
9:45 AM**

**On the following measure:
S.B. 158, H.D. 1, RELATING TO DECEPTIVE PRACTICES**

Chair Rhoads and Members of the Committee:

My name is Mana Moriarty, 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. S.B. 158, H.D. 1 addresses this improper practice by amending Hawaii Revised Statutes chapter 481B to help ensure that Hawaii consumers are not unfairly billed 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

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facilitate transparency in consumer transactions and will help ensure that Hawaii 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.



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 23, 2023
Re: SB 158 RELATING TO DECEPTIVE TRADE PRACTICES**

Good morning, Chair Rhoads and members of the Senate Committee on Judiciary. 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 and is a statewide, not for profit trade organization committed to supporting 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, on-line sellers, 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 158 SD1 Relating to Deceptive Trade Practices. This measure establishes that charging shipping and delivery charges that exceed the actual cost charged to the seller to ship or deliver a consumer commodity or consumer package to a consumer in Hawai'i constitutes an unfair and deceptive practice; and is effective 7/1/2050.

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.

Online shopping and customers have changed just within the past few years. We continue to see an increase of online shopping. These customers want free and fast shipping. Before it was 2-days, now they want it sooner. Online has answered by being more competitive in their pricings.

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 must pass the expense 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.** The consumer has the right to not purchase items if they feel the shipping it too high.

We need to remain cognizant that in many cases shipping to Hawaii is more expensive. Since the pandemic, we have seen an exponential rise in cost in not only coastal shipping but also by air. Hawaii does NOT have the options that the mainland has for shipping. For example, a seller on the mainland can offer Ground shipping because it is one of the cheapest forms of shipment where shipments typically travel by truck or railway. Hawaii is not able to take advantage of Ground Shipping since we are an island state. The seller would have to send it via air. The customer always has the option to opt out of not purchasing the item due to the shipping cost or to pay the shipping or find the same product on another website with cheaper shipping.

In addition, **many online sellers have contracts with 3rd party shippers that are proprietary.** Each contract is different with a multitude of factors. **This measure would give some companies unfair advantage of knowing what deal their competitor received.** Online sellers know that they have to remain competitive in their pricing of not only the item but shipping as well or people go to another site to purchase.

We are very concerned that with this type of mandate, online sellers may no longer make certain products available or in a very possible worst case scenario no longer ship anything to Hawaii and that would leave Hawaii's consumers with even less choices.

We humbly ask that you hold this measure.

Mahalo again for this opportunity to testify.