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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Economic Development and Technology
Friday, January 31, 2025
10:00 a.m.**

**On the following measure:
H.B. 1361, RELATING TO SMALL BUSINESS**

Chair Ilagan and Members of the Committee:

My name is Ty Nohara, and I am the Commissioner of Securities and head of the Department of Commerce and Consumer Affairs' Business Registration Division (BREG). BREG offers comments on this bill.

Growing out of a concern with the high cost of starting a business, and to encourage the creation of new small businesses, the purpose of this bill is to establish a small business fee waiver program to waive certain fees for applicants registering a new small business in the State for the first time.

As an initial matter, the State recognizes several different types of business entities in a number of chapters of the Hawaii Revised Statutes (HRS). Each chapter contains the specific filing requirements and fees an entity must pay to register as a new business in the State. The highest statutory registration filing fee for a new business is \$100.00. Effective January 21, 2005, however, BREG reduced all its filing fees for new business registrations by 50%. Since then, all filing fees have remained at a reduced amount. Consequently, the most that a new business entity will pay to register with

BREG is \$50.00. Therefore, while a new small business may face a variety of challenges to start up in the State, BREG respectfully submits that business registration filing fees are not one of those challenges. Conversely, BREG is special-funded and relies entirely on the statutory fees and fines that it collects to cover its budgeted expenditures. The small business waiver program proposed by this bill will significantly reduce BREG's source of funding.

BREG also has the following concerns with this bill:

1. This bill does not define "applicant," and therefore, it is unclear whether an applicant can be an individual, an entity, or an individual who is a member, officer, director, partner, or manager of an entity.
2. Without a clear definition of an "applicant," the small business fee waiver program may be open to abuse. For example, a sole proprietorship applicant who receives a fee waiver for a new small business can still qualify for the fee waiver in another capacity, as a member, officer, director, partner, or manager of a new small business created by a different business entity. And, without a clear definition of an "applicant," it is also unclear what facts and disclosures an applicant must provide to meet the affidavit requirement of this bill. Ultimately, this bill, as currently worded, may qualify an applicant for a fee waiver not intended under the small business fee waiver program. Or worse, a resourceful applicant could potentially obtain fee waivers under different guises, and for "new" small businesses that already exist, thus circumventing the bill's purpose and intent to encourage the establishment of "new" small businesses in the State.
3. BREG's current authority to file documents delivered by a business entity is ministerial, and BREG does not verify the correctness or validity of the information contained in any of the documents submitted by a business entity. Even assuming BREG's authority is expanded beyond its ministerial duty to file documents, BREG neither collects nor maintains all the information necessary for it to determine whether a business entity has satisfied the

- requirements in subsections (b)(1) through (3) of this bill to qualify for a fee waiver.
4. The HRS chapter pertaining to each type of business entity specifies what information must be provided in the entity's registration filings. As such, BREG is limited by statute as to what information is collected from an entity when it registers as a new business in the State. As an example, HRS Chapter 414 does not require a new domestic for-profit corporation registering in the State for the first time to identify its officers and/or directors when filing its articles of incorporation with BREG. Therefore, because such information would not be reflected in BREG's registration filings, BREG would be unable to verify an applicant's statement in the required affidavit that they are not an officer and/or director of a corporation that currently or previously registered as small business in the State under subsection (b)(3) of this bill.
 5. Related to No. 4 above, a business entity is not required to disclose the number of its full-time employees when registering as a new business in the State. Nor is a business entity required to submit any filing to BREG to confirm its independent ownership and operation. Therefore, because such information would not be reflected in BREG's registration filings, BREG would be unable to verify whether an entity meets the definition of a "small business" under HRS section 211D-1, as required by subsection (b)(2) of this bill.
 6. If BREG is to obtain the information that subsections (b)(1) through (3) of this bill requires, the various chapters of HRS affected by this bill would need to be amended. BREG would also need to change its existing forms or create new forms for each entity, which may require more time and effort, and create more paperwork, for a new business.
 7. BREG handles a high volume of documents on a daily basis. While the user experience appears simple and straightforward, the myriad of documents and transactions that BREG processes are supported by a highly complex "back

- end” management and documents processing system. The system adjustments that this bill requires would be extensive and necessitate revisions to BREG’s basic forms. Consequently, if BREG will need to revise its forms and collect data in the manner contemplated by this bill, and especially if the work must be completed within a narrow timeframe, BREG respectfully requests costs for contract services for revision and update to BREG systems be added to the appropriation.
8. In addition, this bill will require the establishment of new positions, the adoption of administrative rules, and the implementation of procedures for BREG to comply with the requirements of this bill. This bill does not address enforcement to prevent any abuse of the small business fee waiver program, or any penalties or other sanctions if a violation is found.
 9. This bill waives the fees to register a trade name, trademark, and service mark for a new small business. Registrations of trade names, trademarks, and service marks expire after five years. It is unclear whether this bill waives the fees for a new small business to renew such registrations. It is also unclear whether an applicant, once it is qualified as a new small business under this bill, will have its fees waived for any and all future registrations of trade names, trademarks, and services marks of that applicant.
 10. This bill also requires BREG to: (1) develop an outreach program to inform the public about the small business fee waiver program; and (2) provide guidance and resources to assist new business owners with the business registration process. However, this bill’s proposed small business fee waiver program, as shown above, requires further clarification, consistency, and fine-tuning. Accordingly, if the Committee chooses to pass this measure, BREG respectfully requests that this bill’s effective date of July 1, 2025, be deferred to July 1, 2027, to allow BREG sufficient time to arrange for the collection of information it needs to comply with this bill.

Thank you for the opportunity to testify on this bill.



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TO: Committee on Economic Development and Technology

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: January 31, 2025

TIME: 10am

RE: HB1361 Relating to Small Businesses

Position: Support

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

HFIA is in support of this measure. Hawaii has one of the most challenging business climates in the country. As the measure notes the high cost of starting a business can deter entrepreneurship and innovation. The State should be encouraging the establishment of new small businesses to spur economic growth.

HFIA has proudly produced the Made in Hawaii Festival for 30 years. We know first-hand the tremendous power and potential of our small businesses. Removing barriers to the creation of new businesses means more local businesses, more jobs, and more Made in Hawaii companies and products. This measure is a step in the right direction, and we encourage the Committee to vote yes.