**TESTIMONY OF**
**THE DEPARTMENT OF THE ATTORNEY GENERAL**
**KA ʻOIHANA O KA LOIO KUHINA**
**THIRTY-THIRD LEGISLATURE, 2025**

**ON THE FOLLOWING MEASURE:**
S.B. NO. 50, RELATING TO CONSUMER PROTECTION.

**BEFORE THE:**
SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

**DATE:** Tuesday, February 4, 2025 **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or
Christopher T. Han, or Christopher J.I. Leong, Deputy Attorneys General

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Chair Lee and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill establishes as a deceptive practice advertising, displaying, or offering a price for goods or services that does not include all mandatory fees or charges, subject to certain exceptions. This bill also repeals the definition of "vehicle license recovery fees," limits the fees and taxes that a motor vehicle lessor may pass on to a lessee, amends the prorated amount of vehicle license and registration fees and weight taxes that a motor vehicle lessor may pass on to a lessee, and repeals the requirement that rental car companies submit annual audits to the Office of Consumer Protection of the Department of Commerce and Consumer Affairs.

The bill may be subject to challenge under the First Amendment of the United States Constitution as a potential restriction on commercial speech, but adding a preamble stating the justification for the bill will better protect it against such a legal challenge.

Courts have recognized that laws regulating business advertising constitute a form of commercial speech regulation. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York,* 447 U.S. 557 (1980); *see also Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099 (9th Cir. 2004) (upholding the constitutionality of a California statute regulating how physicians can advertise board-certification status). In

determining whether a regulation on commercial speech is constitutional, a regulation is more likely to be upheld where the speech is misleading, the asserted governmental interest is substantial, the regulation directly advances the governmental interest, and the regulation is not more extensive than is necessary to serve that interest. *See Retail Digital Network, LLC v. Prieto*, 861 F.3d 839, 844 (9th Cir. 2017) (upholding prohibition on a retailer from leasing advertising space to alcohol manufacturers).

Thus, we recommend including a preamble in the bill that finds that advertisements, displays, or offers for goods and services that fail to include all mandatory fees or charges are misleading in nature, and emphasizes the necessity of enacting these new requirements and restrictions to protect consumers from potential exploitation. Examples of an appropriate preamble can be found in S.B. Nos. 354 and 355, though the wording of these examples should be adjusted to address more than just transient accommodation providers or booking agencies.

Further, we recommend inserting a non-impairment clause to insulate part II of the bill from a challenge under the Contract Clause, article I, section 10, clause 1, of the United States Constitution. Since arrangements between the motor vehicle rental lessor and lessee are contractual in nature, the new fees imposed by the bill may raise concerns about impairing existing contracts. To mitigate these issues, we recommend inserting the following wording after page 12, line 6:

> SECTION 8. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Constitution of the State of Hawaii or article I, section 10, of the United States Constitution.

The current sections 8 and 9 should then be renumbered accordingly. Thank you for the opportunity to provide comments.

**JOSH GREEN, M.D.**
GOVERNOR | KE KIA'ĀINA

**SYLVIA LUKE**
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

**STATE OF HAWAII | KA MOKUʻĀINA ʻO HAWAIʻI**
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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the**
**Senate Committee on Transportation and Culture and the Arts**
**February 4, 2025**
**3:00 PM**
**Via Videoconference**
**Conference Room 224**

**On the following measure:**
**S.B. 50, RELATING TO CONSUMER PROTECTION**

Chair Lee and Members of the Committee:

My name is Melissa Lam, and I am an enforcement attorney with the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department hereby submits comments and opposition to SB 50, Part I, and support on SB 50, Part II.

Part I of this bill addresses drip pricing and junk fees. This bill adopts the broad legislative ban adopted by California, rather than the Federal Trade Commission (FTC) approach under the junk fees rule. The FTC Junk Fees rule applies only to live event ticketing and short-term lodging. The California law applies more broadly but it is subject to many industry exemptions. A comprehensive approach provides transparent pricing across industries, allowing consumers to make better informed choices in the marketplace. The California law has reportedly led to a number of private class action

enforcement lawsuits concerning pricing practices at theme parks, hotels, and for contact lenses.

OCP is opposed to exempting broadband providers who are already subject to FCC federal labeling requirements that provide consumer protections from this amendment. The State is permitted to adopt more stringent consumer protection requirements than those adopted by the federal government. If broadband providers are exempted, any exemption would have to be repealed before broadband providers could be held to high state law standards. Currently, broadband providers are subject to the FCC standards; however, the FCC could seek to re-write those standards to be less protective of consumers.

Part II of this bill seeks to repeal vehicle license recovery fees and remove the requirement that all rental companies submit an annual audit to OCP. The Department supports Part II in its entirety.

The Department supports repealing the vehicle license recovery fees that car rental companies are authorized to pass onto consumers. This is consistent with the Department's position when it opposed H.B. 735, H.D. 2, S.D. 2, C.D. 1, which was enacted into law as Act 137, Session Laws of Hawaii 2017.

Act 137 amended Hawaii's Motor Vehicle Rental Law (Hawaii Revised Statutes chapter 437D) in two significant ways. First, it added one-time fees to the litany of fees that car rental companies were authorized to visibly pass onto consumers. Prior to Act 137, the car rental industry was only allowed to visibly pass on recurring costs, such as general excise taxes, license and registration fees, surcharge taxes, and rents and fees payable to the Hawaii Department of Transportation. The car rental industry was not allowed to pass on fixed one-time costs of doing business, such as use taxes attributable to the importation of motor vehicles to the State, and license plate fees. In this regard, authorizing the passing on of one-time fees was a significant departure from the previous statutory policy favoring the visible pass-on of only recurring government fees and taxes.

Secondly, Act 137 changed the method of calculating the pass-on costs. Currently, the Motor Vehicle Rental Law authorizes a visible pass-on to consumers if it is prorated at 1/292$^{nd}$ of the annual fees and taxes paid on the vehicle being rented. This

rate may have resulted in some consumers being charged more than their fair share of the taxes. The Department supports changing the proration method to 1/365$^{th}$, because consumers would thereby be charged for fees and taxes that are directly attributable to their use of the vehicle on a particular day. This would be a logical and fair method of passing on these costs.

OCP has submitted testimony in support of SB 29, which also proposes the repeal of vehicle license recovery fees.

Thank you for the opportunity to testify on this bill.

Testimony of
Davin Aoyagi - Senior Government Relations Manager
Turo Inc.
**COMMENT SB50, 02/04/25**

Aloha e Chair Lee, Vice Chair Inouye, and other Committee Members,

On behalf of Turo and our vibrant community of peer-to-peer car sharing hosts and guests in Hawaii, we respectfully offer the following written testimony offering comments on SB50, and in particular Part II, covering the provisions relating to vehicle license recovery fees. On its face, the bill outlines many relevant points about the problems of vehicle license recovery fees ("VLF"), and the fact that they are a mechanism that allows traditional rental car companies to pass on fees including motor vehicle weight taxes; fees connected with the registration of specially constructed, reconstructed, or rebuilt vehicles; special interest vehicles or imported vehicles; license plate and emblem fees; inspection fees; highway beautification fees; and any use tax on rental car users.

Moreover, the bill correctly notes that VLF has subsequently expanded to one-time fees and has also been amended to allow a more generous framework for traditional rental car companies, resulting in overpayments by rental car users.

We are opposed to Part II of this bill however, because this measure does not actually repeal VLF. Rather, it removes the statutory definition and instead, hides the fee under a vehicle registration and weight taxes fee (which is exactly what the VLF was) and keeps traditional rental car companies' ability to pass on the fee to consumers. And while it does seek to reduce the fee from 1/365th instead of the current rate of 1/292th, it also removes the state mandated annual audit of rental cars that was established under Section 5, Act 137, Session Laws of Hawaii 2017. Without this audit, there is no way to verify whether or not rental car companies are using this pass through as a profit center.

In conclusion, Turo advocates for the actual repeal of VLF versus having VLF continue as a hidden fee. We also continue to believe that the Legislature should have the oversight provided under Section 5, Act 137, Session Laws of Hawaii 2017.

We extend a warm mahalo to the committee for its consideration of our testimony.

**Robert Muhs, Esq.**
Vice President, Government Affairs
& Counsel
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Senator Chris Lee, Chair
Senator Lorraine Inouye, Vice Chair
Committee on Transportation and Culture and the Arts

February 4, 2025, 3:00 p.m.
Conference room 224 & Videoconference

**RE: SB 50 – Relating to Consumer Protection – In Opposition to Part II**

Aloha Chair Lee, Vice Chair Inouye and members of the committee:

My name is Robert Muhs, Vice President, Government Affairs & Counsel for Avis Budget Group. Avis Budget Group is in opposition to Part II of SB 50 which, among other things, amends the prorated amount of vehicle license and registration fees and weight taxes that a motor vehicle lessor may pass on to a lessee.

Hawaii is in line with 48 other states that allow for the recovery of government assessed vehicle fees by a separate line item on the rental agreement. These fees are clearly and conspicuously disclosed when you reserve a car. Attached is a screen shot of a Budget Booking page. The vehicle license recovery fee is based on the vehicle type and is calculated to recover only the costs the governments mandate associated with placing the vehicle in service such as license, registration and plates. In short, the customer pays a proportionate share of this expense similar to a lessee paying these fees on a long-term car finance lease.

Vehicles are not rented every day of the year due to down time for maintenance and other conditions which may be outside the control of the rental company such as accidents and thefts. The average vehicle is rented 20-25 days per month. Therefore, the previous methodology of prorating the vehicle license recovery fees at 1/365$^{th}$ of the annual vehicle license recovery fees resulted in a significant shortfall. The existing law is intended to capture and recover a fair amount of government-imposed fees.

For the above reasons, we ask for your consideration in deleting Part II. Thank you.

Attachment

**Pick-Up**
Honolulu Intl Airport, HNL
Sun, Feb 02, 12:00 PM

**Return**
Honolulu Intl Airport, HNL
Mon, Feb 03, 12:00 PM

**Intermediate**
Toyota Corolla or similar
5 Y 1 2

| | | |
|---|---|---|
| Base Rate | ~~$35.99~~ | $32.39 |
| Taxes & Fees | | $18.52 |
| Concessionaire Fee (11.11%) | | 3.74 |
| Customer Facility Charge - 4.50/day | | 4.50 |
| Rntl Mtr Veh Schg Tax - 7.00/day | | 7.00 |
| Vehicle License Fee Recoupment - 1.30/day | | 1.30 |
| Total Tax | | 1.98 |
| **Estimated Total (Prepaid)** | | **$50.91** |
| **Total Savings** | | **$3.60** |

See Rate Terms

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 3, 2025

TO: Senator Chris Lee
Chair, Committee on Transportation and Culture and the Arts

FROM: Matt Tsujimura / Tiffany Yajima

RE: **S.B. 50, Relating to Consumer Protection**
**Hearing Date: Tuesday, February 4, 2025 at 3:00PM**
**Conference Room 224**

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Dear Chair Lee, Vice Chair Inouye, and Members of the Committee on Transportation and Culture and the Arts:

We submit this testimony on behalf of Enterprise Mobility, which includes Enterprise Rent-A-Car, Alamo Rent-A-Car, National Car Rental, and Enterprise Commute (Van Pool).

Enterprise Mobility **opposes** sections 3 through 5 of S.B. 50, which repeals the vehicle license recovery fees.

In 2017, the Legislature amended HRS 437D to bring Hawaii in line with 38 other states by allowing rental car companies to pass on to customers the government fees and taxes that are assessed on each vehicle. HRS 437D-8.4 requires that rental car companies must visibly list on its rental car contracts the fees and taxes that they incur. Prior to 2017, the statute did not allow rental car companies to recover all of the government assessed fees that are paid.

S.B. 50 would not allow rental car companies to pass on the majority of the government-imposed fees and taxes. The statute currently includes all fees that rental companies pay to make a vehicle ready to rent. Removing any of these fees from the statute would be detrimental and regressive to the car rental industry.

S.B. 50 also amends the calculation of the fees from 1/292$^{nd}$ to 1/365$^{th}$ of the annual cost. Reverting to a calculation of 1/365$^{th}$ virtually ensures that car rental companies in Hawaii under-collect government taxes and fees. Rental cars are only rented on average 80% of the calendar year. Vehicles are routinely grounded for maintenance, repair, cleaning, and recalls. When cars are grounded, vehicles cannot be rented and fees go uncollected. Keeping the current statutory calculation ensures that the fees are fairly and equitably collected.

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Enterprise provides over 1,000 jobs locally throughout the state, and prides itself on the significant contributions it has made to Hawaii's community. A healthy and robust rental car industry is vital to Hawaii's tourism economy. The COVID-19 pandemic and Maui wildfires have caused serious supply chain costs increases, and with a decreased availability of vehicles to purchase. The rental car industry is still on the road to recovery.

For the above reasons, we respectfully oppose this measure and ask that it be held. Thank you for the opportunity to submit this testimony.

February 3, 2025

The Honorable Chris Lee
Chair
Senate Committee on Transportation and Culture and the Arts
State Capitol
Honolulu, HI 96813

Dear Chair Lee:

On behalf of CTIA®, the trade association for the wireless communications industry, I write in opposition to Part I of Senate Bill 50, relating to deceptive trade practices. We appreciate the goal of protecting consumers from practices that may undermine a consumer's ability to make informed commercial decisions, and our industry is committed to ensuring consumers have accurate and transparent information. However, robust federal regulations and public industry commitments already exist, thereby making any new state-specific law imposed on our industry potentially duplicative and not in the consumer's interest. As such, we respectfully request that any law should expressly exempt services already regulated by the FCC.

**Industry is Committed to Keeping Consumers Informed**

In the competitive wireless marketplace, CTIA and its members have established the *Consumer Code for Wireless Service*[1] —an evolving set of principles designed to help consumers make informed decisions when selecting wireless services. This code has been regularly updated since it was first created nearly 20 years ago. Importantly, more than half of the principles contained in the *Consumer Code for Wireless Service* speak to this important issue, with disclosure of rates and terms of service being the first commitment. Further, Principle 5 *establishes a commitment to "clearly and conspicuously" disclosing material charges*.

Wireless services are used every day to connect consumers to school, work, and loved ones, and as of 2023, there are 1.6 wireless connections for every person in the United States.[2] Consumers tend to use their wireless devices throughout the day, which serves as a tangible reminder of the services they are receiving, making wireless services distinguishable from other products and services for which consumers are being charged. Moreover, wireless providers typically have regular engagement with their customers, through monthly notices regarding plan terms and itemized costs, as well as through alerts that may be sent in accordance with commitments made as part of the *Consumer Code for Wireless Service*.

[1] CTIA, *Consumer Code for Wireless Service* (2020), https://api.ctia.org/wp-content/uploads/2020/03/CTIA-Consumer-Code-2020.pdf ("*Consumer Code for Wireless Service*").
[2] *See* CTIA, *2023 Annual Survey Highlights*, at 5 (July 25, 2023), https://www.ctia.org/news/2023-annual-survey-highlights.

**Robust Federal Regulation of the Wireless Industry Already Exists**

The wireless industry is regulated by the FCC, which has its own regulatory regime to protect consumers from surprise or unfair fees and billing practices, including broadband labeling and Truth-in-Billing regulations. The FCC's rules already require the wireless industry to convey accurate and relevant information to consumers and prevent unfair or deceptive fees. CTIA's members have for years embraced regulatory efforts already undertaken by the FCC to ensure consumers have clear information about service charges and to help protect consumers from fraud and unauthorized third-party fees. These rules and policies effectively prevent and hold wireless providers responsible for any unfair billing practices or deceptive fees.

FCC Broadband Labeling*:* Implementing a Congressional directive, the FCC adopted requirements for broadband labeling in 2023.[3] These requirements ensure consumers are given clear, accurate, and transparent information to guide their purchasing decisions. Under the broadband consumer label rules, all wireless consumers have access to easy-to-understand labels modeled on the nutrition labels that appear on food products. The labels clearly lay out key information about prices (including monthly and one-time fees, and the availability of discounts and bundles), the amount of data included in the base price, typical upload and download speeds that consumers can expect, and a provider's network management and privacy practices. Importantly, in adopting its directive, Congress clearly intended that the FCC should regulate the advertising of broadband on a *national* level.[4]

FCC's Truth-in-Billing: For nearly two decades, wireless voice providers have complied with the FCC's Truth-in-Billing requirements, which are broad, binding principles that ensure voice providers offer information on customers' bills that is clear and not misleading.[5] The Truth-in-Billing rules have also served to help protect consumers from fraud and unauthorized third-party charges. Importantly, the FCC created a comprehensive framework that affords providers flexibility in their billing procedures without discouraging the introduction of new pricing plans or impairing the ability of providers to adopt improvements to their billing systems or bill structures.[6]

Therefore, the law should clearly exempt services that are regulated by the FCC.

FTC Regulations*:* In November 2023, the FTC published a Notice of Proposed Rulemaking ("FTC NPRM") that proposes to prohibit unfair or deceptive practices relating to fees for goods or services.[7] The proposal sought to prohibit businesses from offering, displaying, or advertising amounts consumers may pay without clearly and conspicuously disclosing the "Total Price," as considered in the legislation. The Federal Trade Commission ("FTC") issued its final rule regarding unfair and

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[3] *See Empowering Broadband Consumers Through Transparency*, Order, CG Docket No. 22-2, DA 23-617 (CGB rel. July 18, 2023).
[4] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60504(a), 135 Stat. 429, 1244 (2021).
[5] *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) ("FCC Truth-in-Billing R&O"); *Truth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005).
[6] *See* FCC Truth-in-Billing R&O, 14 FCC Rcd at 7499, ¶ 10
[7] *See* Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023).

deceptive consumer fees in December 2024, whereby it adopted provisions only applicable to problematic industries, specifically the live-event ticketing and short-term rental industries.[8]

Title 47 U.S.C.: It is not clear if the requirements in the bill are consistent with federal law, which plainly states that "no State or local government shall have any authority to regulate the entry of or *the rates charged by* any commercial mobile service . . . except that this paragraph shall not prohibit a State from regulating the *other* terms and conditions of commercial mobile services."[9] It is also not clear if the proposed exceptions in the legislation related to "tax or fees imposed by a government on the transaction" would include the wide range of monies wireless providers collect at the behest and with the blessing of government regulators.

**Wireless Services are Already Regulated by the FCC**

Commitments made by wireless service providers through the *Consumer Code for Wireless Service*, coupled with regulatory protections adopted by the FCC, serve today to provide protection and clarity to consumers regarding their commercial decisions. Wireless providers have a vested interest in maintaining a trusted relationship with consumers, therefore, CTIA urges Hawaii to recognize the dynamics within the competitive wireless marketplace and refrain from imposing a new state law on the wireless industry that would be unnecessary, duplicative, and not in the consumer's interest.

If Hawaii ultimately enacts a law regarding unfair and deceptive fees, any new law should expressly exempt services already regulated by the FCC for the reasons stated above.

Sincerely,

Mike Blank
Director of State Legislative Affairs

[8] The FCC is also considering rules related to cable and DBS pricing. *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket No. 23-203, FCC 23-52 (rel. June 20, 2023).
[9] 47 U.S.C. § 332(c)(3)(A) (emphasis added); *see also, e.g.*, *MCI Telecommunications Corp. v. FCC*, 822 F.2d 80 (D.C. Cir. 1987).