

Honolulu, Hawaii

FEB 09 2021

RE: S.B. No. 562
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 562 entitled:

"A BILL FOR AN ACT RELATING TO DECEPTIVE TRADE PRACTICES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify that any person who offers free or reduced rate shipping to a consumer in another state but who refuses to honor that shipping offer to a consumer in Hawaii has engaged in an act that is unfair and deceptive under certain conditions; and
- (2) Extend remedies.

Your Committee received testimony in support of this measure from one individual. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs and Department of the Attorney General.

Your Committee finds that many companies offer free or reduced rate shipping to consumers in the United States, but for many consumers in Hawaii, these companies will refuse to honor these offers once a Hawaii zip code is entered. This measure would establish the offering of free or reduced rate shipping to a



consumer in another state that is refused to a consumer in Hawaii as an unfair and deceptive practice.

Your Committee has heard the concerns raised in testimony that this measure in its current form may have the unintended consequence of discouraging or deterring merchants from shipping goods to consumers in Hawaii. Since it is likely that shipping goods to Hawaii costs more than shipping to other states, it may be unreasonable to require mainland companies to apply the same free or reduced rates that it offers to mainland consumers, and it would require a merchant to absorb an additional cost to ship to Hawaii consumers. However, your Committee finds that the assessment of any arbitrary fees or costs, in addition to the actual costs to ship goods to Hawaii consumers, is unreasonable and should be regulated by this measure. Accordingly, amendments to this measure are necessary to address these concerns.

Your Committee also notes the concerns raised by the Department of the Attorney General that this measure may be subject to challenge under the commerce clause of the United States Constitution. Your Committee finds that this concern merits further consideration and requests that your Committee on Judiciary further examines this issue raised by the testifiers on this measure.

Your Committee has amended this measure by:

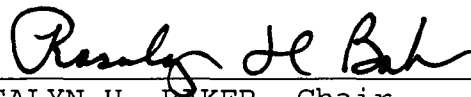
- (1) Deleting language that would have established the deceptive trade practice of refusing to honor free or reduced rate shipping to a consumer in this state under section 481A-3, Hawaii Revised Statutes;
- (2) Inserting a new section into chapter 481B, Hawaii Revised Statutes, providing that, in the sale or purchase of any commodity to be shipped or delivered to a consumer in this State, if a separate charge for shipping or delivery is charged to a consumer, that charge shall not exceed the actual cost to ship or deliver the commodity to a consumer in this State;
- (3) Updating section 1 to reflect its amended purpose; and



- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 562, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 562, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



