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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Thursday, February 4, 2021
9:30 AM
Via Videoconference**

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

Chair Baker 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 appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) clarify that any person that offers free or reduced rate shipping to a consumer in another state but 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.

The Department is concerned this bill may create unintended consequences by discouraging merchants from shipping goods to consumers in Hawaii. Since shipping goods to Hawaii costs more than shipping goods to other states, it may be unfair to require mainland companies to apply the same free or reduced rate that it offers to mainland consumers. For example, if a good normally costs \$5 to ship to a mainland state and \$10 to ship to Hawaii, this bill would require a mainland merchant to absorb an additional cost for shipping to Hawaii consumers. In this instance, many retailers

may choose to refrain from shipping their products to Hawaii rather than losing money on the sale.

There is no question, however, that Hawaii consumers are often unfairly treated by online merchants' imposition of shipping costs. Many of these retailers apply an arbitrary shipping cost to Hawaii residents that does not correlate with their actual cost of shipping. To rectify this situation the Department recommends amending Hawaii Revised Statutes chapter 481B to help ensure that Hawaii consumers are charged only the actual cost of shipping, instead of an artificial rate that has nothing to do with the actual cost: "**§481B- Shipping Charges.** In the sale or purchase of any commodity to be shipped or delivered to a consumer in Hawaii, 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 Hawaii." Requiring a merchant to apply the actual shipping cost will facilitate transparency in consumer transactions and will help to ensure that Hawaii consumers will no longer be victim to the arbitrary whims of online merchants in assessing shipping charges.

Thank you for the opportunity to testify on this bill.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 562, RELATING TO DECEPTIVE TRADE PRACTICES.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Thursday, February 4, 2021 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Christopher J.I. Leong,
Deputy Attorney General, at 586-3092)

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to clarify that any person that 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.

The bill may be subject to a Commerce Clause challenge. The Commerce Clause, article I, section 8, clause 3 of the United States Constitution, grants Congress power to regulate interstate commerce and implicitly restricts states from enacting laws that unduly burden interstate commerce. Under Commerce Clause jurisprudence, when the effect of a state statute is to directly regulate or discriminate against interstate commerce, or to favor in-state economic interests over out-of-state interests, the state statute will generally be struck down as an unconstitutional burden on interstate commerce. *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579 (1986).

This bill seeks to penalize those who charge higher shipping rates to Hawaii consumers compared to consumers in other states even though the cost of shipping goods into Hawaii is typically higher than that of shipping goods into other states. It could be argued, then, that this bill directly regulates or discriminates against interstate commerce because it regulates the cost of shipments that travel from one state into

another. When a state statute seeks to regulate or discriminate against interstate commerce, it will generally be struck down as a violation of the Commerce Clause “without further inquiry.” *Id.*

Thank you for the opportunity to provide comments.

Andrew Pepper
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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Thursday, February 4, 2021
9:30 AM
Conference Room 229

SB 562—Relating to Deceptive Trade Practices

My name is Andrew Pepper and I am a Hawaii consumer. I SUPPORT SB 562 as an important piece of consumer protection legislation.

Hawaii consumers are in danger of being left behind as global commerce rapidly moves online. More and more, companies that offer “free” or “reduced” shipping to Hawaii for online orders are refusing to honor those offers for shipments made to Hawaii. Frequently, this refusal to honor free or reduced shipping is not revealed until the final steps of an online transaction and Hawaii consumers are then forced to choose between paying for shipping costs or cancelling their orders and not receiving the goods. Other American consumers are not faced with this choice and have free access to online goods and services.

The refusal of online vendors to honor free or reduced shipping to Hawaii is based on perceptions of increased shipping costs. However, shipping costs in all instances are a function of “zones” and online vendors already deal with variable costs depending on where they and their customers are each located (for example, a shipper in New York who offers “free” shipping will pay less to ship to a customer in Pennsylvania than to a customer in California; yet such “free” shipping offers are honored for a California customer). Hawaii is part of the national economy and it is vital that Hawaii consumers be treated on an equal footing with other American consumers. It is clearly unfair and deceptive to Hawaii consumers to offer “free” or

“reduced” price shipping on “all” orders and then withdraw that offer when the vendor is informed that the consumer who wishes to purchase its products is located in Hawaii.

I ask that SB 562 be passed and forwarded to the Committee on Judiciary for further consideration.

Thank you for this opportunity to provide testimony.