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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
House Committee on Judiciary and Hawaiian Affairs
Wednesday, April 2, 2025
2:00 p.m.
Capitol Room 325

On the following bill:
S.B.1035, H.D. 1 RELATING TO CONSUMER PROTECTION

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

My name is Mana Moriarty and I am the Executive Director for the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department supports the intent of this bill and offers comments.

The purpose of this bill is to address the harmful practices of bait-and-switch pricing and misleading fees and charges in the live-event ticketing and short-term lodging industries. The harms attendant to these practices are particularly pronounced in these industries, where most transactions occur online. Consumers trying to comparison shop across multiple websites are unable to do so because some businesses hide the true total price and force consumers to go to different sites and click through multiple web pages for each offer to learn the true total price. Consumer harm is also pronounced in these industries because the offered goods and services are often identical (as is the case with live-event tickets), or nearly identical (as is the case with competing short-term lodging

offers in a particular destination and for a particular star rating), and the most salient feature is the total price, which is shrouded from consumers.

In December 2024, the Federal Trade Commission (FTC) issued a final trade regulation rule to combat hidden fees and misrepresentations about pricing in the live-event ticketing and short-term lodging industries.¹ The Rule was finalized after intense debate.² Scheduled to take effect May 12, 2025, the Rule will apply on a nationwide basis and empower state attorneys general to enforce it. If intervening events undermine the Rule's implementation, however, there will be no nationwide standard for state law enforcement to enforce.

The Department supports enactment of a state law that protects consumers equally or greater than the Rule. We have attached a proposed draft with our recommended wording. We propose two changes to more closely align this bill with the text of the Rule, described below. With those changes, we also propose a clean effective date of "upon approval."

Amend the Definition of "Clearly and Conspicuously" to Track the Federal Rule

This bill contains an abbreviated definition of "clear and conspicuous" which applies only to the disclosures in subsection (c) and not the disclosures in subsection (a). The abbreviated definition and the limited application of the definition both diverge from the text of the Rule. Moreover, this is not simply a matter of elevating form over substance: the changes may lead to the undesirable result that this bill protects consumers less than the Rule.

At page 7, lines 16-18, the term "clearly and conspicuously" is defined, shorn of eight paragraphs of the Rule's definition of the same term. The eight paragraphs appear in an altered form at subsection (d) at page 5, line 4 – page 6, line 20. The eight

¹ Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066, RIN 3084-AB77, 16 C.F.R. Part 464.

² The Advanced Notice of Proposed Rulemaking, published on November 8, 2022, led to receipt of more than 12,000 comments; the Notice of Proposed Rulemaking, published November 9, 2023, led to receipt of nearly 61,000 comments (with more than 48,000 in support). The Commission conducted an informal hearing on April 24, 2024, at which seventeen interested parties were identified and fifteen made presentations. <https://www.federalregister.gov/d/2024-30293/p-144>

paragraphs contain critical provisions about what it means to make “clear and conspicuous disclosures” in communications that are solely visual, solely audible, and communications using the internet, a mobile application or software and conspicuous disclosure for non-print media.

At page 5, lines 4-5, the text of the bill expressly limits the application of the “clear and conspicuous” requirements to the requirements “under subsection (c).” Subsection (a), however, also contains requirements for “clear and conspicuous” disclosure. There is potential for ambiguity as to whether the clear and conspicuous requirements set forth at page 5, line 6 – page 6, line 20, apply to the disclosures “under subsection (a).

In the attached, proposed H.D. 2, we have recommended wording to ensure that the “clear and conspicuous” disclosures in subsection (a) and subsection (c) are measured by the same standard.

“Total Price” Must be Displayed *More Prominently* than any Other Pricing Information, Except the Final Amount of Payment

We appreciate the amendment made by the prior Committee clarifying that total price must be displayed more prominently than any other pricing information, with one exception: when the final amount of payment and total price are both displayed, the final amount of payment must be displayed as prominently or more prominently than the total price. See page 2, lines 10-16. However, this amendment now conflicts, perhaps inadvertently, with the bill purpose description. See page 1, lines 12-17. We ask that the bill purpose section be amended to conform to the text on page 2, lines 10-16, and have attached proposed wording to ensure that is achieved.

Briefly summarized, the conflict is that the purpose section now allows the total price to be shown as prominently or more prominently than other pricing information, except the final amount of payment. Section 2 of the bill, however, requires the total price to be shown **more prominently** than any other pricing information, except the final amount of payment. Section 2 of the bill is consistent with the Rule. In issuing the Rule, the Federal Trade Commission cited one of its own reports explaining that consumers are harmed when they see partitioned prices for different services, but do not see the total

price advertised.³ The Commission proposed to address this by requiring that the total price be advertised more prominently than any other pricing information.

Insert an Effective Date of "Upon Approval"

The Rule is scheduled to take effect on May 12, 2025, which is within ten days of the end of the Hawaii Legislature's 2025 Regular Session. Businesses affected by this bill have been on notice that they will have to come into compliance with the identical provisions of the Rule since December 2024.

We appreciate the amendments made by the prior committee that align this bill more closely with its federal counterpart. Those amendments included: clarifying that when the total price and the final price are displayed, the final price must be as prominently or more prominently than the total price; defining ancillary goods or services; and clarifying that total price includes the cost of all mandatory ancillary goods and services.

We respectfully ask the Committee to make the amendments in the attached, S.B. No. 1035, Proposed H.D. 2. The Department supports the intent of this bill, and with the recommended changes, the Department would support the bill's enactment into law. Thank you for the opportunity to testify on this bill.

³ 90 Fed. Reg. 2066, 224. <https://www.federalregister.gov/d/2024-30293/p-224>.

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, as the cost of
2 living continues to increase in the State, it is necessary for
3 the State to intervene in markets where retailers and goods and
4 services providers are treating consumers unfairly. The ability
5 to identify the price of a good or service is a necessity for a
6 properly functioning economy. Consumers look for prices to
7 comparison shop and to weigh what a good or service might be
8 worth. Most consumers rely on price to answer critical
9 questions around how much they are able to spend and save, and
10 how they will meet their basic needs and those of their
11 families.

12 The legislature also finds that consumers increasingly face
13 widespread and growing unfair and deceptive fee practices that
14 make it harder to identify how much something will ultimately
15 cost. Unfortunately, the Internet and the ability to purchase
16 goods or services online have only exacerbated the practice of
17 charging mandatory junk fees that are not disclosed until after
18 the transaction begins. The practice of charging junk fees and

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Proposed H.D. 2

1 other undisclosed mandatory costs is called "drip
2 pricing". Drip pricing is most prevalent in practices involving
3 fees for live-event tickets and short-term lodging and other
4 places of temporary sleeping accommodations, such as hotels,
5 motels, inns, short-term rentals, and vacation rentals.

6 The legislature further finds that according to the Federal
7 Trade Commission, in the last few years alone, tens of thousands
8 of Americans have expressed displeasure upon discovering the
9 cost of their hotel stays were significantly higher than
10 expected due to hidden resort fees and other mandatory charges
11 in addition to the advertised price. Consumers have also
12 complained about purchasing tickets to a live-event online and
13 finding out that the quoted ticket price had almost doubled by
14 the time they reached the final checkout page. Consumers have
15 confronted a host of mysterious, mandatory charges labeled as
16 "convenience", "processing", or "service" fees that are
17 nondescriptive and confusing. These practices are frustrating
18 for consumers when they shop for travel and entertainment,
19 especially because these purchases can represent significant
20 expenditures to their already strained finances.

21 The legislature additionally finds that the Federal Trade
22 Commission issued a final rule on January 10, 2025, to address

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1 certain unfair or deceptive practices involving fees or charges
2 for live-event tickets and short-term lodging. This final rule
3 serves as a guidance for the State to enhance its consumer
4 protection laws and allow consumers to make better informed
5 decisions when purchasing live-event tickets or deciding where
6 to stay on a short-term basis by leveling the playing field for
7 honest businesses in these industries that truthfully and
8 transparently disclose their pricing information.

9 Accordingly, the purpose of this Act is to:

10 (1) Make it an unfair or deceptive act or practice for
11 businesses to offer, display, or advertise the price of live-
12 event tickets or short-term lodging without clearly and
13 conspicuously disclosing the total price more prominently than
14 any other pricing information, except the final amount of
15 payment; and

16 (2) Make it an unfair or deceptive act or practice for
17 businesses to misrepresent any fees or charges in any offer,
18 display, or advertisement for the sale of live-event tickets and
19 short-term lodging.

20 SECTION 2. Chapter 481B, Hawaii Revised Statutes, is
21 amended by adding a new section to part I to be appropriately
22 designated and to read as follows:

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1 **"§481B- Live-event tickets; short-term lodgings; total**
2 **price; disclosure required; prohibited.** (a) It is an unfair or
3 deceptive practice in violation of section 480-2 and a violation
4 of this part for any business to offer, display, or advertise
5 any price of a covered good or service without clearly and
6 conspicuously disclosing the total price.

7 (b) In any offer, display, or advertisement that
8 represents the price of a covered good or service, a business
9 shall disclose the total price more prominently than any other
10 pricing information, except when the final amount of payment for
11 the transaction is displayed, the final amount of payment shall
12 be disclosed more prominently than, or as prominently as, the
13 total price.

14 (c) A business shall disclose clearly and conspicuously,
15 before the consumer consents to pay for any covered good or
16 service:

17 (1) The nature, purpose, and amount of any fee or charge
18 imposed on the transaction that has been excluded from the total
19 price and the identity of the good or service for which the fee
20 or charge is imposed; and

21 (2) The final amount of payment for the transaction.

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1 (d) In any offer, display, or advertisement for a covered
2 good or service, it shall be an unfair or deceptive act or
3 practice in violation of section 480-2 and a violation of this
4 part for any business to misrepresent any fee or charge,
5 including but not limited to:

6 (1) The nature, purpose, amount, or refundability of any
7 fee or charge; and

8 (2) The identity of the good or service for which the fee
9 or charge is imposed.

10 (e) For the purposes of this section:

11 "Ancillary good or service" means any additional goods or
12 services offered to a consumer as part of the same transaction.

13 "Business" means a person that offers goods or services,
14 including but not limited to online, in mobile applications, or
15 at physical locations.

16 "Clearly and conspicuously" means a required disclosure
17 that is easily noticeable (i.e., difficult to miss) and easily
18 understandable by ordinary consumers, including in all of the
19 following ways:

20 (1) In any communication that is solely visual or solely
21 audible, the disclosure must be made through the same means
22 through which the communication is presented. In any

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1 communication made through both visual and audible means, such
2 as a television advertisement, the disclosure must be presented
3 simultaneously in both the visual and audible portions of the
4 communication even if the representation requiring the
5 disclosure is made in only one means.

6 (2) A visual disclosure, by its size, contrast, location,
7 the length of time it appears, and other characteristics, must
8 stand out from any accompanying text or other visual elements so
9 that it is easily noticed, read, and understood.

10 (3) An audible disclosure, including by telephone or
11 streaming video, must be delivered in a volume, speed, and
12 cadence sufficient for ordinary consumers to easily hear and
13 understand it.

14 (4) In any communication using an interactive electronic
15 medium, such as the internet, a mobile application, or software,
16 the disclosure must be unavoidable.

17 (5) The disclosure must use diction and syntax
18 understandable to ordinary consumers and must appear in each
19 language in which the representation that requires the
20 disclosure appears.

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1 (6) The disclosure must comply with these requirements in
2 each medium through which it is received, including all
3 electronic devices and face-to-face communications.

4 (7) The disclosure must not be contradicted or mitigated
5 by, or inconsistent with, anything else in the communication.

6 (8) When the representation or sales practice targets a
7 specific audience, such as children, older adults, or the
8 terminally ill, "ordinary consumers" includes members of that
9 group.

10 "Covered good or service" means:

11 (1) Live-event tickets; or

12 (2) Short-term lodging, including temporary sleeping
13 accommodations at a hotel, motel, inn, short-term rental,
14 vacation rental, or other place of lodging.

15 "Government charges" means the fees or charges imposed on
16 the transaction by a federal, state, tribal, or local government
17 agency, department, or unit.

18 "Pricing information" means any information relating to an
19 amount that a consumer may pay.

20 "Shipping charges" means the fees or charges that
21 reasonably reflect the amount a business incurs to send physical

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goods to a consumer, including through the United States Postal Service, private mail and shipping services, or by freight.

"Total price" means the maximum total of all fees or charges that a consumer shall pay for any good or service and any mandatory ancillary good or service; provided that government charges, shipping charges, and fees or charges for any optional ancillary good or service may be excluded."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

INTRODUCED BY: _____

BY REQUEST

S.B. NO. 1035

Proposed H.D. 2

Report Title:

Consumer Protection; Unfair or Deceptive Acts or Practices;
Live-Event Tickets; Short-Term Lodging; Disclosures; Total
Price; Junk Fees

Description:

Makes it an unfair or deceptive act or practice for businesses to: offer, display, or advertise the price of live-ticket events or short-term lodging without clearly and conspicuously disclosing the total price; and misrepresent any fees or charges in any offer, display, or advertisement for the sale of live-event tickets or short-term lodging. Effective upon approval. (Proposed HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



AMERICAN HOTEL & LODGING ASSOCIATION



March 28, 2025

Representative David A. Tarnas, Chair,
Representative Mahina Poepoe, Vice Chair, and
Members of the Committee on Judiciary & Hawaiian Affairs

Hearing: Committee on Judiciary & Hawaiian Affairs
Date: Wednesday, April 2, 2025
Time: 2:00 p.m.
Place: Conference Room 325 & Videoconference
State Capitol
415 South Beretania Street

Testimony in Support of SB 1035, SD2, HD1
Relating to Consumer Protection

Aloha Chair Tarnas, Vice Chair Poepoe and
Members of the Committee on Judiciary & Hawaiian Affairs:

Hawaii Hotel Alliance (“**HHA**”) and American Hotel & Lodging Association (“**AHLA**”) believe fully transparent pricing from the outset of a consumer's transient accommodations booking in Hawai'i is paramount to their proper experience of aloha, which is why we are proud to support SB 1035, SD2, HD1.

SB 1035, SD2, HD1 aligns Hawai'i with the industry-supported Federal Trade Commission's Final Rule on Unfair or Deceptive Fees governing short-term lodging rates and live-ticket events set to be effective May 12, 2025.

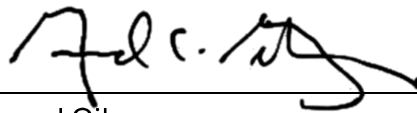
Under the final FTC Rule, all hotels, motels, short-term rentals, online travel agencies, metasearch sites, short-term rental platforms, and other entities that offer, list, advertise, or display transient accommodations must transparently disclose all mandatory fees or charges in the initial advertised price and then include government-imposed taxes and fees at the point of sale.

Importantly, SB 1035, SD2, HD1 would enshrine the FTC Rule into statute and ensure Hawai'i consumers are protected from undisclosed mandatory fees regardless of actions taken at the federal level.


Several hotel brands have already shifted to upfront display of resort and other mandatory fees rather than prior to the finalization of a booking transaction. The FTC Rule and SB 1035, SD2, HD1 bring parity to the lodging industry, which is critical to ensure that a consumer experiences the same pricing transparency, no matter the transient accommodations type or distribution channel.

For these reasons, HHA and AHLA are proud to support SB 1035, SD2, HD1. Thank you for considering our testimony.

Hawaii Hotel Alliance

By 
Gerard Gibson
President

American Hotel & Lodging Association

By 
Kekoa McClellan for The American Hotel &
Lodging Association
Principal, The McClellan Group

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April 2, 2025

Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
and members of the House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 1035, S.D. 2, H.D. 1 (Consumer Protection)**
Hearing Date/Time: Wednesday, April 2, 2025, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA offers comments on and proposes three amendments to this Bill.

This Bill makes it an unfair or deceptive act or practice for businesses to: offer, display, or advertise the price of live-ticket events or short-term lodging without clearly and conspicuously disclosing the total price; and misrepresent any fees or charges in any offer, display, or advertisement for the sale of live-event tickets or short-term lodging.

Some financial institutions issue credit cards to customers. As part of the credit card rewards program, the customers might be offered the ability to use rewards points and/or money to obtain certain travel products such as a stay at a short-term lodging (e.g., a hotel). Neither the financial institution or its affiliates set the prices or fees for the hotel stay. The financial institution and its affiliates obtain and rely on information about prices and fees for the hotel stay from a third party (i.e., from a third-party travel services supplier such as the hotel). The price and fee information received by the financial institution and its affiliates is then provided to the customer before the customer books the hotel stay on the travel portal of the financial institution or its affiliates using credit card rewards points and/or money.

Under this Bill, the financial institution and its affiliates would be considered a “business”.

A limited exception from liability is needed in this Bill to cover situations where a business has made reasonable efforts to obtain the information and data from a third-party supplier, and the business relies on the information and data from the third-party supplier.

Accordingly, we are offering the following three proposed amendments to this Bill:

Amendment #1 - re-name Subsection 481B-__(f) on page 7, line 10 of the Bill as Subsection (g).

Amendment #2 - add a new Subsection 481B- __ (f) on page 7, line 10 of the Bill as follows:

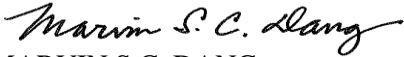
(f) Notwithstanding the provisions of this section, it shall not be considered an unfair or deceptive act or practice for a business to fail to disclose

the nature, purpose, and amount of any fees, charges, or other expenses imposed by a third-party supplier of goods or services, provided that such failure is due to a lack of information or data, or a lack of accurate information or data, from the third-party supplier. This exception shall apply only if the business has made reasonable efforts to obtain such information or data. An effort shall be deemed reasonable if the business has established a process to obtain the necessary information or data from the third-party supplier electing to impose the required fee, charge, or cost on a covered good or service.

Amendment #3 - add a definition for “third-party supplier” in the re-named Subsection 481B- __ (g) on page 7, line 10 of the Bill as follows:

“Third-party supplier” means any entity or individual that provides goods or services to a business for the purpose of resale or distribution to consumers. A third-party supplier is responsible for setting and communicating the fees, charges, or other expenses associated with their goods or services to the business. The business relies on the third-party supplier to provide accurate and timely information regarding any such fees, charges, or expenses.

Thank you for considering our comments and our proposed amendments.


MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association