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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
Senate Committee on Economic Development and Tourism
Thursday, January 30, 2025
1:00 p.m.
Capitol Room 229

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

Chair DeCoite 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 offers comments on this bill.

The Department appreciates the purpose of this bill, which is to

- (1) Require businesses that offer a price for live-event tickets or short-term lodging to disclose the total price, inclusive of most mandatory charges, and to ensure that the total price is disclosed more prominently than other pricing information, except the final amount of payment; and
- (2) Prohibit misrepresentations about fees or charges in any offer, display, or advertisement for the sale of live-event tickets and short-term lodging.

Concerns about "drip pricing," and "hidden" or "junk" fees are at the core of state and federal legislative attempts to protect consumers from opaque pricing models in

online and in-person commerce across the nation, particularly in live-event ticketing and short-term lodging. In December 2024, the Federal Trade Commission (FTCs) adopted a final trade regulation rule, the “Rule on Unfair or Deceptive Fees,” 16 C.F.R. Part 464, (the “Junk Fees Rule”), to combat drip pricing and junk fees for covered goods or services. The Junk Fees Rule is scheduled to take effect May 10, 2025, and it seeks to address consumer concerns about opaque pricing in the live-event ticketing and short-term lodging industries. In many ways, the approach taken in this bill is almost identical to the FTC’s approach in the Junk Fees Rule.

However, it is not clear whether this bill mirrors intentionally departs from the FTC approach under the Junk Fees Rule in certain respects. For example, both this bill and the Junk Fees Rule require businesses to “disclose the total price more prominently than any other pricing information” in “any offer, display, or advertisement that represents any price of a covered good or service.” But only the Junk Fees Rule requires that “where the final amount of payment for the transaction is displayed, the final amount of payment must be disclosed more prominently than, or as prominently as, the total price.” This omission could inadvertently limit consumer protections provided by this bill, unless consumer interests are furthered by the omission.

Differences between the bill and the Junk Fees Rule should be carefully analyzed to prevent a situation where Hawaii consumer protection law provides less protection than federal consumer protection law. OCP’s longstanding view is that federal consumer protection laws should provide a “floor” for Hawaii consumers, and state consumer protection laws should only be adopted if they provide equal or greater protections to Hawaii consumers.

This bill defines additional unfair or deceptive acts or practices in trade or commerce, violations of which OCP has the power to enforce by bringing a civil action for a violation of state consumer protection laws. OCP routinely brings civil actions to enforce state consumer protection laws, including state laws defining unfair or deceptive practices under Hawai‘i Revised Statutes (“HRS”) Chapter 481B, Part I, and HRS section 480-2. OCP is a division of the Department of Commerce and Consumer Affairs that is “designated the consumer counsel for the State” and required to “represent and protect

the State, the respective counties, and the general public as consumers.” OCP is statutorily required to give due consideration to FTC trade regulation rules which define unfair or deceptive acts or practices under federal consumer protection law. This includes the Junk Fees Rule.

The Department appreciates the intent of this bill and the opportunity to testify on it.

SB-1035

Submitted on: 1/29/2025 11:02:17 AM

Testimony for EDT on 1/30/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Olderr	Individual	Support	Written Testimony Only

Comments:

Junk fees are outrageous, anti-consumer, and prey on the fatigue of online shoppers. If someone wants to sell something, they should be upfront about the cost and not hide it until the very last second. Please support this bill.