



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2018

GOV. MSG. NO. 1252

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith HB1621 HD1 SD1 CD1, without my approval and with the statement of objections relating to the measure.

HB1621 HD1 SD1 CD1

RELATING TO CONSUMER PROTECTION

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2018

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1621

Honorable Members
Twenty-Ninth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, House Bill No. 1621, entitled "A Bill for an Act Relating to Consumer Protection."

The purpose of this bill is to protect consumers in cases where damaged goods are returned and where high turnover restaurant franchises do not participate in national advertising campaigns.

This bill is objectionable because it may be unconstitutionally vague and it presents practical challenges to enforcement.

Due process requires that laws "state with reasonable clarity the act it proscribes and provide fixed standards for adjudging guilt, or the statute is void for vagueness." *State v. Gaylord*, 78 Hawai'i 127, 138, 890 P.2d 1167, 1178 (1995). In this bill, the phrases "typical duration," "approximately one hour" and "moderately priced," among others, in the definition of "high turnover restaurant," do not state with reasonable clarity the requirements of the statute, and do not provide fixed standards to avoid arbitrary or subjective enforcement.

In addition, even if this bill is not unconstitutionally vague, a plaintiff will need experts and witnesses to demonstrate whether the "typical duration of customer stay is approximately one hour," and whether the restaurant is "moderately priced." As a practical matter, the high costs of expert testimony, the limits of recovery, and the uncertainty of results will prevent lawsuits from being filed and will therefore impede enforcement.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 1621
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For the foregoing reasons, I am returning House Bill No. 1621 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1

PART I

2

SECTION 1. The legislature finds that many merchants have
3 return policies that impose processing or administrative fees on
4 consumers to effectuate a warranty claim on damaged or defective
5 goods. However, the legislature concludes that a consumer who
6 purchases a damaged or defective product should be able to
7 return it for repair, replacement, or refund without having to
8 bear additional costs.

9

Accordingly, the purpose of this part is to prohibit a
10 merchant from charging a purchaser any fee, including a
11 processing fee or an administrative fee, to repair, replace, or
12 refund damaged or defective goods.

13

SECTION 2. Section 481B-5.5, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

15

"(1) Any return [~~policies~~] policy adopted by the merchant
16 pursuant to this section that limits the purchaser's ability to
17 obtain a refund shall not apply if the goods were damaged or
18 defective prior to the time of sale, unless the merchant was



1 aware of the damage or defect and notified the purchaser of the
2 damage or defect in writing prior to the time of sale. A
3 merchant shall not charge a purchaser any fee, including a
4 processing fee or an administrative fee, to repair, replace, or
5 refund goods pursuant to this subsection."

6 **PART II**

7 SECTION 3. The legislature finds that consumers are often
8 confused or misled by offers that high turnover restaurant
9 franchises make in their national advertising campaigns.
10 Furthermore, while an advertisement may state that an offer is
11 not available in Hawaii, this disclosure is often in tiny print
12 and does not sufficiently inform consumers that the offer is
13 unavailable.

14 Accordingly, the purpose of this part is to ensure that
15 consumers are sufficiently aware when an offer under a high
16 turnover restaurant franchise's advertising campaign is not
17 available in Hawaii by:

18 (1) Requiring high turnover restaurant franchisees to
19 disclose their non-participation in national
20 advertising campaigns of the franchise in which
21 discounts or promotions are offered; and



1 (2) Prohibiting franchisors from limiting or restricting
2 these disclosures.

3 SECTION 4. Chapter 481B, Hawaii Revised Statutes, is
4 amended by adding a new section to part I to be appropriately
5 designated and to read as follows:

6 "§481B- High turnover restaurant franchise; advertising
7 campaigns; non-participation. (a) If a high turnover
8 restaurant franchisee does not participate in a specific
9 national advertising campaign of the high turnover restaurant
10 franchise in which a discount or a promotion is offered, the
11 franchisee shall disclose its non-participation at its entrance
12 or storefront with signage of a size sufficient to be clearly
13 visible to the general public.

14 (b) No high turnover restaurant franchisor may impose a
15 restriction or condition upon its franchisee, whether by the
16 terms of the franchise agreement or by other device or practice,
17 in making the required disclosure under subsection (a).

18 (c) For the purposes of this section:

19 "High turnover restaurant" means a restaurant that is a
20 sit-down, full-service eating establishment with typical
21 duration of customer stay of approximately one hour; that is



1 moderately priced and belongs to a restaurant chain; that
2 generally serves lunch and dinner, but may also be open for
3 breakfast, and sometimes be open twenty-four hours per day; that
4 typically does not take reservations; and in which patrons
5 commonly wait to be seated, are served by a wait staff, order
6 from menus, and pay for meals after they eat. "High turnover
7 restaurant" does not include a fast food restaurant.

8 "Fast food restaurant" means an eating establishing that is
9 characterized by a large carry-out clientele, long hours of
10 service, and food served on paper plates or paper products. It
11 commonly does not provide table service and its patrons
12 generally order at a cash register and pay before they eat."

13 **PART III**

14 SECTION 5. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 6. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect upon its approval;
20 provided that part II shall be repealed on July 1, 2023.



HB No. 1621, HD 1, SD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.


President of the Senate


Clerk of the Senate