



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:
S.B. NO. 83, RELATING TO HOTELS.

BEFORE THE:
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

DATE: Tuesday, February 4, 2025 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or Christopher T. Han or
Christopher J.I. Leong, Deputy Attorneys General

Chair DeCoite and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill adds a new section to the Hawaii Revised Statutes that requires hotelkeepers to provide adequate notice of service disruptions to guests and third-party vendors under certain conditions. This bill also allows for recovery of damages by those injured by violations of the new section.

This bill may face legal challenge under the First Amendment of the United States Constitution as a potential restriction on commercial speech, but adding a preamble stating the justification for the bill will better protect it against a legal challenge. Further, we recommend inserting a non-impairment clause to insulate the bill from a challenge under the Contract Clause, article I, section 10, clause 1, of the United States Constitution as an impairment of contracts.

Courts have recognized that laws regulating business advertising and disclosures constitute a form of commercial speech regulation. *See Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 652 (1985) (upholding the constitutionality of disclosure requirements for contingent-fee arrangements in attorney advertising). In determining whether a regulation on commercial speech is constitutional, a regulation is more likely to be upheld where the speech is misleading, the asserted governmental interest is substantial, the regulation directly advances the governmental interest, and the regulation is not more extensive than is necessary to

serve that interest. See *Retail Digital Network, LLC v. Prieto*, 861 F.3d 839, 844 (9th Cir. 2017) (upholding prohibition on a retailer from leasing advertising space to alcohol manufacturers).

Subsections (a) and (b) of the new section to be added by the bill may trigger commercial speech scrutiny due to the requirements to provide notice of any service disruptions to each third-party vendor and guest. Like *Zauderer*, this bill compels speech by placing an affirmative obligation on a business to provide certain information, thereby raising similar commercial speech concerns.

To strengthen the bill against potential First Amendment challenges, we recommend including a preamble clarifying how service disruptions without adequate notice are detrimental to consumers, that the government's interest in preventing such misconduct is substantial, that this regulation advances the government's interest, and that avoiding these harmful effects justifies the restrictions imposed by the bill. An example can be found in H.B. No. 945, section 1.

Additionally, subsections (c) and (d) of the new section to be added by the bill could be subject to challenge under the Contract Clause of the United States Constitution, which generally prohibits the substantial impairment of contractual relationships. Hotel reservations and bookings are contracts by nature, so requirements under these subsections that are inconsistent with any agreement that is already in effect at the time of this bill's approval may constitute impairment.

To mitigate this issue, we recommend inserting the following wording after page 6, line 5:

SECTION 3. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Constitution of the State of Hawaii or article I, section 10, of the United States Constitution.

The current sections 3 and 4 should then be renumbered as sections 4 and 5.

The addition of a preamble and the suggested section 3, above, would enhance the bill's ability to withstand constitutional challenges. Thank you for the opportunity to provide comments.



Committee On Economic Development and Tourism
Senator Lynn DeCoite, Chair
Senator Glenn Wakai, Vice Chair

Testimony in strong support of SB 83, with proposed amendments

Chair DeCoite, Vice Chair Wakai, and Members of the Committee,

UNITE HERE Local 5 represents over 10,000 Hawaii workers in hotels, health care, airports and food service. We stand in strong support of SB 83, but feel it should be amended as described below. In order for our state's most prominent industry to thrive, visitors should have the opportunity to plan around any complications that might arise during their trips. It does not benefit anyone in the industry for visitors to leave Hawai'i upset about aspects of their trips. Where it is possible to inform guests about disruptions and help them plan around inconveniences, we should require hoteliers to do so.

Over the past years, several hotels have conducted construction projects or experienced strikes. As *USA Today* noted, visitors staying at or attending conferences at some strike-affected hotels have claimed they were not notified of the labor disputes and were upset about these omissions. According to the article:

Sylvia Clark, who stayed at the resort between Sept. 30 to Oct. 5, was one of the chanting guests. "It was nerve wracking," she told USA TODAY. "But I felt it was very unfair of Hilton not to let their guests know way ahead of time that this could be a possibility."

Clark was told about the strike less than three days before she and her family hopped on a plane from California to Oahu – and the news came from Costco, who she booked through, not the hotel. "For us, it was too late," she said.

- "Piles of dirty towels and long lines: Hawaii hotel guests describe conditions amid strikes," *USA TODAY*, 10/14/2024.

Some guests at striking hotels provided statements to workers. For example, one guest told us:

We're here for nine days, but unfortunately they didn't let us know what was going on prior to our arrival, so when we got here they let us know that we won't be having access to any amenities, no room service, no housekeeping, no valet parking; like, a lot of things that we were used to having all those things; and we come to hang out, relax, not having to clean our own room, but it's unfortunate what's happening, I hope it gets resolved soon.

Construction noise, vibration, dust and related closures of services can also impact the guest experience. A 2024 article in the Vietnamese publication *Tuoi Tre News* states :

Sound from drills and the impact of equipment and machines from morning till night at the construction site at 254 Vo Nguyen Giap Street have bothered guests in many nearby hotels since the start of 2024.

"Multiple tourists have canceled room bookings, left negative reviews, and given low scores for the affected hotels. Meanwhile, several guests left the noise-hit

hotels at midnight due to noise pollution,” according to a petition written by hoteliers in Da Nang.*

- “Hotels in Da Nang plagued by noisy construction,” *Tuói Tre News*, 1/16/2024. (Note: in this example, the construction was not onsite at the hotels, but rather nearby; this would not be covered by HB 594; but it would apply where hotels conduct construction projects on-site while their properties remain open.)

In each case, hoteliers knew of the possibility of disruptions before they happened, and had the choice to pass that information to their guests; some chose not to. Had they done so, guests could have planned accordingly and had a better experience.

Local 5 has attempted to inform consumers by reaching out to meeting planners and to visitors prior to their arrival in Hawai'i to make them aware of potential strikes, but we do not have the information that hotels have about future bookings. We have also reached out to guests while they were in Hawai'i during disruptive periods, providing them with tools they could use to redress their grievances. Based on these experiences, it is clear to us that a better practice is possible, that it would benefit the whole industry, and that SB 83 would provide the necessary incentives to ensure visitors who may be impacted by service disruptions have notification and recourse.

In order to make the bill most effective, we recommend making the following amendments:

Provide consumers a means of recourse through a private right of action by adding the following as Section 486K-__ (g):

(g). Suits by persons injured; amount of recovery, injunctions.

(1) Any person who is injured by reason of anything forbidden or declared unlawful by this Section 486K: (i) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorney's fees together with the costs of suit; and (ii) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorney's fees together with the costs of suit.

(2) The remedies provided in this section are cumulative and may be brought in one action.

Add a preamble to the bill along the lines of the following:

Section 486K-__(_). The Legislature finds and declares all of the following:

(1) Tourism is a major contributor to the State's economy. Travelers come from around the globe to experience Hawaii's natural beauty, culture, and diversity.

(2) Travelers staying at hotels are vulnerable to disruptions to accommodation services. They are frequently unfamiliar with local conditions and lack alternative accommodations during their stay.

(3) Hotel guests will often be unaware of infestations, construction, noisy demonstrations, work stoppages, strikes or

lockouts, or the unavailability of advertised amenities at the hotel when they make reservations, and may have difficulty cancelling their reservations upon arriving and discovering such disruptions.

(4) Ensuring that hotel guests are notified of any service disruption, or the possibility of a service disruption, and are permitted to terminate reservations without financial consequences is essential to protect travelers from the effects of service disruptions and to ensure the continued vitality of Hawaii's tourism and hotel sector.

Clarify Section 486K-__(e) as follows:

(e) Any keeper that violates or causes another person to violate this section shall forfeit to the injured party three times the amount of (1) the sum charged in excess of what the keeper is entitled to for each day that a notice was required under Section 486K(a), (b) and/or (d) but not given; and (2) any fee, penalty, or other charge or deposit retained in violation of Section 486K(c).

Modify the bill's section 486K-__ (d) as follows:

HRS 486k-__ (d). At the onset of a service disruption, (i) the keeper shall immediately and clearly notify all guests and hotel service users of the service disruption pursuant to subsections (a) and (b); ~~and~~ (ii) regardless of whether the keeper provides such notice, a guest may terminate any remaining period of a reservation, booking, or agreement for the use of a room or hotel service and the keeper shall not impose any fee, penalty, or other charge for the termination or retain any deposit related to any unused portion of the period of the reservation, booking, or agreement following the onset of the service disruption.

Revise the definition of "Service disruption" in HRS § 486K-__(f) as follows:

"Service disruption" means any of the following conditions ~~that substantially affects or likely to substantially affect a guest's use of a room or hotel service:~~

* * *

(7) Any strike, lockout or ~~picketing activity or other demonstration or event occurring for a calendar day or more at or near the hotel~~ other work stoppage; or

(8) Any lawful picketing or demonstration at or adjacent to the hotel (i) that creates noise that disturbs a guest of the hotel; or (ii) of which the operator has notice and that is likely to create noise that may disturb a guest of the hotel.

Expand HRS § 486K-__(a) and (d) and correct the inconsistency between subsections (a) and (d), as follows:

(a) ~~Within twenty-four hours of the occurrence~~ At the onset of a service disruption or of notice that a service disruption may occur . . .

(d) At the onset of a service disruption or of notice that a service disruption may occur. . . .

With these changes, this legislation could go a long way toward protecting consumers and maintaining a positive image of Hawai'i even for those who face service disruptions. Thank you.



February 1, 2025

Senator Lynn DeCoite, Chair
Senator Glenn Wakai, Vice Chair
Committee on Economic Development and Tourism
Hawaii Senate
Hawaii State Legislature

Opposition to and Comments on Bill 83

Dear Chair DeCoite, Vice Chair Wakai and Members of the Senate Committee on Economic Development and Tourism,

Thank you for the opportunity to provide our opposition to and comments on Bill 83.

In an ideal world, there would never be a service disruption at a hotel. But we live in the real world, where service disruptions can and do occur. When those events happen, our hotel members manage them immediately, through corporate policies established by their respective brands, and in direct partnership with the impacted guests. The aim is to always “make it right”, but what “right” looks like for each guest is unique. Right can be a refund, or a return of points, or assistance with moving a guest’s stay to a neighboring hotel. Right can be a complimentary meal, an alternative experience, or access to an amenity not currently available at one hotel, in partnership with another.

The requirement on page 3, requiring the hotelier to “forfeit to the injured party three times the amount of the sum charged” is not only excessive, it does not adequately address that many guests expectations are not met solely with money. We also need to honor their limited time while they’re in Hawaii on vacation, and that often means finding an immediate solution that is tailored to their needs.

At the KCRA, our hotel members’ reputations depend on their capacity to anticipate the impact of those disruptions. We also require the flexibility to deliver alternatives that will allow us to uphold our brands’ promises. Our aim is always to keep our clients happy, to exceed their expectations even in the midst of challenges, and to build their desire to return to Hawaii again and again.

This legislation groups together a wide variety of disruptions that we believe are already being effectively managed by the hotels. The penalties and timeframe suggested, and the requirement to notify everyone within all forms of communication is onerous, and does not take into consideration the localized nature of most of the identified impacts.

For example, one of our member properties has more than 600 hotel rooms. If they receive a complaint about bed bugs, they immediately address it by relocating the guest to another room, closing the impacted and adjoining rooms on both sides, and calling in a pest inspector for service. The pest inspector then needs to verify if there is indeed an infestation, as guests may have experienced some other skin irritation they attributed to bed bugs – when bed bugs were not the issue. If there is indeed an infestation, the pest control company has established protocols for treating it before it certifies that those rooms can be reopened. We believe that policy adequately addresses the challenge, without unnecessarily damaging the reputation and experience of the guests staying in the other 597 rooms.

The timeframes for resolution of service disruptions identified in this bill also do not acknowledge the reality experienced by neighbor island hotels. For example, the primary elevator service companies are located on Oahu, and specialized parts often need to be transported to the neighbor islands. Therefore, it can sometimes take a number of days to repair an

elevator. While that repair is in process, we always communicate with the guests currently staying at a property and provide alternatives like where to find elevators that are functional, or changing the location of their room to a different floor in order to avoid the need for an elevator. But it would be excessive to inform our travel/trade partners of the repair of the elevator, as that repair would be completed before guests using that service arrived at the property.

Sometimes severe weather will cause a disruption, and we'll be forced to close our pools or ocean access for a limited period of time. In those events, we notify all the guests staying with us of the disruption through all communications channels, and we wait for the all clear from Civil Defense and emergency management agencies, before we reopen, as our guests' safety is our highest priority. It would be excessive to place a notice on our advertisements, websites and social media channels that our pool is closed, as it is a temporary event.

Though likely created with the best of intentions, this bill is overreaching, excessive, and does not adequately address the unique needs and desires of our guests. It also unnecessarily targets hotels for service disruptions, when many of the issues identified (closure of pools, elevators, pest infestations) could disrupt service at many other business establishments including malls, retail outlets, restaurants, condos, etc.

On behalf of our 5,500 employees and the 17,500 Hawaii Island residents they support, mahalo for the opportunity to provide our comments opposing Bill 83.

Sincerely,



Stephanie Donoho, Administrative Director

Craig Anderson, VP Operations, Mauna Kea Resort –President
Pat Fitzgerald, CEO, Hualalai Investors – Vice President
Charlie Parker, General Manager, Four Seasons Hualalai – Secretary
Daniel Scott, Managing Director Rosewood Kona Village – Treasurer
Chris Sessions, DOSM, Fairmont Orchid – Board of Directors
Scott Head, VP Resort Operations, Waikoloa Land Company – Board of Directors
David Givens, General Manager, Hilton Waikoloa Village – Board of Directors
Rob Gunthner, Area VP Resort Operations, Hilton Grand Vacations – Board of Directors
Pete Alles, Regional VP and GM, Mauna Lani, Auberge Resorts Collection – Board of Directors
Mark Goldrup, General Manager, Waikoloa Beach Marriott – Board of Directors



Randy Perreira
President

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The Thirty-Second Legislature
The Senate
Committee on Economic Development and Tourism

Testimony by
Hawaii State AFL-CIO

February 4, 2025

TESTIMONY IN SUPPORT OF SB83 - RELATING TO HOTELS

Chair DeCoite, Vice Chair Wakai, and members of the Committees:

The Hawaii State AFL-CIO is a state federation of 74 affiliate labor organizations representing over 68,000 union members across Hawaii in industries including healthcare, construction, hospitality, entertainment, transportation, and government. The Hawaii State AFL-CIO serves its affiliates by advocating for the rights of working families, promoting fair wages, safe working conditions, and policies that strengthen Hawaii's workforce.

We are in support of SB83, which requires hotelkeepers to provide adequate notice of service disruptions to guests and third-party vendors under certain conditions. As the backbone of Hawaii's economy, tourism depends on the trust and satisfaction of our visitors. Service disruptions such as renovations or labor disputes can affect a guest's experience and tarnish Hawaii's reputation as a world-class destination. Requiring hotels to notify guests of potential disruptions helps maintain transparency and strengthens the industry's commitment to visitor satisfaction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Perreira".

Randy Perreira
President

SB-83

Submitted on: 2/2/2025 7:46:45 PM

Testimony for EDT on 2/4/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Veronica Moore	Individual	Support	Written Testimony Only

Comments:

To: Senator Lynn DeCoite, Chair

Senator Glenn Wakai, Vice Chair

Senate Committee on Economic Development and Tourism

Senate Committee on Commerce and Consumer Protection

Senate Committee on Judiciary

From: Veronica Moore, Individual Citizen

Date: February 2, 2025

RE: Upcoming Hearing for SB83

Measure Title: RELATING TO HOTELS.

Report Title: Hotels; Hotel Services; Service Disruption; Third-Party Vendor;
Guests; Notice; Damages

To All Concerned,

My name is Veronica Moore and I support Senate Bill 83 because it is simply common courtesy to provide notice to third-party vendors and guests should a disruption of service(s) occur. Thank you for your consideration, and I appreciate the opportunity to present testimony regarding this bill.

Sincerely,

Veronica M. Moore