

JAN 22 2010

A BILL FOR AN ACT

RELATING TO ACTIVITY DESKS.

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

SECTION 1. Chapter 468M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§468M- Record keeping requirements for client trust accounts. (a) An activity desk shall maintain all books and records necessary to comply with this chapter and any rules adopted pursuant to this chapter and shall make all records relating to client trust accounts available for inspection and audit within three business days of a written request by the director. Nothing in this section shall prevent the director from inspecting or auditing the books and records of an activity desk as otherwise provided pursuant to this chapter or rules adopted by the director pursuant to chapter 91.

(b) An activity desk shall keep and maintain copies of all bank statements, deposit slips, cancelled checks, drafts, and wire or electronic transaction documents relating to client trust accounts for a period of at least two years."



SECTION 2. Section 468M-3, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]~~**\$468M-3**~~[+]~~ **Prohibited acts.** No activity desk shall engage in any of the following practices:

- (1) Covering, concealing, or obscuring the name, address, or telephone number of an activity provider in any card or brochure;
- (2) Placing a telephone number, address, or other information on any card, brochure, or other advertising material produced or published by an activity provider, whether by decal, sticker, stamp, or otherwise, without identifying the activity desk by name ~~[and]~~, address~~[+]~~, and registration number;
- (3) Using a promotional card or brochure that does not clearly display the name and telephone number of the activity provider whose activity is being sold or booked when the activity is located in this State;
- (4) Withdrawing any funds of a consumer from a client trust account, other than a sales commission up to a maximum of fifteen per cent or to make a refund to the consumer, until the activity provider has been paid;

~~[or]~~



(5) Failing to possess a current and valid registration prior to engaging in business or advertising as an activity desk[-]; or

(6) Booking or placing a reservation for activities with an activity provider until full payments for the activity are received by the activity desk or the reservation specifically provides for direct payment of the amounts owed to the activity provider at the time of the activity."

SECTION 3. Section 468M-9, Hawaii Revised Statutes, is amended to read as follows:

"[+]§468M-9[+] Client trust accounts; maintenance of and withdrawal from such accounts. (a) Within three business days of receipt, an activity desk shall deposit all sums received from a consumer[-] for excursions or activities offered by the activity desk in a trust account maintained in a federally insured financial institution located in Hawaii. All sums paid by any person to an activity desk for activities furnished by an activity provider shall be held in trust for the benefit of the person making the payment and the activity provider. The activity provider shall be considered the trustee of the funds paid to an activity desk, less any commission.



(b) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the activity desk. The activity desk shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except:

(1) In partial or full payment for excursion or activities to the activity provider directly providing the services; or

(2) To make refunds as required by this chapter.

(c) This section shall not prevent the withdrawal from the trust account of:

(1) The amount of the sales commission, up to a maximum of fifteen per cent;

(2) Any interest earned and credited to the trust account;

(3) Refunds; or

(4) Remaining funds of a consumer once the activity provider has been paid.

(d) At the time of registration, the activity desk shall file with the department the account number and the name of the financial institution at which the trust account is held [or

~~submit a bond or letter of credit as provided in section 468M-~~

~~10]~~. The activity desk shall notify the department of any



1 change in the account number or location within one business day
2 of the change.

3 ~~[(c) The director may, by rule, allow for the use of other~~
4 ~~types of funds or accounts provided that the protection for~~
5 ~~consumers is no less than that provided by this section.] "~~

6 SECTION 4. Section 468M-11, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"[+]§468M-11[+] Violations; fraud.** Any violations by an
9 activity desk of any law relating to client trust accounts ~~[or~~
10 ~~the bond or letter of credit pursuant to section 468M-10]~~ shall
11 constitute a prima facie showing of fraud on the part of the
12 activity desk and may not be dischargeable as a debt to a
13 consumer or an activity provider in any bankruptcy proceeding."

14 SECTION 5. Section 468M-10, Hawaii Revised Statutes, is
15 repealed.

16 ~~"[§468M-10] Performance bond and irrevocable letter of~~
17 ~~credit as alternative to client trust account required of~~
18 ~~activity desks; coverage amount and computation; annual report~~
19 ~~and option; adjustments; coverage upon transfer. (a) If a~~
20 ~~client trust account is not established and maintained as~~
21 ~~required under section 468M-9, no activity desk shall be~~
22 ~~permitted to operate in the State unless the activity desk:~~



~~(1) Posts a bond which is a performance or financial guaranty type bond naming the director as the obligee and which may be canceled only if the activity desk gives sixty days prior written notice to the surety or if the surety gives thirty days prior written notice to the director of cancellation of the bond; or~~

~~(2) Obtains an irrevocable letter of credit which is a guarantee of payment for a term of one year naming the director as beneficiary, with a provision for automatic extension for additional annual periods, and which may be canceled only if the activity desk gives prior written notice by certified mail to the director and to the issuer at least ninety days before the letter's expiration date or the date on which the activity desk intends the letter to cease being effective or the issuer gives prior written notice by certified mail to the director at least sixty days before the expiration date.~~

~~(b) The bond or letter of credit shall be issued by a surety or federally insured lending institution authorized to do business in the State to indemnify any consumer who may suffer loss as a result of nonperformance by an activity desk.~~



1 ~~(c) An activity desk shall not provide the required~~
2 ~~coverage through multiple bonds or irrevocable letters of credit~~
3 ~~but shall provide either a single bond or a single irrevocable~~
4 ~~letter of credit. An activity desk may substitute the bond with~~
5 ~~an irrevocable letter of credit. An activity desk may~~
6 ~~substitute the bond with an irrevocable letter of credit and~~
7 ~~vice versa pursuant to subsection (h), but shall not provide one~~
8 ~~in addition to the other to reach the required aggregate amount~~
9 ~~of coverage. If an activity desk has more than one branch desk~~
10 ~~location, the bond or irrevocable letter of credit shall cover~~
11 ~~all locations and computations on the coverage amount shall be~~
12 ~~based on the total net sales revenues of all branch locations.~~

13 ~~(d) Upon cancellation or expiration of the bond or letter~~
14 ~~of credit, the surety or insurer shall remain liable for any~~
15 ~~claims against the bond or letter of credit for a period of six~~
16 ~~months; provided that:~~

17 ~~[(1)] The debts were incurred while the bond or letter of~~
18 ~~credit was in effect; and~~

19 ~~[(2)] The director notifies the surety or insurer, as the~~
20 ~~case may be, of any claims within ninety days of~~
21 ~~discovery of any claims.~~



1 ~~(e) The surety or insurer is not required to release any~~
2 ~~moneys or collateral to the activity desk during the six months~~
3 ~~after cancellation of the bond or expiration of the letter of~~
4 ~~credit.~~

5 ~~(f) The amount of coverage shall be equal to the average~~
6 ~~monthly net sales revenues of the activity desk as determined~~
7 ~~for the twelve month period ending on the last sales period~~
8 ~~ending date of the fifth month prior to the anniversary date of~~
9 ~~the bond or the irrevocable letter of credit; provided that the~~
10 ~~amount of coverage of the bond or irrevocable letter of credit~~
11 ~~shall not be less than \$50,000 and shall not be more than~~
12 ~~\$100,000. Any activity desk providing a bond or irrevocable~~
13 ~~letter of credit for the first time during the period beginning~~
14 ~~on September 1, 1992, and ending on March 31, 1993, shall base~~
15 ~~its initial coverage amount on the twelve month period ending on~~
16 ~~June 30, 1992. If an activity desk does not have a full twelve-~~
17 ~~month period on which to base the amount, the amount shall not~~
18 ~~be less than the average monthly net sales revenues as~~
19 ~~determined for the months available; provided that this amount~~
20 ~~shall not be less than \$75,000, notwithstanding the minimum~~
21 ~~amount of \$50,000 for regularly computed coverage.~~



~~(g) No later than four months before the anniversary date of coverage, each activity desk shall submit a notarized annual report to the department verifying the monthly net sales revenue figures for the twelve month period upon which the amount of the bond or irrevocable letter of credit is based. However, each activity desk shall have the option not to submit the annual report if the activity desk provides a bond or an irrevocable letter of credit for the maximum amount of \$100,000.~~

~~(h) Each activity desk shall review the desk's coverage at least once each year and shall increase or decrease the amount of the coverage as necessary according to the computation method in subsection (f) at the time coverage is renewed on the anniversary date or on other dates if coverage is reinstated or replaced; provided that any downward adjustment in coverage shall not result in coverage below \$50,000.~~

~~A bond shall be accepted as replacement for another bond or an irrevocable letter of credit and an irrevocable letter of credit shall be accepted as replacement for another irrevocable letter of credit or a bond if:~~

~~(1) The effective date of a replacement bond is prior to or on the cancellation date of the bond being replaced;~~



1 ~~(2) Where a letter of credit is about to expire, the~~
2 ~~effective date of the replacement bond is prior to or~~
3 ~~on the same date as the date of expiration of the~~
4 ~~irrevocable letter of credit and the replacement bond~~
5 ~~is received by the director before that expiration~~
6 ~~date;~~

7 ~~(3) The replacement irrevocable letter of credit is~~
8 ~~received by the director at least fifteen days prior~~
9 ~~to the expiration date of the irrevocable letter of~~
10 ~~credit being replaced; or~~

11 ~~(4) The replacement irrevocable letter of credit is~~
12 ~~received by the director on or before the cancellation~~
13 ~~date of the bond.~~

14 ~~(i) An activity desk whose bond or letter of credit has~~
15 ~~been cancelled or has expired may continue to operate the~~
16 ~~activity desk provided the desk establishes the client trust~~
17 ~~account at least two months prior to the cancellation or~~
18 ~~expiration of the bond or letter of credit, and shall not be~~
19 ~~allowed to replace the client trust account with a bond or~~
20 ~~letter of credit for at least one year.~~

21 ~~(j) Failure to have in effect a client trust account, or~~
22 ~~current bond or letter of credit shall result in automatic~~



~~forfeiture of the registration. An activity desk whose
registration is forfeited shall apply as a new applicant for
registration."]~~

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

SECTION 7. This Act shall take effect on July 1, 2010.

INTRODUCED BY:

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Report Title:

Activity Desks; Client Trust Accounts

Description:

Establishes record keeping requirements for client trust accounts held by activity desks. Clarifies that activity desks shall include registration numbers on all advertising materials. Prohibits an activity desk from booking or placing a reservation for activities with an activity provider until payment is received or direct payment to the provider is arranged. Repeals authority to substitute a bond or letter of credit for client trust account.

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