



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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DIRECTOR

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DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

THURSDAY, FEBRUARY 18, 2010
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 2417, HOUSE DRAFT 1
RELATING TO ACTIVITY DESKS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND TO THE HONORABLE GLENN WAKAI, VICE CHAIR,
AND TO THE HONORABLE KEN ITO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs' Regulated Industries
Complaints Office ("RICO") appreciates the opportunity to testify on House Bill No.
2417, House Draft 1, Relating To Activity Desks. My name is Jo Ann Uchida,
RICO's Complaints and Enforcement Officer. RICO supports Sections 1, 2, and 3

of the bill, subject to one revision, and takes no position on the remainder of the bill regarding bond and letter of credit.

House Bill No. 2417, House Draft 1, amends Chapter 468M, Hawaii Revised Statutes, to 1) establish record keeping requirements for client trust accounts; 2) require registration numbers on all advertising materials; 3) preclude an activity desk from booking or placing a reservation for activities until full payment for the activity is received or direct payment is arranged; 4) clarify that all sums paid 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; and 5) increases the maximum amount that can be required for a bond or letter of credit.

The language in Section 1 of the bill will assist RICO in conducting a thorough investigation of possible violations in an expeditious manner and will provide guidance to registrants as to how long records must be maintained.

The language in Section 2 of the bill will ensure that the activity desk does not book reservations with providers until it receives full payment or where direct payment is made to the activity provider at the time of the activity. The current law does not address this situation.

RICO is advised that Activities & Attractions Association of Hawaii ("A3H") has requested an amendment to the bill on page 3 lines 4 to 9 as follows:

6) Failing to obtain full payment for activities prior to or at the time activity reservations are booked or placed with the activity provider or within three business days thereafter, except where the reservation specifically provides for direct payment of the amounts owed to the activity provider at the time of the activity.

While this amendment will pose increased risk of loss to the activity provider, A3H has indicated that the amendment will still establish a short time frame for payment while providing the registrant some latitude in processing payments. RICO does not oppose this amendment.

The language in Section 3 of the bill clarifies the role of the activity desk, the activity provider, and the customer with regard to monies held in the client trust account. RICO has had cases in which client trust funds are used for improper purposes and this language will reinforce the responsibility of the activity desk as trustee of the trust funds.

Thank you for this opportunity to testify on House Bill No. 2417, House Draft 1. I will be happy to answer any questions that the members of the Committees may have.



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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Thursday, February 18, 2010
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 2417, H.D. 1, RELATING TO ACTIVITY DESKS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Lee Ann Teshima, Executive Officer for the Activity Desks Program, with the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs ("Department").

Thank you for the opportunity to testify on House Bill No. 2417, H.D. 1. We support this bill that would establish record keeping requirements for client trust accounts held by an activity desk, require registered activity desks to include their registration numbers on all advertising materials of an activity provider, prohibit an

activity desk from booking or placing a reservation on activities with an activity provider until payment is received or direct payment to the activity provider is arranged and increase the amount of the bond or letter of credit for an activity desk to \$250,000.

Section 1 of the bill would provide guidance to activity desks as to how long records must be maintained and to allow the Regulated Industries Complaints Office to conduct their investigation of possible violations in an expeditious manner.

Section 2 of the bill would require the activity desk to include their activity desk registration number in all advertising materials of an activity provider, allowing both the consumer and the activity provider to verify the activity desk's current registration and any possible prior complaints history and prohibit an activity desk from booking or placing a reservation on activities with an activity provider until payment is received or direct payment to the activity provider is arranged which may ensure that the activity desk is in receipt of monies for the activity at the time the activity is provided and that appropriate payment may be made to the activity provider.

Section 3 of the bill clarifies that the activity desk be the trustee of the monies held in a client trust account, making the activity desk accountable and responsible for monies collected by the consumer which are to be paid to the activity provider.

Section 4 of the bill amends the maximum amount of the bond or letter of credit for an activity desk without a client trust account from \$100,000 to \$250,000 which would afford more protection for consumers who may suffer a loss as a result of non-performance by an activity desk.

Thank you for the opportunity to testify on House Bill No. 2417, H.D. 1.



Activities & Attractions Association of Hawaii
PO Box 598, Makawao, Hawaii 96768
(808)871-7947 Main (808)877-3104 Fax

Testimony to the House Committee on Consumer Protection & Commerce/Judiciary

Thursday, February 18, 2010; 2:00 p.m.

Conference Room 325

Testimony of

Toni Marie Davis/Executive Director

Activities & Attractions Association of Hawaii

RE: Support for HB2417 Relating to Activity Desks

Dear Chairman Herkes, Vice Chair Wakai & members of the committee CPC and
Chair Karamatsu and Vice Chair Ito & members of the Committee of Judiciary;

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 12 years it has been my honor to serve the activity & attraction industry of Hawaii through my position as the Executive Director of the Activities & Attractions Association of Hawaii.

HB2417 Modifies HRS468. The purpose of this statute is to protect the consumer's money and "value" of their ticket by protecting the Activity Provider's money while also eliminating deceptive sales tactics. This Bill also provides better proactive tools for the DCCA to enforce the law currently on the books. Our goal is a healthy productive symbiotic industry for all involved.

HRS468M requires businesses be licensed & registered if selling Activities. As part of this statute, consumer & Activity Provider funds follow a detailed custodianship, e.g.: 100% of funds paid by a consumer for an activity must be deposited to a specific bank account in the state, labeled trust. There are restrictions on withdrawals (limit <15%) and requirements addressing timely payments to providers (within 30 days date of invoice) along with payment of interest, if any, made on provider's funds while held in trust. This statute also prohibits the covering, concealing or obscuring of Activity Providers' contact information on brochures. Other sections of this law involve the selling of activities by OPC outside public contacts for timeshare properties.

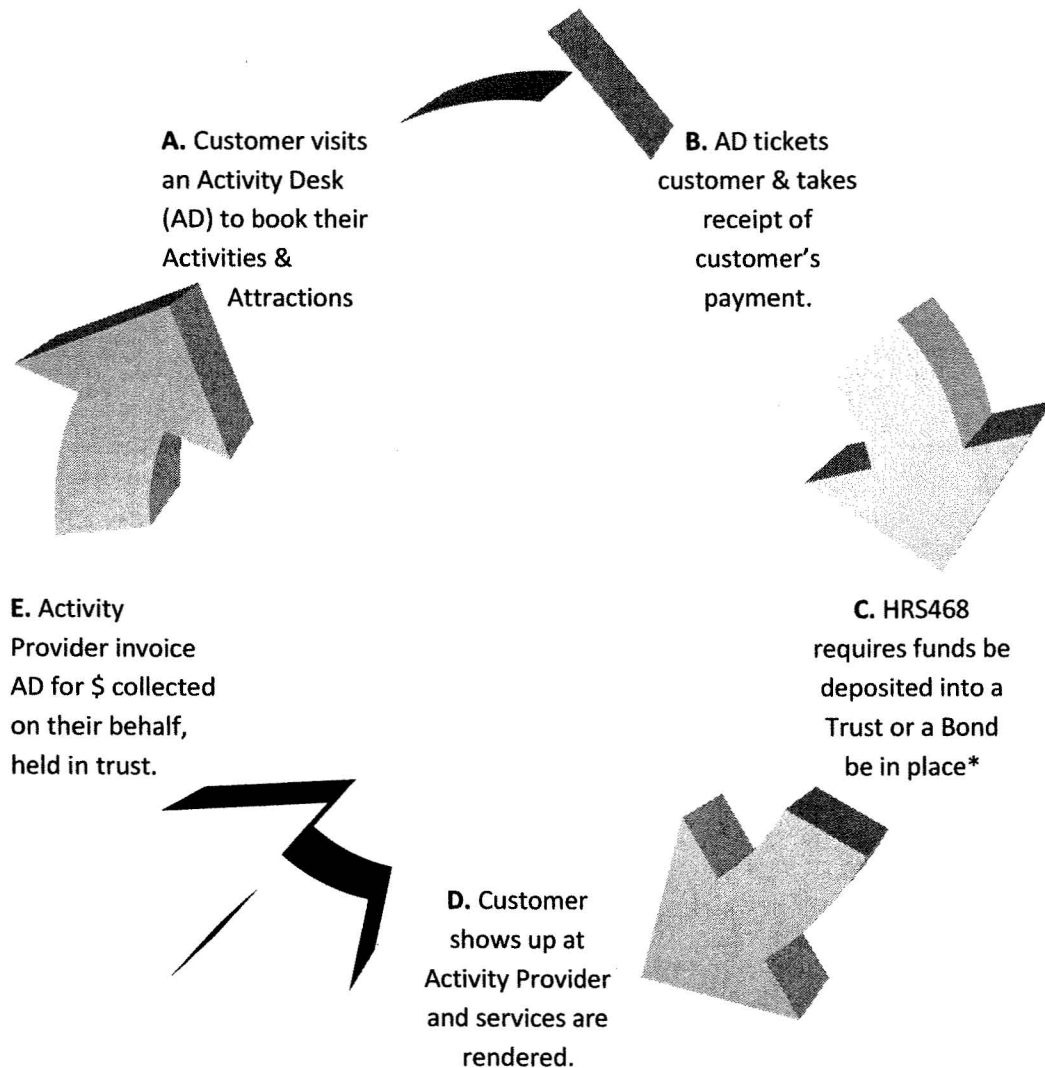
HB2417 modifies HRS468 specifically by creating a new section on recordkeeping, requires disclosure of the desk's registration # on stickers, prohibits desk from booking without collection of \$ from Customer, clarifies language related to Trust account providing expedited audit ability to the DCCA and eliminates the irrevocable letter of credit as an option to a trust.

Our industry over the years has witness the closure & bankruptcy of many activity desks representing nearly 100 million dollars in lost revenue. The first was in 1993, WAVE shut its door with millions owed.

1/2

HRS468M was created as a result. Millions again were lost when American Hawaii Cruises filed bankruptcy in 2001, 2002 Activity Outlet tried to stiff Maui operators when they relocated to the Big Island, thanks to this law, Maui operators were paid only later to have the owner flee owning 100s of thousands to Big Island businesses, 2006 Coconut Activities, 2007 Hawaii Travel Network closed their doors owning millions, 2008 Activity Stop, 2009 Happy Vacations and just this last summer of LTC with over 1/2 million.

With the current economy and these Activity Desks basing much of who they promote on how much money they make – this has got to stop. Here is a diagram to help you understanding the cycle of money – start at A.



*Current bond limitation maximize amount to \$100K, insufficient in most cases.

**If the Activity Desk is an Outside Public Contact for Timeshare no funds are collected from the customer often this is gifted.

HB2417 Modifies HRS468M as follows:

- Creates new record keeping process to simplify proactive enforcement
- Eliminates the letter of irrevocable credit and raises the maximum of the Bond from \$100K to \$250K.
- Adds Activity Desk registration to stickers when placed on Activity Provider brochures
- Prohibits booking an activity without proper custodianship funds

After discussions with desks operating part time as OPC (outside public contact for timeshare sales) utilizing the CTA (Client Trust Account) they need time to transfer funds to the trust. In the companion bill SB2607SD1, we amended section 2, item 6 to read as follows:

(6) Failing to obtain full payment for activities prior to or at the time activity reservations are booked or placed with the activity provider or within three business days thereafter, except where the reservation specifically provides for direct payment of the amounts owed to the activity provider at the time of the activity."

Mahalo Again for this opportunity to testify,

Toni Marie Davis/Executive Director

Testimony to the House Committee on Consumer Protection & Commerce/Judiciary

Thursday, February 18, 2010; 2:00 p.m.

Conference Room 325

Testimony of

Toni Marie Davis/Executive Director

Activities & Attractions Association of Hawaii

RE: Support for HB2417 Relating to Activity Desks

Amendments to HB2417 HD1

After discussions with desks operating part time as OPC (outside public contact for timeshare sales) utilizing the CTA (Client Trust Account) they need time to transfer funds to the trust. In the companion bill SB2607SD1, we amended section 2, item 6 to read as follows:

(6) Failing to obtain full payment for activities prior to or at the time activity reservations are booked or placed with the activity provider or within three business days thereafter, except where the reservation specifically provides for direct payment of the amounts owed to the activity provider at the time of the activity."

Mahalo Again for this opportunity to testify,

Toni Marie Davis/Executive Director

A/K



Four Winds II & Maui

Magic

Testimony of Lynse Frank Comptroller of Maui Classic Charters, Inc.

Before the Joint Committee on Consumer Protection & Commerce/Judiciary

Thursday, February 18, 201 @ 2:00 p.m.

Conference Room: 325

RE: Support for HB2417 HD1 Relating to Activity Desks

Dear Chairman Herkes, Vice Chair Wakai & members of the CPC committee AND Chairman Karamatsu and Vice Chair Ito and members of the Committee on Judiciary;

My name is Lynse Frank and I am the comptroller for Maui Classic Charters, Inc.

Our company has been in business for the past 27 years, since 1983. We operate two charter boats that take visitors out to Molokini Crater and other destinations around Maui for snorkeling trips and employ 27 individuals on a year round basis.

We strongly SUPPORT HB2417 HD1.

We feel that this bill will positively protect the Consumer's & Activity Provider's funds collected by Activity Desks. This law will also improve the DCCA's ability to proactively enforce HRS468M.

Over the past 27 years lack of enforcement and the ability for DCCA to be proactive has represented over a **\$37,000 loss to our company and to our state in tax revenue.**

Time and time again, activity desks have closed up shop and defaulted on the monies that they owed us for providing tours for their clients. This cannot be allowed to continue. It is vital that the State step in and provide enforcement so that the activity providers are paid for the services that they provide. It is imperative to our tourist economy, so that our guests to Hawaii are comfortable booking activity tours for events throughout the Islands without fearing that some activity desk will run off with their money and the activity provider will not honor their tickets. **Tourism is what makes this State run. Without tourist dollars, Hawaii simply can't balance the State budget.**

Thank you,

Lynse Frank, Comptroller

**Testimony of Kenneth Schmitt
President, Aloha Nui Loa Tours, Inc., dba Hike Maui**

Before the Joint Committee on Consumer Protection & Commerce/Judiciary

Thursday, February 18, 201 @ 2:00 p.m.

Conference Room: 325

RE: Support for HB2417 HD1 Relating to Activity Desks

Dear Chairman Herkes, Vice Chair Wakai & members of the CPC committee AND Chairman Karamatsu and Vice Chair Ito and members of the Committee on Judiciary;

My name is Kenneth Schmitt. I am the president of Aloha Nui Loa Tours, Inc., on the island of Maui. Our company has been in business for 27 years, doing business as Hike Maui, and providing visitors with hiking tours. We currently employ 19 employees and SUPPORT HB2417 HD1. We feel that this bill will positively protect Consumer's & Activity Provider's funds collected by Activity Desks. This law will also improve the DCCA's ability to proactively enforce HRS468M.

Since the passage of HRS 468M, lack of enforcement and the ability for DCCA to be proactive has represented a \$49,000 loss to our company and a resulting loss to our state in tax revenue.

Mahalo for this opportunity to testify,

A handwritten signature in black ink, reading "Kenneth J. Schmitt". The signature is written in a cursive, flowing style.

Kenneth J. Schmitt

wakai2-Daniel

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2010 9:46 PM
To: CPCtestimony
Cc: ken@hikemaui.com
Subject: Testimony for HB2417 on 2/18/2010 2:00:00 PM

Testimony for CPC/JUD 2/18/2010 2:00:00 PM HB2417

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Kenneth Schmitt
Organization: Aloha Nui Loa Tours, Inc., dba Hike Maui
Address: 285 Hukilike St. B-104 Kahului, HI 96732
Phone: 808-878-6945
E-mail: ken@hikemaui.com
Submitted on: 2/15/2010

Comments:

We really need this bill to be passed. The DCCA has been powerless to enforce HRS 468M whenever activity desks have gone out of business and disappeared with many thousands and often millions of dollars of other people's money.

**Testimony of Raymond J Hutaff
President of Valley Isle Excursions, Inc
Before the Committee on Consumer Protection & Commerce
RE: Support for HB2417 HD1 Relating to Activity Desks**

Dear Chairman Herkes, Vice Chair Wakai & members of the committee;

My name is Raymond J Hutaff and I own Valley Isle Excursions, Inc on the island of Maui. Our company has been in business for 15 years providing visitors with Culturally Based Hana Tours. We currently have 27 employees and about 60 people depend on our business for things like breakfast, lunch, entrée fees, vehicle parts and educating us on the proper Hawaiian Cultural History and protocols all of us SUPPORT HB2417 HD1. We feel that this bill will positively protect Consumer's & Activity Provider's funds collected by Activity Desks. This law will also improve the DCCA's ability to proactively enforce HRS468M.

Over the past 10 years, lack of enforcement and the ability for DCCA to be proactive has represented a \$40,000 loss to our company and to our state in tax revenue.

We have recently seen a trend for Activity Desks and resellers not use the funds they collect from the consumer, properly, as set forth with HRS468M. They are either not depositing the money in trust accounts or removing the money for other reasons than what HRS468M requires of them.

There are a few Activity resellers who are not licensed now who are using the Hotel as a means to sell activities, even though they have activity desks at other locations, they don't believe that HRS468M is valid.

We need HB2417 to protect not only the Activity Providers, but all our valuable visitors. Our visitor needs to know that there is protection for their vacation plans. We cannot repeat what has happened in the past, having visitors arrive with plans in hand only to find their vacation gone along with their hard earned money. Should this happen, we could lose our price less reputation and our visitors.

Mahalo for this opportunity to testify,

Raymond J Hutaff

February 12, 2010

RE: Support for HB2417 HD1 Relating to Activity Desks

Dear Chairman Manahan & Members of the Committee:

My name is Gregory James Hoxsie and I own Sunset Studio Maui on the island of Maui. Our company has been in business for over 10 years providing visitors with photography services. We currently employ 4 part time photographers and SUPPORT HB2417. We feel that this bill will positively protect our company's funds collected by Activity Desks. This law will also improve the DCCA's ability to proactively enforce HRS468M.

Mahalo for this opportunity to testify,

Gregory James Hoxsie
Sunset Studio Maui
808-298-7244

February 16, 2010

Testimony in Support of HD1 on HB 2417

House Committee on Consumer Protection & Commerce
and
House Committee on Judiciary

Thursday, 18 February 2010 at 1400 in Rm 325

Chairs and Respected Members of the Committees;

My name is Reg white. I am vice president, project development for Paradise Cruise, Ltd. We support the HD1 version of House bill 2417.

Thank you,

Reg White
Vp, project development, Paradise Cruise, Ltd.
1540 S. King St.
Honolulu, HI 96826-1919
(808) 222-8784
RawcoHI@cs.com



**Before the Joint Committee on : Consumer Protection &
Commerce and Committee on Judiciary**

**Thursday, February 18, 2010
2:00 PM Conference Room 325**

RE: Support for HB2417 HD1 Relating to Activity Desks

Dear Chairman Herkes, Chairman Karamatsu & members of the committees;
My name is Melynda Dant and I own and manage Fair wind Cruises on the island of Hawaii. Our company has been in business for 39 years providing visitors with guided snorkeling and scuba diving tours to Kealahou Bay. We currently employ 40 employees and SUPPORT HB2417 HD1. We feel that this bill will positively protect Consumer's & Activity Provider's funds collected by Activity Desks. This law will also improve the DCCA's ability to proactively enforce HRS468M. Over the past years the lack of enforcement and the ability for DCCA to be proactive has represented a \$ 50,000 loss to our company and a portion of that to our state in tax revenue. Mahalo for this opportunity to testify,

**Testimony of Melynda Dant
Vice President of Fair Wind Cruises**

**Testimony of Warren & Lisa Gibson
Owners, Warren & Annabelle's Magic Show**

Before the Joint Committee on Consumer Protection & Commerce/Judiciary

Thursday, February 18, 201 @ 2:00 p.m.

Conference Room: 325

RE: Support for HB2417 HD1 Relating to Activity Desks

Dear Chairman Herkes, Vice Chair Wakai & members of the CPC committee AND Chairman Karamatsu and Vice Chair Ito and members of the Committee on Judiciary;

Our names are Lisa and Warren Gibson, we are the owners of Warren & Annabelle's in Lahaina, Maui. Our company has been in business for 11 years providing up to 50,000 visitors per year with outstanding evening entertainment. We don't advertise much because all of our business is word-of-mouth. We currently employ about 25 employees and SUPPORT HB2417 HD1. We feel that this bill will positively protect Consumer's & Activity Provider's funds collected by Activity Desks. This law will also improve the DCCA's ability to proactively enforce HRS468M.

Over the past 10+ years, a lack of enforcement and the ability for DCCA to be proactive has represented huge loss to all the activity companies throughout our state and hence, a great loss to our state in tax revenue.

Mahalo for this opportunity to testify,

Warren & Lisa Gibson