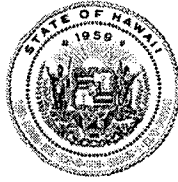


HB 2417 HD 2



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE ON TOURISM

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2010**

**Thursday, March 11, 2010
2:45 p.m.**

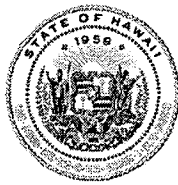
TESTIMONY ON HOUSE BILL NO. 2417, H.D. 2, RELATING TO ACTIVITY DESKS.

**TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

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. 2. We support this bill with the amendments being proposed by the Regulated Industries Complaints Office.

Thank you for the opportunity to testify on House Bill No. 2417, H.D. 2.



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

TO THE SENATE COMMITTEE ON
TOURISM

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

THURSDAY, MARCH 11, 2010
2:45 P.M.

TESTIMONY ON HOUSE BILL NO. 2417, H.D. 2
RELATING TO ACTIVITY DESKS

TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR,
AND TO THE HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office ("RICO") appreciates the opportunity to testify on House Bill No. 2417, H.D.2, 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 amendment, and takes no position on the remainder of the bill regarding bond and letter of credit.

House Bill No. 2417, H.D.2, 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 failing to obtain full payment for activities later than three business days after the time activity reservations are booked or placed with an activity provider, except where 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 bill also has a defective effective date of January 1, 2112.

RICO notes that this Committee heard Senate Bill No. 2607, and passed out a Senate Draft¹ with language similar to the language in this bill.

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.

With regard to Section 2 of the bill, the current language on page 3 lines 6-11 does not make it clear that an activity desk is precluded from booking or placing a reservation for activities until full payment for the activity is received or within three business days of booking. To better clarify this issue, RICO suggests either replacing the phrase "later than" on page 3 lines 6-7 with the word "within" or inserting the language contained in Senate Bill No. 2607 S.D.2 on page 3 lines 4-10.

While language that precludes an activity desk from booking or placing a reservation for activities until full payment is received or within three business days

of booking will pose increased risk of loss to the activity provider, the proponent, Activities and Attractions Association of Hawaii, has indicated that this language will still establish a short time frame for payment while providing the registrant some latitude in processing payments. RICO does not oppose this language.

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, H.D.2. I will be happy to answer any questions that the members of the Committee may have.



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

Testimony to the Senate Committee on Tourism

Thursday, March 11, 2010; 2:45 p.m.

Conference Room 325

Testimony of
Toni Marie Davis/Executive Director
Activities & Attractions Association of Hawaii

RE: Support for HB2417 HD2 Relating to Activity Desks

Dear Chairman Nishihara & members of the committee;

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.

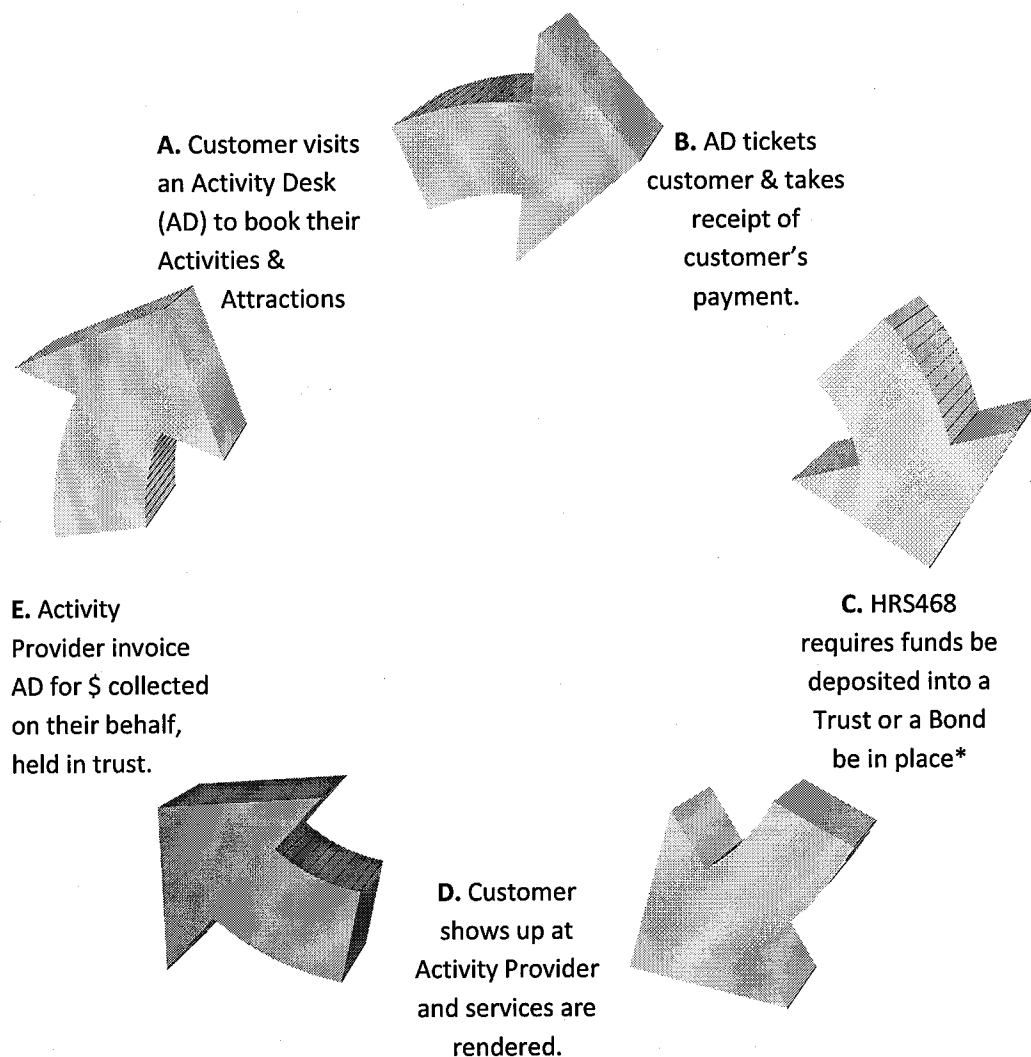
HRS468M requires businesses be licensed & registered if selling Activities. As part of this statute, consumer & Activity Provider funds follow a detailed custodianship, e.g.: 100% of funds paid by a consumer for an activity must be deposited to a specific bank account in the state, labeled trust. There 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.

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.



HB2417 Modifies HRS468M as follows:

- Creates new record keeping process to simplify proactive enforcement
- Raises the maximum of the Bond from \$100K to \$250K.
- Adds Activity Desk registration to promotional materials
- Prohibits booking an activity without proper custodianship funds

There has been no opposing testimony to this version of the Bill. Please modify the defective effective date from January 1, 2112 to July 1, 2010 as is the date on the companion Bill SB2607.

Mahalo Again for this opportunity to testify,

Toni Marie Davis/Executive Director



Committee on : Tourism
Senator Clarence K. Nishihara, Chair
Senator Brickwood Galuteria, Vice Chair

Thursday, March 11, 2010
2:45 PM Conference Room 229

RE: Support for HB2417 HD2 Relating to Activity Desks

Dear Chairman Nishihara, and Vice Chair Galuteria & 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 HD2. 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. Please pass this bill.

Sincerely,
Melynda Dant
Vice President of Fair Wind Cruises

nishihara1 - Kristen

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 09, 2010 10:38 AM
To: TSM Testimony
Cc: vie@maui.net
Subject: Testimony for HB2417 on 3/11/2010 2:45:00 PM

Testimony for TSM 3/11/2010 2:45:00 PM HB2417

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Raymond Hutaff
Organization: Valley Isle Excursions, Inc
Address: 390 Papa Pl Unit B Kahului, Hi
Phone: 808-871-5224
E-mail: vie@maui.net
Submitted on: 3/9/2010

Comments:
Aloha,

Mahalo for considering this important bill before. Having it pass will help insure that our valuable visitor and Hawaii's tour industry is protected from those very few that don't have a commitment to best business practices here in Hawaii.

With that in mind, it is important that we don't wait or delay the effect of this law, please have this law in place as soon as possible, we need to protect the industry and our visitors in these tough times.

Mahalo for the opportunity to testify.