

# SB743

Measure Title: RELATING TO ACTIVITY DESKS.

Report Title: Activity Desks; Exemptions; Fiduciaries; Client Trust Accounts; Reports

Description: Requires activity desk to designate fiduciaries in case of certain business closures and to submit monthly financial reports to DCCA. Exempts from the law certain activity desks that operate without compensation.

Companion: [HB723](#)

Package: None

Current Referral: CPN

Introducer(s): BAKER

<u>Sort by Date</u>		<b>Status Text</b>
1/23/2015	S	Introduced.
1/26/2015	S	Passed First Reading.
1/28/2015	S	Referred to CPN.
2/13/2015	S	The committee(s) on CPN has scheduled a public hearing on 02-19-15 9:00AM in conference room 229.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH STATE LEGISLATURE  
REGULAR SESSION, 2015

THURSDAY, FEBRUARY 19, 2015  
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 743  
RELATING TO ACTIVITY DESKS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 743, Relating to Activity Desks. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on the bill.

Senate Bill No. 743 requires an activity desk to designate a fiduciary when the activity desk terminates its business, to notify the Department of the designation, and to file monthly reports with the Department. The bill also amends the definition of "activity desk" to exclude activity desks that do not accept consumer moneys for services other than services they offer.

RICO defers to the Department's Activity Desk Program on the policy issues of whether a fiduciary should be designated or monthly reports filed.

However, as the enforcement agency for the Department's Activity Desk Program, RICO is concerned that the amendment to the definition of "activity desk" in Section 2 of the bill is inconsistent with the unamended language in the definition. As currently defined, an "activity desk" is an intermediary that sells activities offered by an activity provider. However, the exemption in Senate Bill No. 743 for activity desks that do not accept consumer moneys for services other than services they provide appears to contradict the function of an activity desk as an "intermediary". Without language that clearly and unambiguously identifies conduct that is exempt from the requirements of Chapter 468M, Hawaii Revised Statutes ("HRS"), RICO would have difficulty determining whether any particular conduct is subject to Chapter 468M, HRS, requirements.

Thank you for the opportunity to testify on Senate Bill No. 743. I will be happy to answer any questions the members of the Committee may have.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Thursday, February 19, 2015  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 743, RELATING TO ACTIVITY DESKS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Carol Kramer and I am the Executive Officer for the Activity Desks Program, Department of Commerce and Consumer Affairs ("Department"). The Department thanks you for the opportunity to present testimony in opposition to Senate Bill No. 743, which proposes to: (1) require activity desks to designate a corporate officer to be the fiduciary in charge upon closure of the business; (2) exempt any activity desk which does not accept consumer moneys for services other than their own; and (3) subject all activity desks to monthly reporting of sales and ending balances of client trust accounts.

For the Committee's information, the House companion measure, House Bill No. 723, was heard by the House Committee on Tourism on February 4, 2015. It passed out with an effective date of July 1, 2020, to promote further discussion.

The Department has the following concerns with Senate Bill No. 743:

- Section 1, page 1, lines 4-11. This section requires each activity desk to notify the Department of: (1) the corporate officer designated as the fiduciary in charge when the activity desk terminates its business and (2) its designee or any change in designee within ten days of the action. The Department questions the merit of these requirements after termination of the business and questions the duties and responsibilities of the designee. The bill provides no guidance as to the expectation of the designated fiduciary in charge nor of the Department's role upon receipt of the information. In addition, the Department questions the term "deficient" client trust account as the bill sets no parameters or guidelines to determine what is to be considered deficient or if being deficient forces closure of the activity desk business.
- Section 2, page 2, lines 1-11. The amendments to the definition of an activity desk exempts activity desks which do not accept moneys for services other than its own. This is in direct conflict with lines 1-4 which states in part "...to act as an intermediary to...arrange...activities which are furnished by an activity provider", which requires licensure for arranging activities even without collection of moneys. In 1992, the

Legislature passed Act 231, which exempted hotels and air carriers from obtaining a license for selling or arranging their own services as many provided these services in an activity desk or kiosk format. This exemption was authored to be based on services rather than based on entities and, therefore, the Department questions the type of services of its own an activity desk would provide to warrant an exemption.

- Section 3, page 3, lines 7-9. This section imposes a monthly reporting requirement for all activity desks to provide the Department with monthly sales and client trust account ending balances. The Department questions the need for these monthly reports as no clear purpose is provided nor are there clear guidelines established as to the Department's responsibility or role in review of these reports.

For these reasons, the Department requests that Senate Bill No. 743 be held.

Thank you for the opportunity to testify on this measure.



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 Commerce and Consumer Protections  
Thursday, February 19, 2015, 9:00 am  
Conference Room 229**

**RE: SUPPORT OF SB743 723 RELATING TO ACTIVITY DESKS**

Chair Senator Baker, Vice Chair Senator Taniguchi & Members of the committee;

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 17 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 (A3H). A3H represents over 200 businesses statewide. Our members range in size from very large (over 300 employees) to very small (1-2 employees). **A3H strongly SUPPORTS the intent of SB743.**

This Bill amends HRS§ 468M, which oversees the relationship between Activity Providers (A3H members) and Activity Desk, aka: concierge, wholesalers or resellers. The law provides protection for consumers and activity providers, due to the collection and holding of funds by these middlemen, Activity Desks.

In section HRS§ 468M-16 entitled: Criminal penalties, there are criminal consequence to individuals (agents, managers, employees and/or contract labor) violating this statute, specifically the handling of funds. The law, however lacks a fiduciary tether to individuals for violations.

Laws currently exist for securities, insurance, finance, legal, etc...which pierce the corporate veil holding personally responsible those individuals (agents, managers, employees and/or contract labor) for violations regarding Client Trust Accounts.

The lack of fiduciary tether in HRS§ 468M has enabled Activity Desks, in a corporate structure, to blatantly disregard Section 9, entitled: Client trust accounts; maintenance of and withdrawal from accounts. These businesses legally close their doors, empty their Client Trust Account, thereby committing theft without consequence.

The following are a few examples of corporations which simply closed their doors:

1. El Dorado Market Place – June 2014 estimated in the thousands
2. Maui Fun Company – September 2013 estimate over \$200k.
3. Tickets on the Rocks – September 2011 in excess of \$250k
4. Activity Stop – June 2010 estimate in the thousands
5. Top-10-Hawaii.Com LLC dba Hawaii Travel Network – April 2007 estimated over \$1.2 Million



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These businesses clearly violated the proper financial custodianship outline in HRS§ 468M, otherwise sufficient funds would have been in the client trust account. In their wake, Consumers were left with worthless tickets and Activity Providers with past services rendered, which they would never be paid, nor with any means in which to collect.

For clarity A3H would like to recommend the following changes to the language of the Bill:

Section 468M - Fiduciary responsibilities of corporate officers; activity desks.  
The corporate officer(s) of each activity desk, as designated in the entity's filings with the Department of Commerce and Consumer Affairs, shall be personally responsible for paying or reimbursing all amounts due as a result of the entity's failure to maintain a client trust account or irrevocable letter of credit in compliance with HRS Section 468M-9. The activity desk shall also be responsible for providing notification in writing to the department within ten days after any change in its corporate officers.

Section 468M-1 – “Activity desk” means any sole proprietorship, . . . , which receives funds directly from consumers and which for compensation or other consideration, acts or attempts to act as an intermediary to sell, . . . , activities which are furnished by an activity provider. This chapter shall not apply to . . . .“

Section 468M-9.5 – Record keeping requirements for client trust accounts. An activity desk which is required to maintain a client trust account pursuant to this chapter shall submit an electronic copy of the first page of its monthly client trust account statement confirming that the account remains open and the amount then being held therein, such statement to be submitted to the department on or before the 15 days following the bank statement's closing date.

Thank you for the opportunity to testify. Please let me know if you have any questions.

Sincerely,

Toni Marie Davis  
Executive Director

February 17, 2015

Dear Chairman:

Our company has been in the business of providing ocean activities since the 1970's to Maui's visitors. In those 40 years, we have seen the increased use of thinly capitalized shell corporations as a means of avoiding the required client trust funding requirements. Time after time, corporate officers have raided these accounts, distributed the funds to themselves, family members, employees, and friends. The corporations are then declared bankrupt and a new corporation is formed and the process is then repeated.

The intent of this bill is to make the controlling corporate officers personally liable for failing to fully fund these client trust accounts as required by law. We do not expect DCCA to be at all effective at investigation and enforcement of client trust laws based on their past performance. This bill will put the onus of compliance on the corporate officers and not on the state's DCCA branch. The threat of personal responsibility will be a real deterrent to the raiding of the client trust accounts.

This bill is the crucial solution the repeated avoidance of funding the client trust accounts. Please support this for the good of Hawaii's economy and Hawaii's visitors.

Yours truly,

David H. Jung  
Owner  
Lahaina Cruise Company, Inc.

From: [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
To: [CPN Testimony](#)  
Cc: [vie@maui.net](mailto:vie@maui.net)  
Subject: Submitted testimony for SB743 on Feb 19, 2015 09:00AM  
Date: Wednesday, February 18, 2015 12:01:39 PM

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**SB743**

Submitted on: 2/18/2015

Testimony for CPN on Feb 19, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Raymond J Hutaff	Valley Isle Excursions, Inc	Support	No

Comments: Chair Senator Baker, Vice Chair Senator Taniguchi & Members of the committee; Mahalo for this opportunity to testify, my name is Raymond J Hutaff, Vice President of Valley Isle Excursions, Inc I strongly SUPPORT the intent of SB743. This Bill amends HRS§ 468M, which oversees the relationship between Activity Providers (A3H members) and Activity Desk, aka: concierge, wholesalers or resellers. The law provides protection for consumers and activity providers, due to the collection and holding of funds by these middlemen, Activity Desks. The lack of fiduciary tether in HRS§ 468Mhas enabled Activity Desks, in a corporate structure, to blatantly disregard Section 9, entitled: Client trust accounts; maintenance of and withdrawal from accounts. These businesses legally close their doors, empty their Client Trust Account, thereby committing theft without consequence. The following are a few examples of corporations which simply closed their doors: 1. El Dorado Market Place - est in the thousands 2. Maui Fun Company - est over \$200k. 3. Tickets on the Rocks - in excess of \$250k 4. Activity Stop - est in the thousands 5. Top-10-Hawaii.Com LLC est over \$1.2 Million These businesses clearly violated the proper financial custodianship outline in HRS§ 468M, otherwise sufficient funds would have been in the client trust account. In their wake, Consumers were left with worthless tickets and Activity Providers with past services rendered, which they would never be paid, nor with any means in which to collect. We are also concerned that companies may go our of business and leave people stranded. We have seen this before and if it hits the news media it could drastically hurt tourisms here in Hawaii. So I believe that this bill is important, and must pass, not only to Tour Providers but to the visitor industry as whole. We really need to put this on the books and inforce it, at all costs. Raymond J Hutaff Vice President Valley Isle Excursions, Inc

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
To: [CPN Testimony](#)  
Cc: [erik@zipline.com](mailto:erik@zipline.com)  
Subject: Submitted testimony for SB743 on Feb 19, 2015 09:00AM  
Date: Tuesday, February 17, 2015 10:05:28 PM

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### **SB743**

Submitted on: 2/17/2015

Testimony for CPN on Feb 19, 2015 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Erik McLellan	Skyline Eco-Adventures	Support	No

Comments: As the General Manager and part owner of Skyline Eco-Adventures for over 10 years, I am submitting testimony in support of this bill, both on behalf of myself as an individual and on behalf the company I represent. As a small business owner, I have worked extremely hard to develop a great company and a great product for the guests that participate in the activity we offer, as well as for the staff that help to provide the experience on a daily basis. It takes an incredible amount of work, time, and resources to ensure that our operation is able to follow through on providing that experience, which we commit to offering to the guests that pay for our tours. We offer activity desks the privilege of selling our tour, for a commission, to their guests. This is a beneficial relationship when working with reputable desks. However, we have had the unfortunate privilege of working with a number of un reputable and dishonest activity desks over the years who have sold our tours, essentially on credit, and not followed through on paying our company moneys due. This has amounted to tens of thousands of dollars lost that directly impacts our ability to run our business effectively, and currently, there is no recourse should this happen. There is also no effective way to monitor the financial health of these activity desks and/or their commitment to setting up trust accounts for money due to small companies such as ours. Passing this bill would be a significant step toward providing activity providers, such as Skyline and many others, the ability to monitor relationships with activity desks to ensure they are holding up their end of contractual and legal obligations. Activity providers bear a significant amount of risk in operating a business that is responsible for providing an experience, maintaining insurance, covering payroll, keeping up ongoing maintenance, etc., etc., while activity desks resell these tours with very little to no oversight and very little to no risk in collecting money up front from guests, but not holding net rates in trust in order to follow through on their obligations. Thank you for your time, and I am hopeful that this bill will be passed. Mahalo, Erik McLellan General Manager, Skyline Eco-Adventures

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**SB743**

Submitted on: 2/18/2015

Testimony for CPN on Feb 19, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Gigi Gaea	Individual	Support	No

Comments: Testimony to the Senate Committee on Commerce and Consumer Protections Thursday, February 19, 2015, 9:00 am Conference Room 229 RE: SUPPORT OF SB743 723 RELATING TO ACTIVITY DESKS Chair Senator Baker, Vice Chair Senator Taniguchi & Members of the committee; Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 17 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 (A3H). A3H represents over 200 businesses statewide. Our members range in size from very large (over 300 employees) to very small (1-2 employees). A3H strongly SUPPORTS the intent of SB743. This Bill amends HRS§ 468M, which oversees the relationship between Activity Providers (A3H members) and Activity Desk, aka: concierge, wholesalers or resellers. The law provides protection for consumers and activity providers, due to the collection and holding of funds by these middlemen, Activity Desks. In section HRS§ 468M-16 entitled: Criminal penalties, there are criminal consequence to individuals (agents, managers, employees and/or contract labor) violating this statute, specifically the handling of funds. The law, however lacks a fiduciary tether to individuals for violations. Laws currently exist for securities, insurance, finance, legal, etc...which pierce the corporate veil holding personally responsible those individuals (agents, managers, employees and/or contract labor) for violations regarding Client Trust Accounts. The lack of fiduciary tether in HRS§ 468M has enabled Activity Desks, in a corporate structure, to blatantly disregard Section 9, entitled: Client trust accounts; maintenance of and withdrawal from accounts. These businesses legally close their doors, empty their Client Trust Account, thereby committing theft without consequence. The following are a few examples of corporations which simply closed their doors: 1. El Dorado Market Place - est in the thousands 2. Maui Fun Company - est over \$200k. 3. Tickets on the Rocks - in excess of \$250k 4. Activity Stop - est in the thousands 5. Top-10-Hawaii.Com LLC est over \$1.2 Million These businesses clearly violated the proper financial custodianship outline in HRS§ 468M, otherwise sufficient funds would have been in the client trust account. In their wake, Consumers were left with worthless tickets and Activity Providers with past services rendered, which they would never be paid, nor with any means in which to collect. For clarity A3H would like to recommend the following changes to the language of the Bill: Section 468M - Fiduciary responsibilities of corporate officers; activity desks. The corporate officer(s) of each activity desk, as designated in the entity's filings with the Department of Commerce and Consumer Affairs, shall be personally responsible for paying or reimbursing all amounts due as a result of the entity's failure to maintain a client trust account or irrevocable letter of credit in compliance with HRS Section 468M-9. The activity desk shall also be responsible for

providing notification in writing to the department within ten days after any change in its corporate officers. Section 468M-1 - "Activity desk" means any sole proprietorship, . . . , which receives funds directly from consumers and which for compensation or other consideration, acts or attempts to act as an intermediary to sell, . . . , activities which are furnished by an activity provider. This chapter shall not apply to . . . ." Section 468M-9.5 - Record keeping requirements for client trust accounts. An activity desk which is required to maintain a client trust account pursuant to this chapter shall submit an electronic copy of the first page of its monthly client trust account statement confirming that the account remains open and the amount then being held therein, such statement to be submitted to the department on or before the 15 days following the bank statement's closing date.

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**SB743**

Submitted on: 2/17/2015

Testimony for CPN on Feb 19, 2015 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jan Nolan	Individual	Support	No

Comments:

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I fully support SB 743. We need to hold the entities for collecting and holding monies being held responsible financially to the consumers and activity companies that they represent.

**SB743**

Submitted on: 2/17/2015

Testimony for CPN on Feb 19, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Gibson	activity provider	Support	No

Comments: All of the activity providers in the state of Hawaii need assurances that we are going to be able to collect our monies from the activity agencies who book our activities. We need your help! Collectively, businesses in Hawaii have lost over one million dollars to crooked activity companies. Please vote YES with the revisions presented by Activities & Attractions of Hawaii's Executive Director, Toni Davis. Mahalo.

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**SB743**

Submitted on: 2/18/2015

Testimony for CPN on Feb 19, 2015 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
roger simonot	Individual	Support	No

Comments: Strengthen current efforts on activity desks who do not embrace the current laws .

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