

## ACT 240

H.B. NO. 760

A Bill for an Act Relating to Activity Providers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 214, Session Laws of Hawaii 1990, is amended by amending Section 1 to read as follows:

“SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
ACTIVITY PROVIDERS AND ACTIVITY DESKS**

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Activity desk” means [an individual, firm, corporation, association, partnership, or any group of persons, whether incorporated or not, which,] any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary[, sells, contracts for, arranges, or advertises] to sell, contract for, arrange, or advertise that it can or will arrange, or has arranged, activities which are furnished by an activity provider.

“Activity provider” means an individual, firm, corporation, association, partnership, or any group of persons, whether incorporated or not, which provides

**ACT 240**

specialized air, land, or sea tour excursions and activities[.], but does not mean sellers of airline coupons or tickets.

§ **-2 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; [and]
- (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;
- (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;  
or
- (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.

§ **-3 Payment provision.** Unless the express written contract has a provision to the contrary, payment is due and payable forty-five days from the date of invoice.

§ **-4 Legal rate; computation.** Except as otherwise permitted by existing written contract, any activity desk who directly or indirectly receives any interest on the payment due to the activity provider, shall remit the interest and the payment due to the activity provider; provided that if the interest and payment due are not remitted within forty-five days from the date of invoice, interest on the unpaid balance of the interest and payment due shall accrue at the rate of one per cent per month from the due date.

§ **-5 Injunctive relief; suits.** (a) Any activity provider [is entitled to injunctive relief] may bring suit to enjoin any violation of this chapter and may sue in [any] the circuit court [of] in the [state in the] circuit in which the defendant resides or has an agent[.] or in which the violation has occurred.

[(b) If the court determines that the action was brought frivolously, for purposes of harassment, or in implementation of any scheme in restraint in trade, it may award court costs, reasonable attorneys fees.]

(b) Any activity providers association may bring suit to enjoin any violation of this chapter and may sue in the circuit court in the circuit in which the defendant resides or has an agent or in which the violation has occurred. The relief available to an activity providers association is limited to injunctive and declarative relief and does not include a right to damages. As used in this section, "activity providers association" means a bona fide trade association of activity providers.

(c) The prevailing party, in a civil action brought under the provisions of this chapter, shall be entitled to recover the [cost] costs of [defending the] suit, including [a] reasonable attorney's [fee.] fees.

§ **-6 Action for damages.** Any activity desk shall be liable to the activity provider for a violation of this chapter for any damages which result from such violation [and in no event for an amount less than \$1,000.00 for each

violation]. Damages shall be awarded at the rate of no less than \$1,000 for each violation. Violations shall be calculated by the following formula:

- (1) For violations of section -2(1), (2), or (3), by multiplying the number of days the violations occurred by the number of locations of an activity desk where the violations occurred; or
- (2) For violations of section -2(4), by counting the number of days where the client trust account held funds insufficient to meet the requirements of section -2(4).
- (3) Notwithstanding the above formula, not more than \$10,000 shall be awarded if the activity desk has not previously been required to pay damages to an activity provider pursuant to this section.

§ -7 [Exemptions. This chapter shall not apply to any person whose principal business is the sale of travel services as a travel agency, as defined in chapter 468K, or any travel agency appointed to do business as a travel agency by the Airlines Reporting Corporation, nor shall it apply when an activity provider performs activity desk operations for its own excursions or activities.] **Requirements for offering discounts.** When a discount offered for any activity is contingent upon any requirement that the recipient of the discount first attend a sales presentation of any kind, the activity desk shall disclose such requirement in writing to the recipient of the discount before any payment is made. Failure to do so shall constitute a false and deceptive business practice subject to a civil fine of not less than \$1,000 per day for each occurrence.

§ -8 **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.

(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 all excursion or activities have been provided or once tickets or other similar documentation binding upon the ultimate provider of the activity have been provided.

(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. The activity desk shall notify the department of any change in the account number or location within one business day of the change.

(e) The director may, by rule, allow for the use of other types of funds or accounts provided that the protection for consumers is no less than that provided by this section.

§ -9 **Violations; fraud.** Any violations by an activity desk of any law relating to client trust accounts shall constitute a prima facie showing of fraud on the part of the activity desk and may not be dischargeable as a debt to a consumer or an activity provider in any bankruptcy proceeding.”

**ACT 240**

SECTION 2. Act 214, Session Laws of Hawaii 1990, is amended by amending Section 2 to read as follows:

“SECTION 2. This Act shall take effect upon its approval, and shall be repealed June 30, [1991] 1993.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval, and shall be repealed on June 30, 1993.

(Approved June 12, 1991.)