

ACT 150

S.B. NO. 2607

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 in 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) Failing to obtain full payment for an activity 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.”

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 desk shall be considered the trustee of the funds paid into the client trust account, 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~~[-]~~ and the activity provider. 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 to the activity provider directly providing the services 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 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.]”~~

SECTION 4. Section 468M-10, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) The amount of coverage shall be equal to the average monthly net sales revenues of the activity desk as determined for the twelve-month period ending on the last sales period ending date of the fifth month prior to the anniversary date of the bond or the irrevocable letter of credit; provided that the amount of coverage of the bond or irrevocable letter of credit shall not be less than \$50,000 and shall not be more than ~~[\$100,000.]~~ \$250,000. Any activity desk providing a bond or irrevocable letter of credit for the first time during the period beginning on September 1, 1992, and ending on March 31, 1993, shall base its initial coverage amount on the twelve-month period ending on June 30, 1992. If an activity desk does not have a full twelve-month period on which to base the amount, the amount shall not be less than the average monthly net sales revenues as determined for the months available; provided that this amount shall not be less than \$75,000, notwithstanding the minimum 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.]~~ \$250,000.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2010.

(Approved May 28, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.