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

TO THE HOUSE COMMITTEE ON
TOURISM, CULTURE, & INTERNATIONAL AFFAIRS

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

MONDAY, FEBRUARY 1, 2010
8:45 A.M.

TESTIMONY ON HOUSE BILL NO. 2417
RELATING TO ACTIVITY DESKS

TO THE HONORABLE JOEY MANAHAN, CHAIR,
AND TO THE HONORABLE JAMES KUNANE TOKIOKA, 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, Relating To Activity Desks. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer. RICO supports Sections 1 and 2 of the bill, proposes amendments to Section 3 of the bill, and takes no position on the remainder of the bill.

House Bill No. 2417 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) repeal the authority to substitute a bond or letter of credit for a client trust account.

RICO supports Sections 1 and 2 of the bill, and suggests amendments to Section 3 of the bill that relate to Haw. Rev. Stat. sections 468M-9(a) and (b). RICO takes no position on the remainder of the bill that repeals the authority to substitute a bond or letter of credit for a client trust account.

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.

The language in Section 3 on page 3 lines 17-20 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. The last sentence on page 3 lines 20-22, however, is inconsistent with the prior language and RICO proposes that the sentence be revised as follows:

The activity desk shall be considered the trustee of the funds paid into the client trust account, less any commission.

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.

With regard to Section 3 of the bill at page 4, line 3, RICO suggests that the phrase "and the activity provider" be added to the end of the sentence so that this sentence is reconciled with the prior section.

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



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

Before the Committee on Tourism, Cultural & International Affairs

RE: Support for HB2417 Relating to Activity Desks

Dear Chairman Manahan & 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. (See diagram at end of this testimony).

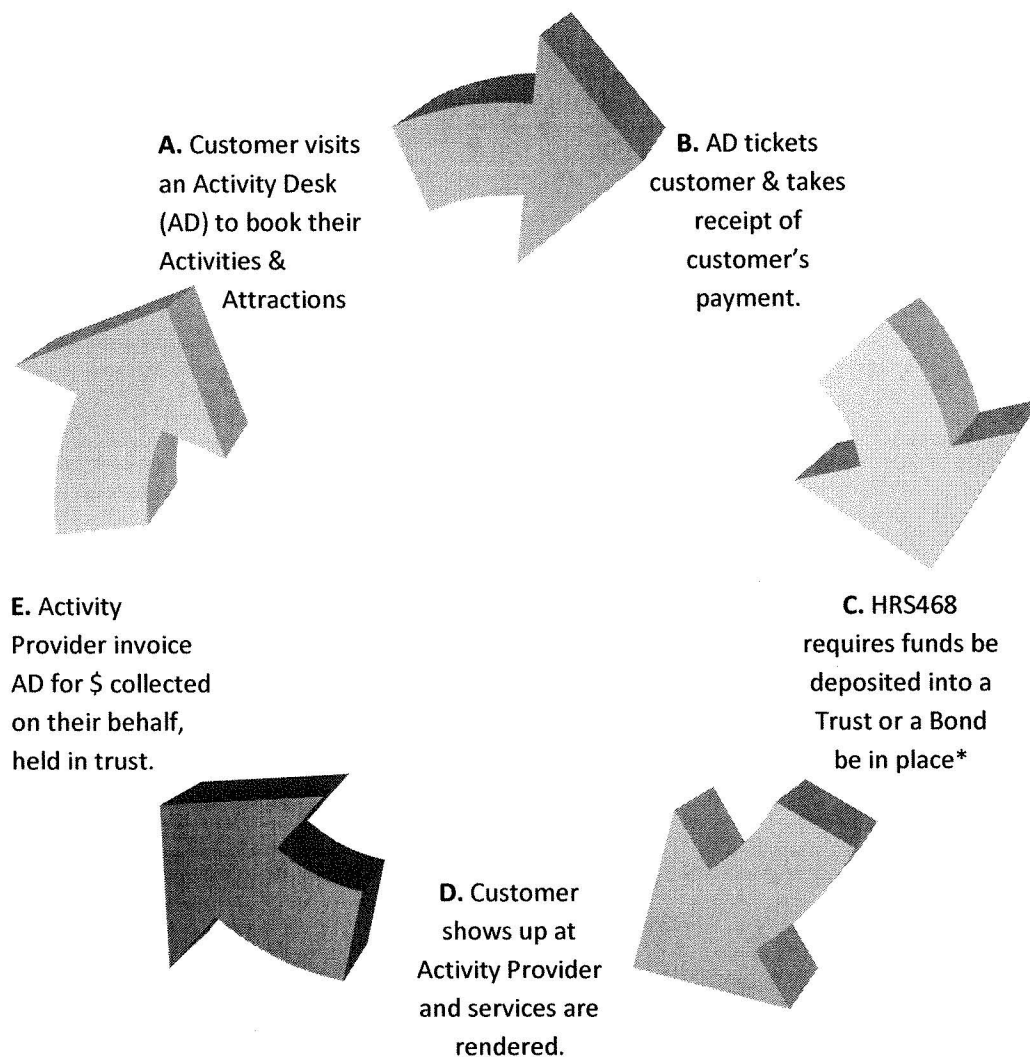
HB2417 modifies HRS468 specifically by creating a new section on recordkeeping, requires disclosure of the desk's registration # on stickers, prohibits desk from booking without collection of \$ from Customer, clarifies language related to Trust account providing expedited audit ability to the DCCA and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

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.



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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.



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HB2417 Modifies HRS468M as follows:

- Creates new record keeping process to simplify proactive enforcement
- eliminates the Bond simplifies proactive enforcement and the opportunity for insufficient coverage for the Activity Providers
- Adds Activity Desk registration to stickers when placed on Activity Provider brochures
- Prohibits booking an activity without collecting and depositing funds into the trust account

Mahalo Again for this opportunity to testify,

Toni Marie Davis/Executive Director

SAFARI

AVIATION INC.

January 30, 2010

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**Testimony of Preston S. Myers
President of Safari Aviation, Inc.**

Before the Committee on Tourism, Culture and International Affairs

RE: Support for HB2417 Relating to Activity Desks

Dear Chairman Manahan & members of the committee;

My name is Preston S. Myers and I own Safari Aviation, Inc on the island of Kauai and Hawaii. Our company has been in business for twenty two (22) years providing visitors with helicopter tours and air charters. We currently employ twenty five (25) employees 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.

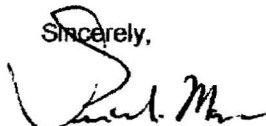
Not only we in the industry have lost approximately \$100 million of revenue in the last 20 years but the State of Hawaii has also lost approximately \$4 Million in excise tax revenue and millions more in lost income tax revenue in the same time frame.

Part of the issue is that the visitor or consumer is not even aware that and activity desk is a middle person that is in the business of profit for providing this service. The visitor thinks the service is free or at most, a minimal amount of fees. The visitor does not realize that they are paying in some cases, in excessive of 35 to 45% in commission fees! The visitor or consumer is completely unaware of the financial interest of these institutions.

I would also like to see added language to this bill that gives the visitor full disclosure as to the amount of commissions that these entities are receiving from hotels and activities so that they can make real intelligent decisions while on vacation.

I was also one of the original companies that were instrumental in the passage of HRS468M through personal visits to the legislature. Thank you for any considerations the committee may entertain.

Sincerely,



Preston S. Myers

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

Before the Committee on Tourism, Culture and International Affairs

RE: Support for HB2417 Relating to Activity Desks
Dear Chairman Manahan & members of the committee;

Our names are Warren & Lisa Gibson. We own a small business here on Maui called Warren & Annabelle's Magic Show. Our company has been in business for almost 11 years. We currently employ 20 employees 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.

Just this past summer when Consolidated Resorts closed their doors overnight, their subsidiary, Lahaina Ticket Company owed our company \$4500. However, lack of enforcement and the ability for DCCA to be proactive means we will never see this money, nor will the state see its share of taxes. **The total bill LTC left outstanding to businesses in our state is well over \$500,000.00**. Not only is that a significant loss to all of our businesses (so many of which are small pop and pop businesses), but again, a **HUGE LOSS TO THE STATE IN TAXES**.

PLEASE VOTE YES FOR HB2417 and HELP PROTECT OUR BUSINESSES from companies who go bankrupt while owing Hawaii businesses and **the State** such large sums of money.

Mahalo for this opportunity to testify,
Warren & Lisa Gibson