



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: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

RONALD BOYER
ACTING DIRECTOR
RODNEY A. MAILE
DEPUTY DIRECTOR

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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

MONDAY, MARCH 29, 2010
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 2607 S.D.2 H.D.1
RELATING TO ACTIVITY DESKS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND TO THE HONORABLE GLENN WAKAI, VICE CHAIR,
AND TO THE HONORABLE KEN ITO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office ("RICO") appreciates the opportunity to testify on Senate Bill No. 2607 S.D.2 H.D.1, 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, takes no position on Sections 4 and 5 of the bill, and recommends that the

delayed effective date set forth in Section 6 of the bill be revised to make the bill effective July 1, 2010.

Senate Bill No. 2607 S.D.2 H.D.1 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) require full payment for an activity prior to or at the time the activity reservations are booked or within three business days, 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) increase the maximum amount of bond or letter of credit to \$250,000. The bill also provides for a defective effective date of January 1, 2112.

RICO notes that the Committees heard a similar bill, House Bill No. 2417, and passed out a House Draft 2. RICO prefers the current H.D.1 language in this bill (S.B. 2607) to all other House and Senate drafts, subject to a revised effective date of July 1, 2010.

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 unless it receives full payment prior to or at the time of booking or within three business days. The current law does not address this situation.

While the amendment in this bill at page 3 lines 6-12 in Section 2 will pose increased risk of loss to the activity provider, the amendment's proponent, Activities and Attractions Association of Hawaii, has indicated that the amendment will still establish a short time frame for payment while providing the registrant some latitude in processing payments. RICO does not oppose this amendment.

The language in Section 3 of the bill on page 3 line 19 to page 4 line 2 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 Senate Bill No. 2607 S.D.2 H.D.1. I will be happy to answer any questions that the members of the Committees may have.



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

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

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

**Monday, March 29, 2010
2:00 p.m.**

**TESTIMONY ON SENATE BILL NO. 2607, S.D.2, H.D.1, RELATING TO ACTIVITY
DESKS.**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:**

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 ("PVLD"). Thank you for the opportunity to submit testimony on Senate Bill No. 2607, S.D.2, H.D.1, Relating to Activity Desks.

We have compared the language in this bill with the language in the companion bill, House Bill No. 2417, H.D.2, S.D.1 and prefer the language in S.B. 2607, S.D.2, H.D.1.

H.B. 2417, H.D.2, S.D.1 deletes reference to "a bond or letter of credit" in section 468M-9 relating to client trust accounts, and also deletes the authority for the director to promulgate administrative rules to allow for the use of other types of funds or accounts, also in section 468M-9. It is unclear how these deletions would effectuate the purpose of this bill.

On the other hand, S.B. 2607, S.D.2, H.D.1 does not contain the aforementioned proposals. It does however propose to increase the maximum amount of a bond or letter of credit from \$100,000 to \$250,000, an amendment that is not contained in the companion H.B. 2417, H.D.2, S.D.1. We previously testified that we take no position on this particular amendment as we have not had an opportunity to study the impact this may have on activity desks.

Thank you for the opportunity to testify on Senate Bill No. 2607, S.D.2, H.D.1.



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

Testimony to the House Committee on Consumer Protection & Commerce/Judiciary
Thursday, March 29, 2010; 2:00 p.m.
Conference Room 325

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

RE: Support for SB2607 Relating to Activity Desks

Dear Chairman Herkes, Vice Chair Wakai & members of the committee CPC and
Chair Karamatsu and Vice Chair Ito & members of the Committee of Judiciary;

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.

SB2607 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.

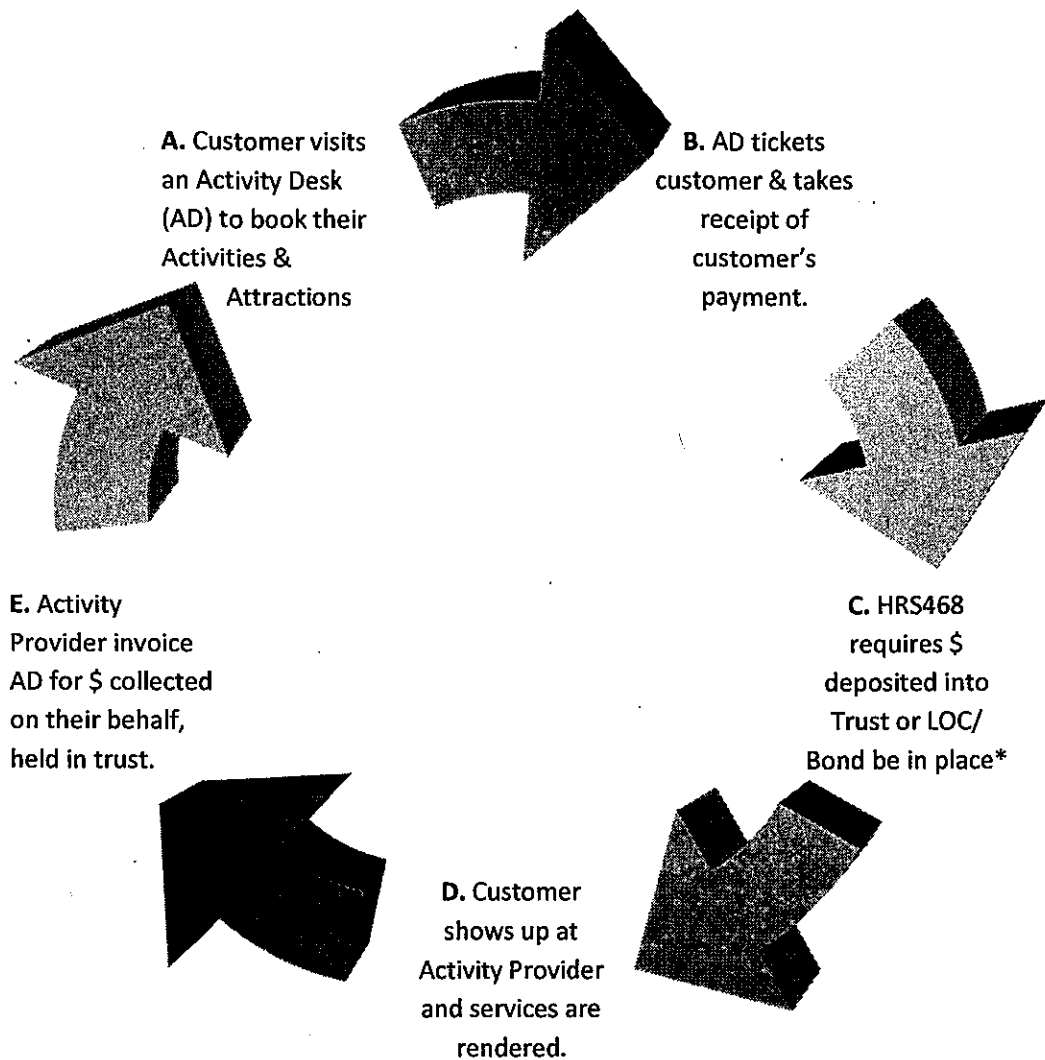
HRS468M requires businesses be licensed & registered if selling Activities. As part of this statute, consumer & Activity Provider funds follow a detailed custodianship, e.g.: 100% of funds paid by a consumer for an activity must be deposited to a specific bank account in the state, labeled trust. There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

SB2607 modifies HRS468 specifically by creating a new section on recordkeeping, requires disclosure of the desk's registration # on stickers, prohibits desk from booking without depositing \$ to cover cost within 3 days, clarifies language related to Trust account providing expedited audit ability to the DCCA and raises the maximum for the irrevocable letter of credit & Bond to \$250K.

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.



SB2607 Modifies HRS468M as follows:

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

Mahalo Again for this opportunity to testify,

Toni Marie Davis/Executive Director

**Testimony of Kenneth Schmitt
President, Aloha Nui Loa Tours, Inc., dba Hike Maui**

**Before the Joint Committee on Consumer Protection & Commerce/Judiciary
Monday, March 29, 2010, 2:00 p.m.**


RE: Support for SB2607 Relating to Activity Desks

Dear Chairman Herkes, Vice Chair Wakai & members of the CPC committee AND Chairman Karamatsu and Vice Chair Ito and members of the Committee on Judiciary:

My name is Kenneth Schmitt. I am the president of Aloha Nui Loa Tours, Inc., on the island of Maui. Our company has been in business for 27 years, doing business as Hike Maui, and providing visitors with Hawaii natural and cultural history hiking tours. We currently employ 19 employees and SUPPORT SB2607, provided that it become effective as of July 1, 2010, not January 1, 2112, which is the ridiculous date that someone has inserted into this bill to make it ineffective. With the correct effective date I 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.

Since the passage of HRS 468M, lack of enforcement and effective guidelines have limited the ability of the DCCA to pursue the thieves in the activities booking agencies. This has represented a \$49,000 loss to our company and a resulting loss to our state in tax revenue.

Mahalo for this opportunity to testify,



Kenneth J. Schmitt

Testimony of
Mary Jane Caldwell
Vice President
Maui Classic Charters, Inc.

Regarding Support for SB2607 Relating to Activity Desks

My name is Mary Jane Caldwell and I am the vice president of Maui Classic Charters, Inc., a company which provides snorkel excursions to Molokini.

We have been in business for over 30 years and employ over 25 people directly.

We strongly support SB2607. We feel that this bill will positively protect Consumer's and Activity Providers' funds collected by Activity Desks. This law will also improve the DCCA's ability to proactively enforce HRS 468M.

Over the past 15 years lack of enforcement and the ability for DCCA to be proactive has represented a \$30,000 loss to our company and to our state in tax revenue.

Thank you for this opportunity to testify.