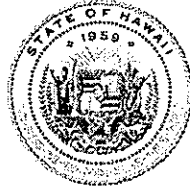


SB 2607



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

TUESDAY, FEBRUARY 23, 2010
10:00 A.M.

WRITTEN TESTIMONY ONLY
ON
SENATE BILL NO. 2607 S.D.1
RELATING TO ACTIVITY DESKS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE DAVID Y. IGE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office ("RICO") appreciates the opportunity to submit written testimony on Senate Bill No. 2607 S.D.1, Relating To Activity Desks. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer. RICO supports Sections 1, 2, and part of Section 3 of the bill and takes no position on the remainder of the bill.

Senate Bill No. 2607 S.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) preclude an activity desk from booking or placing a reservation for activities until full payment for the activity is received or within three business days, except where direct payment is arranged; and 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.

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.

While the amendment in the Senate Draft 1 at page 3 lines 4-10 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.

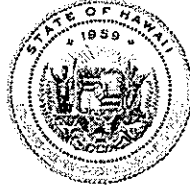
The language in Section 3 of the bill on page 3 line 18 to page 4 line 2 clarifies the role of the activity desk, the activity provider, and the customer with regard to monies held in the client trust account. RICO has had cases in which

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.

RICO notes that the Senate Committee on Tourism, which previously heard this bill, indicated in its Committee Report that the S.D.1 version no longer repealed the option to substitute a bond or letter of credit for a client trust account. However, on page 4 line 22 to page 5 line 2, language allowing for a bond or letter of credit is deleted. RICO suggests that this language be restored.

For this Committee's information, the House Committees on Consumer Protection and Commerce and Judiciary jointly heard the companion measure, House Bill No. 2417 H.D.1, on February 18, 2010. The Committees passed out a House Draft 2 that contains language agreed upon among the industry and interested parties.

Thank you for this opportunity to submit written testimony on Senate Bill No. 2607 S.D.1.



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DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

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

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

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

**Tuesday, February 23, 2010
10:00 a.m.**

WRITTEN COMMENTS ONLY

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

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

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 in support of but with requested amendments to Senate Bill No. 2607, S.D. 1, Relating to Activity Desks.

PVLD supports Sections 1 and 2 of the bill as we believe this will enhance consumer protection and aid the enforcement of efforts by the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs.

With regard to Section 3, except for the provision that repeals the authority to substitute a bond or letter of credit for a client trust account, we support this section. Our objections to the repeal of alternatives to a client trust account is because there has been no evidence presented that these alternative financial requirements lessen consumer protection or are not as viable as a client trust account. In fact, the bond and letter of credit affords as much protection for consumers who may suffer a loss as a result of non-performance by an activity desk. Therefore, we respectfully request that the authority allowing for a bond or letter of credit in lieu of the client trust account be retained in sections 468M-9(c) and (d).

Furthermore, we are aware of and have no objections to the amendment to be recommended by proponents of the bill that increase the maximum amount of the bond or letter of credit from \$100,000 to \$250,000.

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



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

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

Before the Committee on Consumer Protections & Commerce

RE: Support for SB2607 SD1 with Amendments Relating to Activity Desks

Dear Chairman Baker & 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.

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. (See diagram at end of this testimony).

SB2607 SD1 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 CTA providing expedited audit ability to the DCCA and in its original form eliminates the bond & Letter of irrevocable credit, (LOC) as an option to a CTA. Much of the language with the exception of the elimination of the bond was crafted by the DCCA. In SD1 we added in a 3 day grace period for Activity Desk to deposit money for booked Activities. Now in SD2, I'm requesting the bond and Letter of irrevocable credit be reinstated with language which sets the Bond and LOC at an amount equal to average monthly sales.

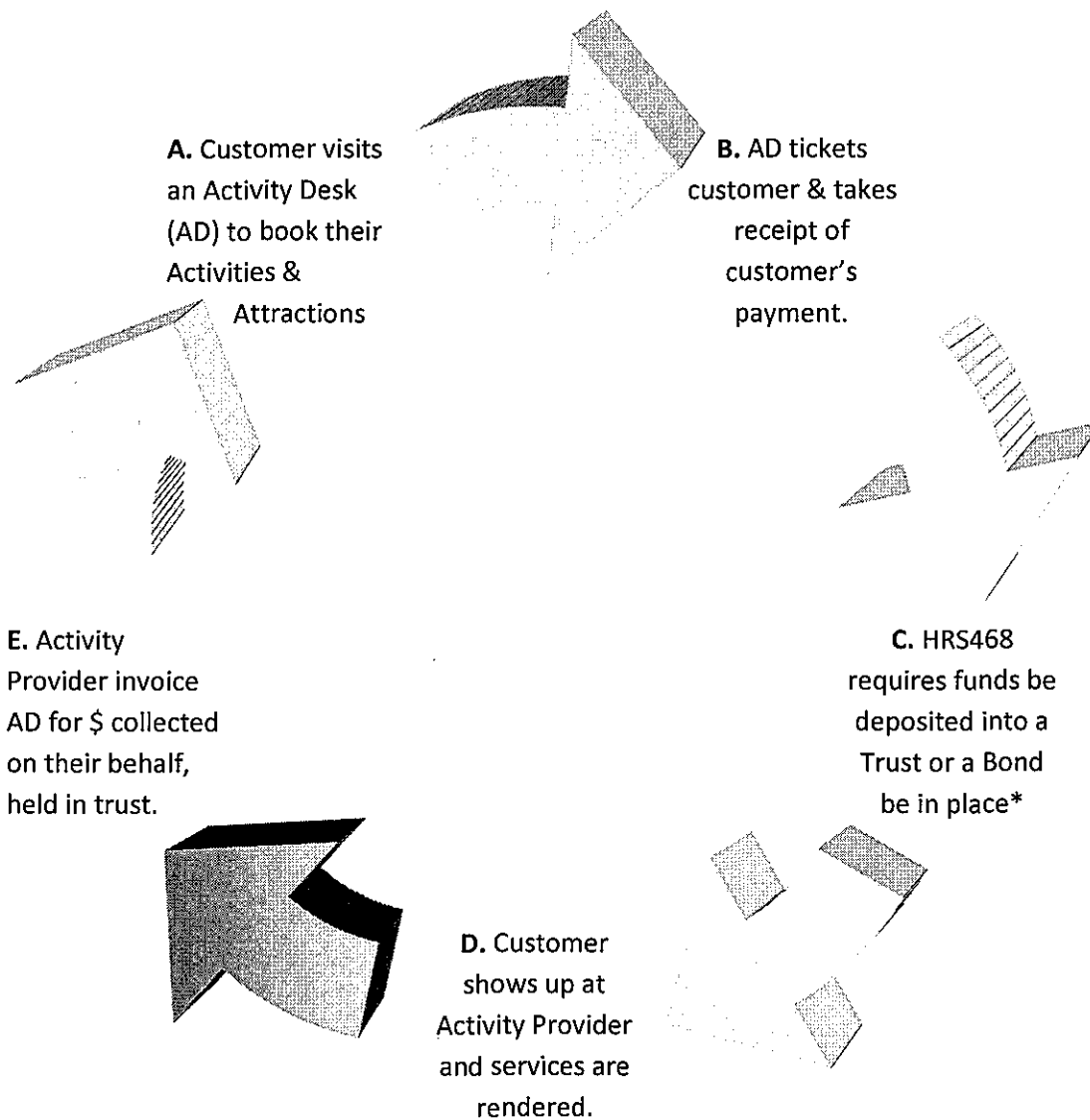
Our industry over the years has witness the closure & bankruptcy of many activity desks representing nearly 100 million dollars in lost revenue. The first was in 1993, WAVE shut its door with millions owed. HRS468M was created as a result. Millions again were lost when American Hawaii Cruises filed bankruptcy 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



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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.





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SB2607 SD1 with amendments Modifies HRS468M as follows:

- Creates new record keeping process to simplify proactive enforcement
- Replaces the maximum for the Bond & LOC with an amount equal to average monthly sales to ensure sufficient coverage for the Activity Providers
- Adds Activity Desk registration to advertisements & promotions
- Prohibits booking an activity without collecting and depositing funds into the trust account within 3 business days.

Mahalo Again for this opportunity to testify,

Toni Marie Davis/Executive Director

baker5 - Leo

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 22, 2010 2:02 PM
To: CPN Testimony
Cc: ray@maui.net
Subject: Testimony for SB2607 on 2/23/2010 10:00:00 AM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for CPN 2/23/2010 10:00:00 AM SB2607

Conference room: 229
Testifier position: support
Testifier will be present: Yes
Submitted by: ray fuqua
Organization: a3h
Address:
Phone:
E-mail: ray@maui.net
Submitted on: 2/22/2010

Comments:

February 22, 2010

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

Before the Committee on Consumer Protection & Commerce
Tuesday, February 23, 2010 @ 10:00 a.m.
Conference Room: 229

RE: Support for SB2607 SD1 Relating to Activity Desks

Dear Chair Baker, Vice Chair Ige & members of the CPC committee,

Our company has been in business for twenty two (22) years on both the island of Kauai and Hawaii. We currently employ twenty five (25) employees and **support SB2607**. We feel that this bill will positively protect the consumer's and our 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 Millions in Excise Tax and Millions more in lost income tax revenues in the same time frame.

I would also add language to SB2607 that would give the visitor (consumer) Full Disclosure as to the amount of commissions that Activity Desks and other middlemen agencies receive from hotels and Activity Providers for their services. The visitor or consumer does not realize that they are paying, in some cases, in excess of 35 to 45% if not more in commissions. Without Full Disclosure there is a real distortion of prices which the visitor is not aware of when they make reservations.

This company is one of the original that were instrumental in the passage of HRS468M through personal visits and testimony to the legislature. Unfortunately, we have also been "blackballed" by many of these Activity Desks and have suffered unnecessary financial damage due to our previous and most likely current testimony.

Thank you for any considerations the committee may entertain in the passage of SB2607.

Sincerely,

Preston S. Myers
President

**Testimony of Jamie DeBrunner
Corporate Director of Sales of Old Lahaina Luau**

Before the Committee on Consumer Protection & Commerce
Tuesday, February 23, 2010 @ 10:00 a.m.
Conference Room: 229

RE: Support for SB2607 SD1 Relating to Activity Desks

Dear Chair Baker, Vice Chair Ige & members of the CPC committee

My name is Jamie DeBrunner, I'm the Corporate Director of Sales for Old Lahaina Luau on the island of Maui. Our company has been in business for 23 years, providing visitors with a Hawaiian Luau experience, held nightly. We currently employ 235 employees and SUPPORT SB2607 SD1. We 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.

Over the past years, lack of enforcement and the ability for DCCA to be proactive has represented tens of thousands of dollars in loss to our company and to our state in tax revenue.

Mahalo for this opportunity to testify,

Jamie DeBrunner

baker5 - Leo

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 19, 2010 3:05 PM
To: CPN Testimony
Cc: RawcoHI@cs.com
Subject: Testimony for SB2607 on 2/23/2010 10:00:00 AM

Testimony for CPN 2/23/2010 10:00:00 AM SB2607

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Reg White
Organization: Individual
Address: 1540 S. King St. Honolulu, HI
Phone: 808-222-9794
E-mail: RawcoHI@cs.com
Submitted on: 2/19/2010

Comments:

Please accept my testimony in support of this bill, SB2607. as corrected by the proposed SD1.

Respectfully,

Reg White
Vp project development, Paradise Cruise, Ltd.