

JAN 23 2009

A BILL FOR AN ACT

RELATING TO DECEPTIVE TRADE PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Section 481A-3, Hawaii Revised Statutes, is
2 amended to read as follows:
- 3 " ~~[+] §481A-3 [±]~~ **Deceptive trade practices.** (a) A person
4 engages in a deceptive trade practice when, in the course of the
5 person's business, vocation, or occupation, the person:
- 6 (1) Passes off goods or services as those of another;
- 7 (2) Causes likelihood of confusion or of misunderstanding
8 as to the source, sponsorship, approval, or
9 certification of goods or services;
- 10 (3) Causes likelihood of confusion or of misunderstanding
11 as to affiliation, connection, or association with, or
12 certification by, another;
- 13 (4) Uses deceptive representations or designations of
14 geographic origin in connection with goods or
15 services;
- 16 (5) Represents that goods or services have sponsorship,
17 approval, characteristics, ingredients, uses,



- 1 benefits, or quantities that they do not have or that
2 a person has a sponsorship, approval, status,
3 affiliation, or connection that the person does not
4 have;
- 5 (6) Represents that goods are original or new if they are
6 deteriorated, altered, reconditioned, reclaimed, used,
7 or secondhand;
- 8 (7) Represents that goods or services are of a particular
9 standard, quality, or grade, or that goods are of a
10 particular style or model, if they are of another;
- 11 (8) Disparages the goods, services, or business of another
12 by false or misleading representation of fact;
- 13 (9) Advertises goods or services with intent not to sell
14 them as advertised;
- 15 (10) Advertises goods or services with intent not to supply
16 reasonably expectable public demand, unless the
17 advertisement discloses a limitation of quantity;
- 18 (11) Makes false or misleading statements of fact
19 concerning the reasons for, existence of, or amounts
20 of price reductions; [e]



1 (12) Advertises goods or services that are unlawful under
2 any federal, state, or county law, ordinance, rule, or
3 regulation; or

4 [~~(12)~~] (13) Engages in any other conduct which similarly
5 creates a likelihood of confusion or of
6 misunderstanding.

7 (b) In order to prevail in an action under this chapter, a
8 complainant need not prove competition between the parties or
9 actual confusion or misunderstanding.

10 (c) This section does not affect unfair trade practices
11 otherwise actionable at common law or under other statutes of
12 this State."

13 SECTION 2. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 4. This Act shall take effect on July 1, 2009.

19

A. K. Singh

INTRODUCED BY:

Guy L. Haas

David N. J. ...

Erzanne ...

Ronald & Bob ...



J. L. ...

Michelle A. Sidani

Will ...

S.S.T.

Report Title:

Trade Regulation; Commercial Activity; Deceptive Trade Practices; Advertising

Description:

Clarifies prohibition on deceptive trade practices to prohibit advertisement of goods or services that violate any federal, state, or county law, ordinance, rule, or regulation.





Hanalei-Ha'ena Community Association
Post Office Box 789
Hanalei, HI 96714

Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

Re: **Testimony in Support of SB 448**

Hearing Date: February 26, 2009, 8:30 am

February 25, 2009

Aloha Senator Baker, Senator Ige and Committee Members,

The Hanalei-Ha'ena Community Association **strongly supports SB 448**. We urge that your committee approve this measure, which would amend the definition of deceptive trade practices to include the advertising of goods or services that are unlawful under any federal, state or county law, ordinance, rule or regulation.

Here on Kaua'i, one can easily find numerous advertisements - in the phone book, in activities desks brochures, and on the internet - for non-permitted boat tours, helicopter tours that offer landings at prohibited sites, ocean recreation activities that operate in violation of DLNR regulations, equipment rental companies that operate in violation of county or state rules, and illegal transient vacation rental accommodations. Such deceptive advertising:

- Imposes a burden on residents as they struggle to keep their communities from being overwhelmed by an onslaught of illegal activities;
- Imposes a burden on visitors, who may be unpleasantly surprised to find themselves caught in confrontations between illegal operators and community members;
- Imposes a burden on the regulatory agencies that struggle to deal with the illegal operations that are continually nourished by deceptive advertising;
- Imposes a burden on Hawai'i's environmental resources by increasing the number, scope and size of activities that violate resource protection regulations;
- Imposes an unfair burden on the honest businesses whose compliance with the law makes their operations less competitive than the operations of businesses that offer extra-legal services or lower-cost services not burdened by compliance with regulations.

SB 448 will not solve the problems outlined above, but it will provide an additional tool for dealing with those problems. Please support our communities and honest businesses, and protect visitors, residents and the environment, by supporting SB 448.

Carl Imperato
President, Hanalei-Ha'ena Community Association
808-826-1856, carl.imparato@juno.com



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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator David Y. Ige, Vice Chair

Thursday, February 26, 2009

8:30 a.m.

Conference Room 229

SB 448 DECEPTIVE TRADE PRACTICES

SUPPORT

Aloha Chair Baker, Vice Chair Ige, and Members of the Committee,

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for almost four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SECTION 1. Section 481A-3, Hawaii Revised Statutes, is amended to read as follows:

Deceptive trade practices. (a) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person: ... (12) Advertises goods or services that are unlawful under any federal, state, or county law, ordinance, rule, or regulation

This bill seems to be self-explanatory and to be common sense. Please pass it.

Mahalo

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 11:10 AM
To: CPN Testimony
Cc: carl.imparato@juno.com
Subject: Testimony for SB448 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB448

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Carl Imparato
Organization: Individual
Address: PO Box 1102 Hanalei HI 96714
Phone: 808-826-1856
E-mail: carl.imparato@juno.com
Submitted on: 2/25/2009

Comments:
Aloha kakou,

We strongly support Senate Bill 448.

Unlawful activities (non-permitted commercial boat tours, helicopter tours that offer illegal landings near waterfalls, ocean recreation activities and equipment rental companies that operate without permits in violation of DLNR or county regulations, illegal transient vacation rental accommodations...) impose a tremendous burden on our community. Yet advertisements for these activities are commonplace.

It is absurd that it is currently legal to advertise such unlawful activities. It is wrong to allow visitors to be deceived into thinking that they are patronizing legal activities.

Advertising illegal activities only benefits law breakers, to the detriment of honest businesses, our communities and our environment.

We therefore urge you to support SB 448.

Carl and Susan Imparato, Hanalei HI

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 11:57 AM
To: CPN Testimony
Cc: freeman@aloha.net
Subject: Testimony for SB448 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB448

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Margery Freeman
Organization: Individual
Address: 6448 Kaahale St. Kapaa, HI 96746
Phone:
E-mail: freeman@aloha.net
Submitted on: 2/25/2009

Comments:

Dear Legislators,

SB 448 is a good bill and I hope you will vote for it.
On Kauai there has been constant breaking of our laws by tour operators who land helicopters, take walking trips, land tour boats and make changes in the landscape without the proper permits. Our land should not be comprimised for operators to make money.

Please vote for SB 448.

Sincerely,
Marge Freeman

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 12:23 PM
To: CPN Testimony
Cc: gabriela@keapana.net
Subject: Testimony for SB448 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB448

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Gabriela Taylor
Organization: Individual
Address: 5620 keapana Rd Kapaa
Phone: 808 823-9013
E-mail: gabriela@keapana.net
Submitted on: 2/25/2009

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 3:51 PM
To: CPN Testimony
Cc: beausephine@hawaii.rr.com
Subject: Testimony for SB448 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB448

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Beau Blair
Organization: Individual
Address: P.O. Box 421 Hanalei, HI
Phone: 808-826-7038
E-mail: beausephine@hawaii.rr.com
Submitted on: 2/25/2009

Comments:

Deceptive trade practices are not just routine on Kauai, they are "rampant".

It is unfair to those who follow the rules, laws and regulations to be lumped together with those that do not, and it creates great amounts of community advocate time that is wasted on trying to get the enforcement branches of government to "police" lawbreakers.

This bill is timely, and relevant. We all need to follow the laws first, then work at changes. But those who do not feel the laws pertain to them, or that they need not adhere to the laws must be held accountable.

Advertising of unlawful activities create division in small communities, especially such as those that exist in Kauai, and much of the State of Hawaii.

I support SB 448