



LATE

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LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Monday, February 23, 2015
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 723, H.D. 1, RELATING TO ACTIVITY DESKS.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Carol Kramer and I am the Executive Officer for the Activity Desks Program, Department of Commerce and Consumer Affairs ("Department"). The Department thanks you for the opportunity to present testimony in opposition to House Bill No. 723, which proposes to: (1) require activity desks to designate a corporate officer to be the fiduciary in charge upon closure of the business; (2) exempt any activity desk which does not accept consumer moneys for services other than their own; and (3) subject all activity desks to monthly reporting of sales and ending balances of client trust accounts.

The Department has the following concerns with this measure:

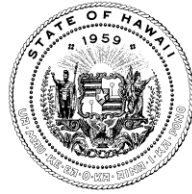
- Section 1, page 1, lines 4-11. This section requires each activity desk to notify the Department of: (1) the corporate officer designated as the fiduciary in charge when the activity desk terminates its business and (2) its designee or any change in designee within ten days of the action. The Department questions the merit of these requirements after termination of the business and questions the duties and responsibilities of the designee. The bill provides no guidance as to the expectation of the designated fiduciary in charge nor of the Department's role upon receipt of the information. In addition, the Department questions the term "deficient" client trust account as the bill sets no parameters or guidelines to determine what is to be considered deficient or if being deficient forces closure of the activity desk business.
- Section 2, page 2, lines 1-11. The amendments to the definition of an activity desk exempts activity desks which do not accept moneys for services other than its own. This is in direct conflict with lines 1-4 which states in part "... to act as an intermediary to...arrange...activities which are furnished by an activity provider", which requires licensure for arranging activities even without collection of moneys. In 1992, the Legislature passed Act 231,

which exempted hotels and air carriers from obtaining a license for selling or arranging their own services as many provided these services in an activity desk or kiosk format. This exemption was authored to be based on services rather than based on entities and, therefore, the Department questions the type of services of its own an activity desk would provide to warrant an exemption.

- Section 3, page 3, lines 7-9. This section imposes a monthly reporting requirement for all activity desks to provide the Department with monthly sales and client trust account ending balances. The Department questions the need for these monthly reports as no clear purpose is provided nor are there clear guidelines established as to the Department's responsibility or role in review of these reports.

For the Committee's information, the Senate companion measure, Senate Bill No. 743, was heard by the Senate Committee on Commerce and Consumer Protection on February 19, 2015. As a result of discussions during and following that Senate hearing, the Department is working with interested stakeholders to see if a mutually agreeable solution to the issues raised in this measure may be reached. The Department would appreciate the opportunity to continue those discussions with respect to this measure as well.

Thank you for the opportunity to testify on this measure.



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DEPUTY DIRECTOR

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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015

MONDAY, FEBRUARY 23, 2015
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 723 H.D.1
RELATING TO ACTIVITY DESKS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 723 H.D.1, Relating to Activity Desks. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on the bill.

House Bill No. 723 H.D.1 requires an activity desk to designate a fiduciary when the activity desk terminates its business, to notify the Department of the designation, and to file monthly reports with the Department. The bill also amends the definition of "activity desk" to exclude activity desks that do not accept consumer moneys for services other than services they offer. In addition, the bill has a defective effective date of July 1, 2020.

As the enforcement agency for the Department's Activity Desk Program, RICO is concerned that the amendment to the definition of "activity desk" in Section 2 of the bill is inconsistent with the unamended language in the definition. As currently defined, an "activity desk" is an intermediary that sells activities offered by an activity provider. However, the exemption in House Bill No. 723 H.D.1 for activity desks that do not accept consumer moneys for services other than services they provide appears to contradict the function of an activity desk as an "intermediary". Without language that clearly and unambiguously identifies conduct that is exempt from the requirements of Chapter 468M, Hawaii Revised Statutes ("HRS"), RICO would have difficulty determining whether any particular conduct is subject to Chapter 468M, HRS, requirements.

RICO and the Department's Activity Desk Program have been working with the bill's proponent on addressing some of the different issues related to the bill, and we would appreciate the chance to continue that discussion.

Thank you for the opportunity to testify on House Bill No. 723 H.D.1. I will be happy to answer any questions the members of the Committee may have.



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

LATE

**Testimony to the House Committee on Commerce and Consumer Protections
Monday, February 23, 2015, 2:00 pm
Conference Room 325**

RE: SUPPORT OF HB723 RELATING TO ACTIVITY DESKS

Chair Representative McKelvey, Vice Chair Representative Woodson & Members of the committee;

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 17 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 (A3H). A3H represents over 200 businesses statewide. Our members range in size from very large (over 300 employees) to very small (1-2 employees). **A3H strongly SUPPORTS the intent of HB723.**

This Bill amends HRS§ 468M, which oversees the relationship between Activity Providers (A3H members) and Activity Desk, aka: concierge, wholesalers or resellers. The law provides protection for consumers and activity providers, due to the collection and holding of funds by these middlemen, Activity Desks.

In section HRS§ 468M-16 entitled: Criminal penalties, there are criminal consequence to individuals (agents, managers, employees and/or contract labor) violating this statute, specifically the handling of funds. The law, however lacks a fiduciary tether to individuals for violations.

Laws currently exist for securities, insurance, finance, legal, etc...which pierce the corporate veil holding personally responsible those individuals (agents, managers, employees and/or contract labor) for violations regarding Client Trust Accounts.

The lack of fiduciary tether in HRS§ 468M has enabled Activity Desks, in a corporate structure, to blatantly disregard Section 9, entitled: Client trust accounts; maintenance of and withdrawal from accounts. These businesses legally close their doors, empty their Client Trust Account, thereby committing theft without consequence.

The following are examples of corporations which simply closed their doors:

1. El Dorado Market Place estimated in the thousands (**Not Licensed**)
2. Maui Fun Company estimate over \$200k (active – status ZP)
3. Tickets on the Rocks in excess of \$250k (active – status F)
4. Activity Stop in the thousands (active – status ZR)
5. Top-10-Hawaii.Com LLC dba Hawaii Travel Network estimated over \$1.2 Million (**Not Licensed**)



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These businesses clearly violated the proper financial custodianship outline in HRS§ 468M, otherwise sufficient funds would have been in the client trust account. In their wake, Consumers were left with worthless tickets and Activity Providers with past services rendered, which they would never be paid, nor with any means in which to collect.

It is clear the DCCA doesn't want to do take on additional work regarding the Bill's monthly report, which would provide the appearance that "someone" is tracking the Trust Account's activity. They are also concerned about creating a situation where activity desks are not licensed which is surprising when you look at the number of current licensed desks.

On Thursday, A3H purchased via State's List Builder the number of licensed activity desk. The results speak volumes on what DCCA is NOT doing regarding these Activity Desks:

Total Activity Desk in List	851	100%
Total Desk InCompliance	296	35%
Total Expired	555	65%
(D) Forfieted; needs to restore (Active)	74	13%
(D) Forfieted; needs to restore (<i>inactive</i>)	2	0%
(F) Terminiated needs to reapply (Active)	454	82%
(F) Terminiated needs to reapply (<i>inactive</i>)	2	0%
(FM) Terminiated/Maintenance Requirement Due (Active)	5	1%
(TC) Voluntary request to cancel/terminated as authorized by statute or rule (Active)	6	1%
(ZC) Voluntarily Surrender or Forfeit License due to Disciplinary Action (Active)	2	0%
(ZP)Voluntary Suspended (Active)	1	0%
(ZR) Revoked (Active)	5	1%
(ZS) Suspended (Active)	2	0%
(ZV) Voluntary Revocation Active	1	0%
(ZV) Voluntary Revocation (<i>inactive</i>)	1	0%
	555	100%

A3H will be sharing our list of over 1450 Agencies booking Hawaii's Activities and Attractions with DCCA, as has been done in the past to encourage they enforce the statute. We will be stripping from our list of resellers, 914 travel agencies which book pre-arriving visitors and pay the suppliers directly as opposed to holding consumers' money. It is for this group, which were lobbying to exempt by changing the definition of activity desk.

For clarity A3H and to successfully pass this Bill, we recommend the following changes to the language of the Bill:

Section 468M - Fiduciary responsibilities of corporate officers; activity desks.
 The corporate officer(s) of each activity desk, as designated in the entity's filings with the Department of Commerce and Consumer Affairs, shall be personally responsible for paying or reimbursing all amounts due as a result of the entity's



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failure to maintain a client trust account or irrevocable letter of credit in compliance with HRS Section 468M-9. The activity desk shall also be responsible for providing notification in writing to the department within ten days after any change in its corporate officers.

To avoid losing all that this Bill hoped to gain due to DCCA's opposition, A3H is willing to eliminate these portions of the Bill:

~~Section 468M-1 — “Activity desk” means any sole proprietorship, . . . , which receives funds directly from consumers and which for compensation or other consideration, acts or attempts to act as an intermediary to sell, . . . , activities which are furnished by an activity provider. This chapter shall not apply to“~~

~~Section 468M-9.5 — Record keeping requirements for client trust accounts. An activity desk which is required to maintain a client trust account pursuant to this chapter shall submit an electronic copy of the first page of its monthly client trust account statement confirming that the account remains open and the amount then being held therein, such statement to be submitted to the department on or before the 15 days following the bank statement's closing date.~~

Thank you for the opportunity to testify. Please let me know if you have any questions.

Sincerely,

Toni Marie Davis
Executive Director

Our newest proposed language:

Section 468M - Fiduciary responsibilities of corporate officers; activity desks. The corporate officer(s) of each activity desk, as designated in the entity's filings with the Department of Commerce and Consumer Affairs, shall be personally responsible for paying or reimbursing all amounts due as a result of the entity's failure to maintain a client trust account or irrevocable letter of credit in compliance with HRS Section 468M-9. The activity desk shall also be responsible for providing notification in writing to the department within ten days after any change in its corporate officers.

DCCA's newest proposed language:

At the time of licensure and renewal, the activity desk shall identify an individual who will be the signatory on the client trust account and responsible for the client trust account. The individual shall be responsible for the entity's compliance with the laws and rules related to activity desks in Hawaii and subject to civil and criminal penalties provided by law. An activity desk shall notify the program of any change in the status of the signatory within 15 days.

Opportunity with DCCA's suggested revisions:

DCCA's proposed language would not prevent a desk from assigning the responsibility to someone who has no ownership or control of the company and it does not address the possibility of the desk changing the responsibility to a straw man after a theft has taken place. It would, at least in theory, mean that someone is identified as the responsible person but obviously that person could be someone with no assets or direct link to the actual theft.

Suggested changes to DCCA language:

At the time of licensure and renewal, the activity desk shall identify any individuals who will be the signatory(ies) on the client trust account and responsible for the client trust account, at least one of whom shall be an "Officer" if the activity desk is a corporation or a "Manager" if the activity desk is a limited liability company. All such individuals shall be responsible for the entity's compliance with the laws and rules related to activity desks in Hawaii and subject to civil and criminal penalties provided by law. An activity desk shall notify the program of any change in the status of a signatory within 15 days of a change.

LATE

**Testimony to the House Committee on Commerce and Consumer Protections
Monday, February 23, 2015, 2:00 pm
Conference Room 325**

RE: SUPPORT OF HB723 RELATING TO ACTIVITY DESKS

Chair Representative McKelvey, Vice Chair Representative Woodson & Members of the committee;

Mahalo for this opportunity to testify, my name is Kristie Wrigglesworth. I am the Deputy Executive Director for Pacific Whale Foundation (PWF). We employ over 200 employees on Maui and use proceeds from our eco tour company to support our non-profit organization, including our research, education and conservation departments.

Pacific Whale Foundation SUPPORTS the intent of HB723.

This Bill amends HRS§ 468M, which oversees the relationship between Activity Providers and Activity Desk, aka: concierge, wholesalers or resellers. The law provides protection for consumers and activity providers, due to the collection and holding of funds by these middlemen, Activity Desks.

In section HRS§ 468M-16 entitled: Criminal penalties, there are criminal consequence to individuals (agents, managers, employees and/or contract labor) violating this statute, specifically the handling of funds. The law, however lacks a fiduciary tether to individuals for violations.

Laws currently exist for securities, insurance, finance, legal, etc...which pierce the corporate veil holding personally responsible those individuals (agents, managers, employees and/or contract labor) for violations regarding Client Trust Accounts.

The lack of fiduciary tether in HRS§ 468M has enabled Activity Desks, in a corporate structure, to blatantly disregard Section 9, entitled: Client trust accounts: maintenance of and withdrawal from accounts. These businesses legally close their doors, empty their Client Trust Account, thereby committing theft without consequence.

The following corporations failed to pay approximately \$50,000 owed to PWF for services rendered and simply closed their doors without consequence:

1. Maui Fun Company (active - status ZP)
2. Tickets on the Rocks (active - status F)

PWF was able to obtain a judgment against Maui Fun Company, but the corporation closed its doors, emptied its accounts and transferred all assets out of the corporation's name, thereby preventing PWF from ever collecting on this judgment.

These businesses clearly violated the proper financial custodianship outline in HRS§ 468M, otherwise sufficient funds would have been in the client trust account. In their wake, they left PWF with past services rendered, which we will never be paid, and we have no means in which to collect.

To successfully pass this Bill, PWF recommends the following changes to the language of the Bill:

Section 468M - Fiduciary responsibilities of corporate officers; activity desks. The corporate officer(s) of each activity desk, as designated in the entity's filings with the Department of Commerce and Consumer Affairs, shall be personally responsible for paying or reimbursing all amounts due as a result of the entity's failure to maintain a client trust account or irrevocable letter of credit in compliance with HRS Section 468M-9. The activity desk shall also be

responsible for providing notification in writing to the department within ten days after any change in its corporate officers.

Because this is such an important bill and will prevent ongoing theft against Consumers and Activity Providers on Maui, PWF supports A3H's willingness to eliminate these portions of the Bill:

~~Section 468M-1 - "Activity desk" means any sole proprietorship, . . . , which receives funds directly from consumers and which for compensation or other consideration, acts or attempts to act as an intermediary to sell, . . . , activities which are furnished by an activity provider. This chapter shall not apply to"~~

-
~~Section 468M-9.5 - Record keeping requirements for client trust accounts. An activity desk which is required to maintain a client trust account pursuant to this chapter shall submit an electronic copy of the first page of its monthly client trust account statement confirming that the account remains open and the amount then being held therein, such statement to be submitted to the department on or before the 15 days following the bank statement's closing date.~~

-
Thank you for the opportunity to testify. Please let me know if you have any questions.

Kristie Wigglesworth
Deputy Executive Director
Pacific Whale Foundation

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 21, 2015 7:23 AM
To: CPCtestimony
Cc: captcoon@gmail.com
Subject: Submitted testimony for HB723 on Feb 23, 2015 14:00PM



HB723

Submitted on: 2/21/2015

Testimony for CPC on Feb 23, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
James E. Coon	Ocean Tourism Coalition	Support	No

Comments: The Ocean Tourism Coalition which represents the 300 family owned charter boat companies across the State supports this important legislation. We humbly ask you to pass HB 723

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 21, 2015 12:12 PM
To: CPCtestimony
Cc: vie@maui.net
Subject: Submitted testimony for HB723 on Feb 23, 2015 14:00PM



HB723

Submitted on: 2/21/2015

Testimony for CPC on Feb 23, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Raymond J Hutaff	Valley Isle Excursions, Inc	Support	No

Comments: Comments: Chair Senator Baker, Vice Chair Senator Taniguchi & Members of the committee; Mahalo for this opportunity to testify, my name is Raymond J Hutaff, Vice President of Valley Isle Excursions, Inc I strongly SUPPORT the intent of SB743. This Bill amends HRS§ 468M, which oversees the relationship between Activity Providers (A3H members) and Activity Desk, aka: concierge, wholesalers or resellers. The law provides protection for consumers and activity providers, due to the collection and holding of funds by these middlemen, Activity Desks. The lack of fiduciary tether in HRS§ 468Mhas enabled Activity Desks, in a corporate structure, to blatantly disregard Section 9, entitled: Client trust accounts; maintenance of and withdrawal from accounts. These businesses legally close their doors, empty their Client Trust Account, thereby committing theft without consequence. The following are a few examples of corporations which simply closed their doors: 1. El Dorado Market Place - estimated in the thousands 2. Maui Fun Company - estimated over \$200k. 3. Tickets on the Rocks - in excess of \$250k 4. Activity Stop - estimated in the thousands 5. Top-10-Hawaii.Com LLC estimated over \$1.2 Million These businesses clearly violated the proper financial custodianship outline in HRS§ 468M, otherwise sufficient funds would have been in the client trust account. In their wake, Consumers were left with worthless tickets and Activity Providers with past services rendered, which they would never be paid, nor with any means in which to collect. We are also concerned that companies may go our of business and leave people stranded. We have seen this before and if it hits the news media it could drastically hurt tourisms here in Hawaii. So I believe that this bill is important, and must pass, not only to Tour Providers but to the visitor industry as whole. We really need to put this on the books and enforce it, at all costs. Raymond J Hutaff Vice President Valley Isle Excursions, Inc

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Sent: Saturday, February 21, 2015 4:30 PM
To: CPCtestimony
Cc: Matthew@HawaiiFoodTours.com
Subject: *Submitted testimony for HB723 on Feb 23, 2015 14:00PM*

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HB723

Submitted on: 2/21/2015

Testimony for CPC on Feb 23, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Gray	Hawaii Food Tours	Support	No

Comments:

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Sent: Sunday, February 22, 2015 7:57 AM
To: CPCtestimony
Cc: saxjr1@gmail.com
Subject: *Submitted testimony for HB723 on Feb 23, 2015 14:00PM*



HB723

Submitted on: 2/22/2015

Testimony for CPC on Feb 23, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Sax	Chief's Luau	Support	No

Comments:

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Sent: Saturday, February 21, 2015 2:37 PM
To: CPCtestimony
Cc: msmercury@msn.com
Subject: Submitted testimony for HB723 on Feb 23, 2015 14:00PM
Attachments: HB 743.docx



HB723

Submitted on: 2/21/2015

Testimony for CPC on Feb 23, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jan Nolan	Individual	Support	No

Comments:

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I fully support SB 743. We need to hold the entities for collecting and holding monies being held responsible financially to the consumers and activity companies that they represent.

LATE

Chair Representative McKelvey, Vice Chair Representative Woodson & Members of the committee;

My husband and I are small business owners on the island of Maui, operating an activity business that caters to the tourism industry. As a whole, the activity industry in Hawaii creates the memorable and lasting experiences that initially bring visitors to our islands, and keeps them coming back, along with the beauty and aloha of our islands.

There are hundreds of small businesses like ours in Hawaii, and we need your help. Please vote in favor of HB723.

This Bill amends HRS§ 468M, which oversees the relationship between Activity Business Owners and Activity Desks, aka: concierge, wholesalers or resellers. The law provides protection for consumers and activity providers, due to the collection and holding of funds by these middlemen, the Activity Desks.

In section HRS§ 468M-16 entitled: Criminal penalties, there are criminal consequence to individuals (agents, managers, employees and/or contract labor) violating this statute, specifically the handling of funds. The law, however lacks a fiduciary tether to individuals for violations.

Laws currently exist for securities, insurance, finance, legal, etc... that pierce the corporate veil holding personally responsible those individuals (agents, managers, employees and/or contract labor) for violations regarding Client Trust Accounts.

The lack of fiduciary tether in HRS§ 468Mhas enables Activity Desks, in a corporate structure, to blatantly disregard Section 9, entitled: Client trust accounts; maintenance of and withdrawal from accounts. There have been too many businesses that legally close their doors, empty their Client Trust Account, thereby committing theft without any consequences.

The following are examples of corporations which simply closed their doors:

1. Top-10-Hawaii.Com LLC dba Hawaii Travel Network stole an estimated \$1.2 Million+ from their customers and never paid the activity providers **(Not a Licensed Desk)**
2. Maui Fun Company - stole over \$200K from their customers and never paid many activity providers. (active - status ZP)
3. Tickets on the Rocks – stole over \$250k (active - status F)
4. Activity Stop - stole thousands of dollars (active - status ZR)
5. El Dorado Market Place **(Not a Licensed Desk)**–stole thousands of dollars from their customers and ultimately many activity providers.

These businesses clearly violated the proper financial custodianship outline in HRS§ 468M, otherwise sufficient funds would have been in the client trust account. In their wake, Consumers were left with worthless tickets. Activity Providers who services were already rendered, were never be paid, nor had any means in which to collect.

As members of Activities and Attractions Association of Hawaii we support the testimony of the Executive Director, Toni Davis, and support of HB 723.

Section 468M - Fiduciary responsibilities of corporate officers; activity desks. The corporate officer(s) of each activity desk, as designated in the entity's filings with the Department of Commerce and Consumer Affairs, shall be personally responsible for paying or reimbursing all amounts due as a result of the entity's failure to maintain a client trust account or irrevocable letter of credit in compliance with HRS Section 468M-9. The activity desk shall also be responsible for providing notification in writing to the department within ten days after any change

in its corporate officers.

And eliminating these portions of the Bill:

~~Section 468M-1 - "Activity desk" means any sole proprietorship, . . . , which receives funds directly from consumers and which for compensation or other consideration, acts or attempts to act as an intermediary to sell, . . . , activities which are furnished by an activity provider. This chapter shall not apply to"~~

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~~Section 468M-9.5 - Record keeping requirements for client trust accounts. An activity desk which is required to maintain a client trust account pursuant to this chapter shall submit an electronic copy of the first page of its monthly client trust account statement confirming that the account remains open and the amount then being held therein, such statement to be submitted to the department on or before the 15 days following the bank statement's closing date.~~

-

Thank you for the opportunity to testify. Please let me know if you have any questions.

Sincerely,

Lisa Gibson
Activity Provider

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 22, 2015 9:49 AM
To: CPCtestimony
Cc: mattmattmaui@hotmail.com
Subject: Submitted testimony for HB723 on Feb 23, 2015 14:00PM



HB723

Submitted on: 2/22/2015

Testimony for CPC on Feb 23, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Figueira	Individual	Support	No

Comments: I support HB723.

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