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

TO THE HOUSE COMMITTEE ON TOURISM

TWENTY-EIGHTH STATE LEGISLATURE  
REGULAR SESSION, 2015

WEDNESDAY, FEBRUARY 4, 2015  
9:30 A.M.

TESTIMONY ON HOUSE BILL NO. 723  
RELATING TO ACTIVITY DESKS

TO THE HONORABLE TOM BROWER, CHAIR,  
AND TO THE HONORABLE TAKASHI OHNO, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

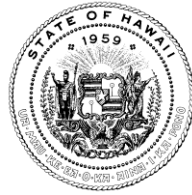
The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 723, Relating to Activity Desks. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the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

House Bill No. 723 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.

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 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.

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



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

TO THE HOUSE COMMITTEE ON TOURISM

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Wednesday, February 4, 2015  
9:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 723, RELATING TO ACTIVITY DESKS.**

TO THE HONORABLE TOM BROWER, 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 these reasons, the Department requests that House Bill No. 723 be held.

Thank you for the opportunity to testify on this measure.



Activities & Attractions Association of Hawaii  
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**Testimony to the House Committee on Tourism  
Wednesday, February 4, 2015, 9:30 am  
Conference Room 312**

**RE: SUPPORT OF HB 723 RELATING TO ACTIVITY DESKS**

Chair Bower, Vice Chair Ohno & 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 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 – June 2014 estimated in the thousands
2. Maui Fun Company – September 2013 estimate over \$200k.
3. Tickets on the Rocks – September 2011 in excess of \$250k
4. Activity Stop – June 2010 estimate in the thousands
5. Top-10-Hawaii.Com LLC dba Hawaii Travel Network – April 2007 estimated over \$12 Million



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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.

The amendments proposed in HB723 will strengthen HRS§ 468M and prevent future theft without consequence by:

1. Holding an appointed corporate officer personally responsible for financial violations regarding the Activity Desk's Client Trust Account or Irrevocable Letter of Credit.
2. Require a monthly report on Client Trust Account or Irrevocable Letter of Credit activity.
3. Exempting businesses from HRS§ 468M which do not collect consumer money.

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

Sincerely,

Toni Marie Davis  
Executive Director