

Honolulu, Hawaii

MAR 30 2017

RE: H.B. No. 1262
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health, to which was referred H.B. No. 1262, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CHARTER TOUR OPERATORS,"

begs leave to report as follows:

The purpose and intent of this measure is to permit a charter tour operator to maintain client trust accounts in a federally insured financial institution outside the State; provided that the charter tour operator allows the Department of Commerce and Consumer Affairs to access the charter tour operator's financial records through the financial institution located outside Hawaii.

Your Committee received testimony in support of this measure from Vacations Hawaii. Your Committee received testimony in opposition to this measure from the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs.

Your Committee finds that charter tour operators are currently required to maintain a client trust account in a federally insured financial institution located within the State. However, concerns have been raised regarding the lack of financial institutions in the State who are able and willing to perform these financial services for charter tour operators. This measure attempts to address these concerns by permitting a charter tour



operator to maintain a client trust account in a federally insured financial institution outside of Hawaii, subject to certain conditions.

However, your Committee has heard the concerns expressed in testimony by the Regulated Industries Complaints Office that this measure poses practical enforcement challenges that may complicate the job of protecting client trust funds. Your Committee understands these concerns and finds that amendments to this measure are necessary to include additional protections for client trust funds. These amendments will help ensure that charter tour operators will be able to continue to serve Hawaii residents in the event that a Hawaii financial institution is unwilling or unable to service a client trust account, while also maintaining sufficient consumer protections.

Your Committee has amended this measure by:

- (1) Clarifying that charter tour operators may deposit sums subject to the requirements for charter tour operator client trust accounts in a trust account maintained in a federally insured financial institution that serves as the depository bank for a public charter program, pursuant to federal regulations;
- (2) Clarifying the requirements a charter tour operator must meet prior to depositing sums in a client trust account maintained in a federally insured financial institution located outside the State, including:
 - (A) Requiring the charter tour operator to provide the Director of Commerce and Consumer Affairs with irrefutable evidence that no financial institution in the State can maintain the charter tour operator's client trust account;
 - (B) Requiring the charter tour operator to file with the Department of Commerce and Consumer Affairs a notarized irrevocable agreement and authorization, in writing, to allow the Department to examine and obtain copies of all business records maintained by the financial institution related to the client trust account;



- (C) Requiring the charter tour operator to bear the cost of reproducing any records requested by the Department; the cost of any fees or expenses, including travel expenses, requested by the Department for purposes of an audit or to determine compliance; or any expense associated with any enforcement action taken on behalf of the Department to protect consumers or otherwise ensure compliance; and
 - (D) Enabling the Department to contract with a private consultant to audit the records of any charter tour operator, and requiring the charter tour operator to bear the costs of any such audit; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1262, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1262, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



