

HB1262 HD2

Measure Title: RELATING TO CHARTER TOUR OPERATORS.

Report Title: Charter Tour Operators; Trust Account; Financial Records

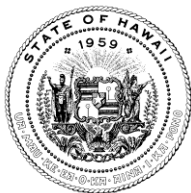
Description: Permits charter tour operators to maintain client trust accounts in a federally insured financial institution outside the State; provided that charter tour operators agree to allow the Department of Commerce and Consumer Affairs to access the tour operator's financial records through the financial institution. (HB1262 HD2)

Companion:

Package: None

Current Referral: CPH

Introducer(s): OHNO



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

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

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

**TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017**

**TUESDAY, MARCH 14, 2017
9:00 A.M.**

**TESTIMONY ON HOUSE BILL NO. 1262 H.D.2
RELATING TO CHARTER TOUR OPERATORS**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1262 H.D.2, Relating to Charter Tour Operators. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department opposes this bill.

House Bill No. 1262 H.D.2 would allow travel agencies operating as charter tour operators to maintain statutorily required client trust accounts outside of the State of Hawaii. The measure requires a charter tour operator who maintains a

client trust account outside of the State to file a written irrevocable agreement and authorization allowing the Department to examine and obtain copies of business records related to the client trust account. These provisions have an effective date of January 1, 2018, and the bill has a defective effective date of July 1, 2112.

Hawaii's charter tour operator law was enacted in 1999 following the failure and bankruptcy of a well-known Las Vegas charter tour operator. The resulting charter tour law provides for strict oversight of charter tour operators. The law requires payments for air transportation, hotel accommodations, baggage handling, ground transportation, and federal taxes be made first. Remaining funds may only be withdrawn after obligations have been paid and travel has been completed. (See Haw. Rev. Stat. section 468L-24.)

The Department believes these provisions are intended to safeguard consumer funds until travel has been completed and that enforcing these provisions may require RICO to move quickly, through a temporary restraining order or other court action, to freeze a client trust account. Although House Bill No. 1262 H.D.2 would require a licensee to provide a written agreement allowing the Department to examine and obtain copies of business records maintained by the out-of-state financial institution, the bill does not consider the added cost of accessing account information and potential time delays, and that RICO would be required to file any action against an out-of-state financial institution in a federal or state court where the financial institution is located. Moreover, because violations of charter tour operator provisions are also misdemeanors under Hawaii law, RICO believes any

enforcement challenges RICO may face would also be encountered by the Office of the Attorney General and county law enforcement agencies.

RICO notes that this Committee heard the companion measure, Senate Bill No. 1299, and passed out a Senate Draft 1. Senate Bill No. 1299 S.D.1 requires a charter tour operator to provide certain evidence before it can maintain a client trust account outside the State and to bear fees and expenses associated with enforcement of client trust account requirements.

The Department appreciates this Committee's efforts in Senate Bill No. 1299 S.D.1 to address some of the enforcement challenges RICO would face and, as such, prefers Senate Bill No. 1299 S.D.1 over this bill. We do, however, believe further discussion is warranted and will continue to work with bill proponents on language that attempts to meet the proponents' concerns without compromising the level of consumer protection provided for in the current law.

Thank you for the opportunity to testify on House Bill No. 1262 H.D.2. I will be happy to answer any questions the Committee may have.



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Senator Rosalyn Baker, Chair
Senator Clarence Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection and Health
Hawaii State Capitol
Honolulu, Hawaii 96813

**RE: HB 1262, HD2 – Relating to Charter Tour Operators
Testimony in Support With Proposed Amendments**

**Tuesday, March 14, 2017 – 9:00 AM
Conference Room 229**

Aloha Chair Baker, Vice Chair Nishihara and Members of the Committee:

This testimony is submitted on behalf of Bill Smith, Vice President and General Manager of Vacations Hawaii. On behalf of Vacations Hawaii, thank you for the opportunity to provide testimony in support of HB 1262, H.D. 2.

As the Committee is aware, the purpose of HB 1262, H.D. 2 is to amend the statute regulating travel agencies and charter tour operators to permit a charter tour operator to maintain a client trust account in a federally insured financial institution outside the state of Hawaii, but subject to all other provisions and protections under the existing statute.

Vacations Hawaii requests the Committee's consideration in amending the language of HB 1262, H.D. 2 to reflect the language in the attached Proposed S.D. 1.

Vacations Hawaii agrees to the amendments made by this Committee to SB 1299 as reflected in S.D. 1, subject to a proposed clarification of the procedure for providing the DCCA Director with information regarding financial institutions within the state that will not handle the client trust account. Accordingly, the Proposed S.D. 1 reflects the language of SB 1299, S.D. 1 with the proposed amendments as described below.

Under the existing language of SB 1299, S.D. 1, a charter tour operator would be required to provide "irrefutable evidence that no financial institution in the State can maintain" the charter tour operator's client trust account. Vacations Hawaii is concerned that such a standard would require Vacations Hawaii to obtain an unspecified and vague quantum of proof collectively from every financial institution in the State of Hawaii, regardless of the size, ability and experience of the financial institution to handle such a highly-regulated client trust account, thus making the standard difficult to apply, interpret and enforce in practice. In addition,

Vacations Hawaii is concerned that if a small financial institution within the State -- which is clearly ill-equipped to handle such a client trust account (in terms of limited assets, resources and/or experience) -- nonetheless claims that it can maintain such an account, the current language suggests that the "irrefutable evidence" standard is not met, and the charter tour operator will be required by the DCCA to use the small financial institution to handle the account, which creates a substantial risk not only to the charter tour operator, but more importantly, to consumers, if the small institution fails to properly maintain the account and/or comply with the numerous and stringent regulations pertaining to such accounts.

Accordingly, as reflected in the attached Proposed S.D. 1 of HB 1262, H.D. 2, Vacations Hawaii proposes that in place of the "irrefutable evidence" standard, a charter tour operator shall be required to provide statements from the three largest federally insured banks in the State of Hawaii (as measured by total local deposits) that, as of the date of the statements and under current circumstances, those banks will not or cannot maintain the charter tour operator's client trust account (or will not consider maintaining such an account). The amended language also addresses a situation where a bank declines to respond to information required by the statute, and clarifies that a charter tour operator should be responsible for bearing any reasonable and necessary expenses to produce records to the department.

Finally, Vacations Hawaii proposes deleting the language in SB 1299, S.D. 1, Subsection (D), which permits the DCCA to audit a charter tour operator's records at the operator's expense, because under the present statute, a charter tour operator is already required (at the charter tour operator's expense) to submit quarterly audited reports on the charter tour trust account to the DCCA (HRS § 486L-26); the DCCA has the existing authority to conduct audits of a charter tour operator's records (HRS § 486L-28(a)); and the DCCA has the existing authority to hire a private consultant to audit the charter tour operator's records at the charter tour operator's expense (HRS § 486L-28(a)).

Vacations Hawaii believes that these proposed amendments provide for a clear, workable and protective standard and procedure for permitting a charter tour operator the option of using an out of state financial institution subject to all other protections specified in the bill and in the existing stringent state and federal regulations.

For the foregoing reasons, we respectfully request that you amend HB 1262, H.D. 2 to reflect the language in the attached Proposed S.D. 1. Vacations Hawaii believes that this measure, as amended, provides a reasonable and balanced solution to address the charter tour trust account issue, while providing for continued regulatory oversight and continued protections for Hawaii consumers.

Thank you for the opportunity to testify in support of this measure.

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A BILL FOR AN ACT

RELATING TO CHARTER TOUR OPERATORS.

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

SECTION 1. Section 468L-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within five business days of receipt, all travel agencies shall deposit all sums received from a consumer, for travel services offered by the travel agency, in a trust account maintained in a federally insured financial institution located in Hawaii~~[=]~~; provided that charter tour operators subject to part II of this chapter may deposit sums subject to section 468L-23 received from a consumer in a client trust account maintained in a federally insured financial institution serving as the depository bank for a public charter program pursuant to the requirements of title 14 Code of Federal Regulations part 380, as amended outside the State in compliance with section 468L-23. A travel agency shall be deemed to have complied with this section if:

(1) (A) Travel services are paid for by the consumer by means of a credit, charge or debit card, or by means of a centrally billed travel account, and the travel agency submits the charge data to the appropriate payment processing or card issuing company within five days of the charge; and

~~(2)~~ (B) Any moneys received from these means by the agency are handled in accordance with the provisions of this section ~~[-]~~; or¹¹

(2) A charter tour operator subject to part II of this chapter deposits sums subject to section 468L-23 in a trust account maintained in a federally insured financial institution located out of the State pursuant to this section; provided that the charter tour operator:

(A) Provides the director with a signed statement from each of the three largest federally insured banks in the State (as measured by total local deposits) that each bank, as of the date of the statement and under then-current circumstances:

(i) Cannot or is otherwise incapable of maintaining the charter tour operator's client trust account;

(ii) Will not or otherwise declines to maintain the charter tour operator's client trust account; or

(iii) Declines or otherwise refuses to consider maintaining the charter tour operator's client trust account;

provided that a signed statement from a charter tour operator representing that a bank has not responded in writing within thirty days of a request for a statement required by this subsection shall conclusively satisfy the requirements of this subsection for that bank;

(B) Files with the department a notarized irrevocable agreement and authorization in writing, in a form prescribed by the department, allowing the department, upon written request to the federally insured financial institution, to examine and obtain copies of all business records maintained by the financial institution related to the client trust account, regardless of the location of the financial institution and records;
provided that the agreement shall indicate that the authorization remains in effect for as long

as the financial institution retains the records;

and

(C) Bears any reasonable and necessary expense to reproduce any records requested by the department to determine compliance with this chapter."

~~SECTION 2. Section 468L-23, Hawaii Revised Statutes, is amended to read as follows:~~

~~"[[AS468L-23]] Charter tour client trust account. Every travel agency engaged in the business of a charter tour operator shall establish and maintain a separate charter tour client trust account solely for the purpose of the travel agency's charter tour business. The charter tour client trust account shall be maintained in accordance with sections 468L-5 and 468L-24[.]; provided that if the client trust account is maintained in a federally insured financial institution outside the State, then the charter tour operator shall file a written irrevocable agreement and authorization with the department, that allows the department, upon written request to the financial institution, to examine and obtain copies at the department of all business records related to the client trust account that are maintained by the financial institution. The agreement shall state that the authorization shall be effective for as long as the financial institution retains the records."~~

SECTION ~~3~~2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4~~3~~. This Act shall take effect on July 1, ~~21122050~~; ~~provided that Sections 1 and 2 of this Act shall take effect on January 1, 2018.~~