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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

WEDNESDAY, MARCH 22, 2017
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 1299 S.D.1 H.D.1
RELATING TO CHARTER TOUR OPERATORS

TO THE HONORABLE ROY M. TAKUMI, CHAIR,
AND TO THE HONORABLE LINDA ICHIYAMA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 1299 S.D.1 H.D.1, 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"). RICO offers comments on this bill.

Senate Bill No.1299 S.D.1 H.D.1 allows travel agencies operating as charter tour operators to maintain statutorily required client trust accounts in federally insured financial institutions 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, upon written request to the financial institution, to examine and obtain copies of business records related to the client trust account. The authorization shall be effective for all long as the financial institution retains the records.

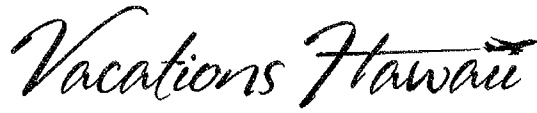
Hawaii's charter tour operator law was enacted in 1999 following the failure and bankruptcy of a well-known Las Vegas charter tour operator. The resulting charter tour law provides for strict oversight of charter tour operators. The current law requires payments for air transportation, hotel accommodations, 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 Remaining funds may only be withdrawn after obligations have been paid and travel has been completed.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.

RICO notes that this Committee heard the companion measure, House Bill No. 1262, and passed out a House Draft 2 with provisions that are now identical to this bill, except for differing defective effective dates.

RICO recognizes that Senate Bill No. 1299 S.D.1 attempted to address some of the enforcement challenges RICO would face by requiring charter tour operators to provide the Department's Director with irrefutable evidence that no financial institution in the State can maintain the charter tour operator's client trust account

and to bear the fees or expenses incurred by the Department in determining compliance, including reproduction costs and travel expenses. As such, the Department prefers the Senate Draft 1 version of Senate Bill No. 1299 as compared with this House Draft 1 version, and is continuing to work with the bill's proponent on language that incorporates some of the enforcement goals in Senate Bill No. 1299 S.D.1, and other possible safeguards.

Thank you for the opportunity to testify on Senate Bill No. 1299 S.D.1 H.D.1. I will be happy to answer any questions the Committee may have.



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Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

**RE: SB 1299, S.D. 1, H.D. 1 – Relating to Charter Tour Operators
Testimony in Support**

**Wednesday, March 22, 2017; 2:00 P.M.
Conference Room 329**

Aloha Chair Takumi, Vice Chair Ichiyama, 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 SB 1299, S.D. 1, H.D. 1.

As the Committee is aware, the purpose of SB 1299, S.D. 1, H.D. 1 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.

As an additional protection, the bill also amends the statute to require a charter tour operator that chooses the option to maintain a client trust account outside of Hawaii to execute an irrevocable agreement with the Department of Commerce and Consumer Affairs to permit the department to examine and obtain copies of all business records from the financial institution related to the trust account regardless of the location of that institution. The irrevocable agreement will ensure that the department will have unfettered access to the charter tour trust account records for investigative or enforcement purposes regardless of the location of the financial institution that maintains the account. Importantly, this bill does not amend the current requirement for travel agency trust accounts to be maintained in a federally insured financial institution located in Hawaii, and that requirement will continue to apply to travel agency funds.

Vacations Hawaii, as an experienced and well-established charter tour operator, is very cognizant of the reasons for the regulation of charter tour operator trust accounts, and supports the continued regulatory requirements under state law to protect our Hawaii consumers. In addition to the state regulations, Vacations Hawaii is also subject to the federal Department of Transportation charter trust account regulations of Title 14 of the Code of Federal Regulations, which have very specific and stringent requirements for the maintenance of charter tour trust accounts.

At the same time, Vacations Hawaii supports this legislation to permit a charter tour operator the option to maintain a client trust account in a federally insured financial institution outside of Hawaii because it ensures, with reasonable protections, that charter tour operators will be able to continue to serve Hawaii residents in the event that a Hawaii financial institution is unable or unwilling to service a trust account.

In the case of Vacations Hawaii, for example, there is only one financial institution in the state of Hawaii that has agreed to maintain Vacation Hawaii's charter client trust account. Due to extensive regulatory and reporting requirements imposed on financial institutions maintaining such accounts, this financial institution expressed concerns in the past about continuing to maintain Vacations Hawaii's account, and previously informed Vacations Hawaii that it would no longer serve as the depository institution for the trust account. After several positive discussions, the financial institution agreed to continue to serve as the depository institution; however, despite discussing this matter for over six months, there is no final agreement in place, and Vacations Hawaii is limited on how far in advance it can book charter tours because of the uncertainty over the maintenance of the account.

Vacations Hawaii, which appears to be the only charter tour company in Hawaii currently affected by this situation, is concerned that the current requirement that a client trust account must be located only in Hawaii places Vacations Hawaii and consumers at a substantial and unnecessary risk. While Vacations Hawaii, for example, is currently working on an agreement with the only financial institution in Hawaii experienced at maintaining the trust account, a change in the management of the institution or a change in policy that results in a decision to discontinue serving the account would require Vacations Hawaii, for all practical purposes, to immediately and indefinitely suspend its charter operations.

Assuming no other Hawaii financial institution is then willing to immediately service the account, such a result would be catastrophic to any charter tour operator, even an established one such as Vacations Hawaii, and such a result would be particularly unfortunate given that the charter tour operator under current law would have no other option to continue to operate in Hawaii despite its best efforts and intentions to do so. Since charter tour operators ultimately have no control over a financial institution's decision on whether to service a client trust account (or not), this legislation reasonably mitigates against a serious risk faced by charter tour operators, and provides a reasonable option for charter tour operators to continue to serve the residents of our state.

To Vacation Hawaii's knowledge, the charter tour operator industry is one of only four industries in Hawaii subject to a statutory requirement that limits the location of a trust account solely to financial institutions in Hawaii (the other industries being legal service providers, activity desks, and travel agents). As noted above, however, federal public charter operators such as Vacations Hawaii are already subject to detailed and stringent consumer protection regulations enforced by the federal Department of Transportation, and aside from the location of the account, this legislation will not amend any other state regulations applicable to charter tour operators, including DCCA's enforcement authority over charter tour operators and its ability to review all applicable records.

Vacations Hawaii is aware of comments previously submitted by the DCCA regarding this legislation, and both Vacations Hawaii and DCCA are continuing to discuss this matter.

Given the foregoing, and to facilitate further discussions, Vacations Hawaii respectfully requests the Committee approve this measure, as Vacations Hawaii believes that this legislation 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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