



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
H.B. NO. 1816, RELATING TO TOUR GUIDES.

BEFORE THE:
HOUSE COMMITTEE ON TOURISM

DATE: Tuesday, January 30, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 423 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Ewan C. Rayner, Deputy Attorney General

Chair Quinlan and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments on this bill.

The purpose of the bill is to establish a tour guide licensing program within the Department of Commerce and Consumer Affairs, and the bill would prohibit anyone from engaging in the practice of tour guiding in exchange for compensation without a valid license.

We believe this law could be subject to challenge under the First Amendment. Similar laws have been challenged in other states and invalidated on the grounds that the licensing requirements for tour guides in those states were an unconstitutional burden on speech. In *Edwards v. D.C.*, 755 F.3d 996 (D.C. Cir. 2014), the U.S. Court of Appeals for the D.C. Circuit ruled that a D.C. law—D.C. Code § 47–2836—which prohibits tour guides from receiving compensation to "guide or escort any person through or about the District of Columbia, or any part thereof, unless he shall have first secured a license so to do," *id.* at 999, was facially unconstitutional under the First Amendment. *Id.* at 1009. Similarly, in *Billups v. City of Charleston*, S.C., 961 F.3d 673 (4th Cir. 2020), the Fourth Circuit Court of Appeals invalidated under the First Amendment a Charleston ordinance requiring tour guides to obtain licenses, eligibility for which required them to "pass a written examination . . . contain[ing] 200 questions and [which] is meant to 'test the applicant's knowledge of [Charleston] and its

history." *Id.* at 677, 690. The courts in these cases found no evidence that, even if ill-informed tour guides presented a legitimate problem, the exam and licensing requirements would actually further the government's interest in addressing that problem. Although these decisions do not provide binding precedent in Hawai'i, the same reasoning could potentially be applied by a court to this bill and there is therefore a risk that this bill, if enacted, would not survive a First Amendment challenge.

In section -10 of the new chapter added by section 1 of the bill, at page 9, lines 12-15, this bill provides that "[t]his chapter shall not be construed to interfere with a person's right to freedom of speech provided by the First Amendment to the Constitution of the United States." However, under the reasoning in *Edwards* and *Billups*, it is not clear that a court considering a First Amendment challenge would be able to construe this bill's provisions so as to avoid interfering with a person's right to free speech without also failing to give effect to this bill's primary function—i.e., to prohibit tour guides from providing tours for compensation without first obtaining a license. *See Billups*, 961 F.3d at 682–83 (agreeing with the assertion that "the Ordinance directly burdens protected speech because it requires a tour guide to obtain a license before leading visitors on a paid tour through Charleston's historic districts."). In light of this First Amendment concern, we respectfully request that this bill be held.

We also note that at page 4, lines 9-17, this bill provides the DCCA Director with the power and duty to appoint an advisory committee of various members to assist with the implementation of the new chapter enacted by this bill and with the adoption of administrative rules. If the Committee decides to pass this bill despite the First Amendment concern, we recommend several amendments to these provisions in the bill.

First, article V, section 6, of the Hawaii State Constitution provides that all executive and administrative offices, departments, and instrumentalities of the State shall be allocated by law among and within its principal departments. Temporary commissions for special purposes may be exempted. This bill does not place the advisory committee within any designated department or set a sunset date. Therefore,

we recommend that the bill be revised to set a sunset date or specify which department the advisory committee is to be placed in for administrative purposes.

Second, in section -4 of the new chapter added by section 1 of the bill, on page 4, line 9, this bill refers to the DCCA's authority to appoint an "advisory committee." However, on page 4, line 18, the bill refers to an "advisory council." We recommend amending the bill to make these two references consistent.

Finally, we note that the advisory committee consists of, among others, "members of the University of Hawaii." We suggest that the bill include more information on the "members" who are to be considered for the new advisory committee in order to provide some indication as to the extent of the possible interference with the usual duties of those "members of the University of Hawaii." Article X, section 6, of the Hawaii State Constitution gives the Board of Regents of the University of Hawaii "exclusive jurisdiction over the internal structure, management, and operation of the university." Section 6 further provides: "This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern." If the appointment of "members of the University of Hawaii" may affect the "internal structure, management, and operation of the university," we also recommend an amendment that adds a statement identifying this bill as a law of statewide concern.

The Department appreciates the opportunity to provide comments on this bill, and, as stated above, we request that this bill be held.



TESTIMONY OF DANIEL NĀHO'OPI'I
INTERIM PRESIDENT & CEO, HAWAII TOURISM AUTHORITY
BEFORE THE HOUSE COMMITTEE ON TOURISM
Tuesday, January 30, 2024 10:00 a.m.
In consideration of
HB 1816
RELATING TO TOUR GUIDES

Aloha Chair Quinlan, Vice Chair Hussey-Burdick, and Members of the Committee,

The Hawai'i Tourism Authority (HTA) offers the following comments in support of the intent of this measure, which establishes the Tour Guide Licensing Program within the Department of Commerce and Consumer Affairs and requires tour guides to complete the Professional Standards Tour Certification program by the University of Hawai'i or another program approved by the Director.

Tour guides are a significant source of information for many visitors, so it is important that visitors have some assurance that the information and guidance can be trusted. A desire for tour guide certification was articulated in each of HTA's island-based, community-led Destination Management Action Plans.

As part of HTA's Destination Stewardship work, Kilohana is developing a curriculum on our behalf for an online tour guide certification training program that will include but not be limited to Hawaiian culture, Hawai'i's history, customer service, and safety issues.

HTA's participation on the advisory committee described in §__-4(6) would bring value to the process and allow us to coordinate more closely with our colleagues at the Department of Commerce & Consumer Affairs on the communication with the visitor industry and visitors on the implementation of this measure. We stand ready to do so, and request being named to that advisory committee in this measure.

We respectfully defer to our colleagues at DCCA on other matters of implementation.

Mahalo for the opportunity to offer our support for the intent of this measure.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA

335 MERCHANT STREET, ROOM 310

P.O. BOX 541

HONOLULU, HAWAII 96809

Phone Number: (808) 586-2850

Fax Number: (808) 586-2856

cca.hawaii.gov

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I. HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Tourism
Tuesday, January 30, 2024
10:00 a.m.

State Capitol, Conference Room 423 and via Video Conferencing

On the following measure:
H.B. 1816, RELATING TO TOUR GUIDES

Chair Quinlan and Members of the Committees:

My name is Nadine Ando, and I am the Director for the Department of Commerce and Consumer Affairs (Department). The Department respectfully opposes this bill.

The purposes of this bill are to: (1) establish a Tour Guide Licensing Program within the Department of Commerce and Consumer Affairs; and (2) require tour guides to complete the Professional Standards Tour Certification program by the University of Hawaii or another program approved by the Director.

The Department acknowledges the importance of maintaining high standards in the tourism industry. Given the potential impact of H.B. 1816 on unregulated professions within the tourism sector, it is imperative that we fully understand the implications of this proposed legislation. The Department requests that this measure remain compliant with Hawaii Revised Statutes (HRS) section 26H-6, which requires that new regulatory measures being considered for enactment be referred to the State

Auditor for a sunrise analysis. HRS section 26H-6 also requires that the Auditor's analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation. The Hawaii Regulatory Licensing Reform Act provides a valuable framework for assessing the necessity and effectiveness of regulatory measures, ensuring that any proposed regulations are well-founded and in the best interest of both the professionals involved and the community.

Given this information, the Department respectfully requests that this measure be held in Committee. If the Committee is not inclined to hold this measure, the Department requests that it be amended to a concurrent resolution to study the impacts of regulating this profession.

Thank you for the opportunity to testify on this bill.

HB-1816

Submitted on: 1/28/2024 7:53:24 PM

Testimony for TOU on 1/30/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Julia Estigoy-Kahoonei	Individual	Support	Written Testimony Only

Comments:

I support this bill that makes it mandatory for all tour guides and companies be certified. Part of the certification should also include Cultural practices and history in their program. So many hippie dippie places operate here in Hawaii Island and completely disrespect the culture and environment and then pass themselves off as "experts" because they've "lived on the land". Cultral sensitivity needs to be a big part of tourism and the only way to control this is to educate tour guides and have regulations on the information they disseminate.



COMMITTEE ON TOURISM

Rep. Sean Quinlan, Chair

Rep. Natalia Hussey-Burdick, Vice Chair

DATE: Tuesday, January 30, 2024

TIME: 10:00 AM

Aloha Chair Quinlan and Vice Chair Hussey-Burdick and committee members,

My name is Antoinette Davis, it has been my honor to represent the Activities and Attractions Association of Hawaii, (A3H), a not-for-profit 501c6 trade organization since 1997 (27 years) as their Executive Director. A3H **supports the intent, due to current certification process must oppose HB1816**, the availability and how certification programs are acknowledged requires a shift before this becomes law.

As a member of the recently formed Responsible Tourism Advisor Committee, organized by CNHA – coordinated by Kilohana Collective, I have been honored to participate in the creation of a certification program for Hawaii Tourism businesses. As part of this guide certification is a requirement so this dovetails nicely. There is an issue currently with certification.

Most all high-quality tours have sent their staff or lead staff to Kapi’olani’s Community College certification program and then developed their own program within their company. To my knowledge there are two recognized consistent programs available to become “Tour Guide” in Hawaii:

1. Professional Tour Guides is a program offered by **Kapi’olani Community College in partnership with the Hawai’i State Tourism Training Council**. To obtain certification, candidates must complete a series of courses, including Introduction to Hawaii’s Visitor Industry, Ho’okipa Me Ke Aloha, Communicating with Impact, Servicing the Global Customer, Foundations of Hawaii, and Know Your Island.

Candidates must also pass a rigorous two-part exam that assesses their knowledge of the courses and requires them to design and deliver an island-specific custom tour. To be eligible for certification, candidates must provide proof of current employment with a licensed Hawaii tour company or documentation showing ownership of a licensed Hawaii tour company. The certification is valid for two years, after which candidates can apply for recertification.



2. A certified tour guide in Hawaii, you must have a license from the **Hawaii Department of Land and Natural Resources**. The license is valid for one year and costs \$50. You need to have a high school diploma or GED and prior experience as a tour guide is preferable. The ability to stand and walk for an extended period of time is also required.

To apply for the license, you must apply to the Department of Business, Economic Development & Tourism and pay the \$50 application fee. After the application has been reviewed and approved, you will be scheduled for an interview. If you pass the interview, you will then be required to take a written examination covering various topics related to Hawaii's history, culture, and natural resources. Finally, you will need to take a skills test to demonstrate your ability to lead tours.

Once you have successfully completed all the necessary steps, you will receive your license and be able to lead tours on Hawaii's public lands, including state parks, beaches, and forests.

Both programs require physical presence on Oahu. Kauai, Molokai, Maui, Lanai, and Hawaii Island businesses incur additional travel costs or have to wait for similar classes to be taught at the local UH college. When taught at the local UH college in the past 4 hours, 2 days a week for 13 weeks – 104 hours. Paying staff while training. Once to twice a year.

The certification program needs to be available online, on demand and at one's own pace. There also should be consideration of the stellar tour companies that helped make these certification programs, they have internal programs and should be at a different level than those new to the industry.

Mahalo,

Toni Marie Davis
Executive Director
Activities & Attractions Association of Hawaii, Inc.