



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2025**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 182, RELATING TO SERVICE DISRUPTIONS.

**BEFORE THE:**

SENATE COMMITTEE ON LABOR AND TECHNOLOGY

**DATE:** Monday, February 10, 2025 **TIME:** 3:15 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Sarah Anne S.L. Mau, Deputy Attorney General  
Lauren A. Sugai, Deputy Attorney General

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Chair Acquino and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill adds a new section to chapter 486K, Hawaii Revised Statutes, that requires hotelkeepers to provide adequate notice of service disruptions due to a strike or lockout to guests and third-party vendors under certain conditions. The bill also allows for recovery of damages by those injured by violations of the new section.

The bill may face legal challenge under the First Amendment of the United States Constitution as a potential restriction on commercial speech, but adding a preamble stating the justification for the bill will better protect it against a legal challenge. Further, we recommend inserting a non-impairment clause to address any potential legal challenge under the Contract Clause of the United States Constitution as an impairment of contracts. See U.S. Const. art. I, § 10, cl. 1.

Courts have recognized that laws regulating business advertising constitute a form of commercial speech regulation. See *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 652 (1985) (upholding the constitutionality of disclosure requirements for contingent-fee arrangements in attorney advertising). In determining whether a regulation on commercial speech is constitutional, a regulation is more likely to be upheld where the speech is misleading, the asserted governmental interest is substantial, the regulation directly advances the governmental interest, and the

regulation is not more extensive than is necessary to serve that interest. See *Retail Digital Network, LLC v. Prieto*, 861 F.3d 839, 844 (9th Cir. 2017) (upholding prohibition on a retailer from leasing advertising space to alcohol manufacturers).

Subsections (a) and (b) of the new section to be added by the bill may trigger commercial speech scrutiny due to the requirements to provide notice of any service disruptions due to a strike or lockout to each third-party vendor and guest. Like *Zauderer*, this bill compels speech by placing an affirmative obligation on a business to provide certain information, thereby raising similar commercial speech concerns.

To strengthen the bill against potential First Amendment challenges, we recommend including a preamble clarifying how service disruptions without adequate notice are detrimental to consumers, that the government's interest in preventing such misconduct is substantial, that this regulation advances the government's interest, and that avoiding these harmful effects justifies the restrictions imposed by the bill. An example can be found in H.B. No. 945, section 1.

Additionally, subsections (c) and (d) of the new section to be added by the bill could be subject to challenge under the Contract Clause of the United States Constitution, which generally prohibits the substantial impairment of contractual relationships. Hotel reservations and bookings are contracts by nature, so requirements under these subsections that are inconsistent with any agreement that is already in effect at the time of this bill's approval may constitute impairment.

To mitigate this issue, we recommend inserting a non-impairment savings clause after page 5, line 14, as follows:

SECTION 3. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Constitution of the State of Hawaii or Article I, section 10, of the United States Constitution.

The current sections 3 and 4 should then be renumbered as sections 4 and 5.

The addition of a preamble and the non-impairment savings clause above would enhance the bill's ability to withstand constitutional challenges. Thank you for the opportunity to provide comments.



*Cade Watanabe, Financial Secretary-Treasurer*

*Gemma G. Weinstein, President*

*Eric W. Gill, Senior Vice-President*

February 9, 2025

Committee On Labor & Technology  
Senator Henry Aquino, Chair  
Senator Chriss Lee, Vice Chair

### **Testimony in strong support of SB 182 with proposed amendments**

Chair Aquino, Vice Chair Lee, and Members of the Committee,

UNITE HERE Local 5 represents over 10,000 Hawaii workers in hotels, health care, airports and food service. We stand in strong support of SB 182, but it should be amended to match the language of HB 594 HD1, attached. In order for our state's most prominent industry to thrive, visitors should have the opportunity to plan around any complications that might arise during their trips. It does not benefit anyone in the industry for visitors to leave Hawai'i upset about aspects of their trips. Where it is possible to inform guests about disruptions and help them plan around inconveniences, we should require hoteliers to do so.

Over the past years, several hotels have conducted construction projects or experienced strikes. As *USA Today* noted, visitors staying at or attending conferences at some strike-affected hotels have claimed they were not notified of the labor disputes and were upset about these omissions. According to the article:

Sylvia Clark, who stayed at the resort between Sept. 30 to Oct. 5, was one of the chanting guests. "It was nerve wracking," she told USA TODAY. "But I felt it was very unfair of Hilton not to let their guests know way ahead of time that this could be a possibility."

Clark was told about the strike less than three days before she and her family hopped on a plane from California to Oahu – and the news came from Costco, who she booked through, not the hotel. "For us, it was too late," she said.

- "Piles of dirty towels and long lines: Hawaii hotel guests describe conditions amid strikes," *USA TODAY*, 10/14/2024.

Some guests at striking hotels provided statements to workers. For example, one guest told us:

We're here for nine days, but unfortunately they didn't let us know what was going on prior to our arrival, so when we got here they let us know that we won't be having access to any amenities, no room service, no housekeeping, no valet parking; like, a lot of things that we were used to having all those things; and we come to hang out, relax, not having to clean our own room, but it's unfortunate what's happening, I hope it gets resolved soon.

Construction noise, vibration, dust and related closures of services can also impact the guest experience. A 2024 article in the Vietnamese publication *Tuổi Trẻ News* states :

Sound from drills and the impact of equipment and machines from morning till night at the construction site at 254 Vo Nguyen Giap Street have bothered guests in many nearby hotels since the start of 2024.

"Multiple tourists have canceled room bookings, left negative reviews, and given low scores for the affected hotels. Meanwhile, several guests left the noise-hit

hotels at midnight due to noise pollution,” according to a petition written by hoteliers in Da Nang.\*

- “Hotels in Da Nang plagued by noisy construction,” *Tuói Tre News*, 1/16/2024. (Note: in this example, the construction was not onsite at the hotels, but rather nearby; this would not be covered by HB 594; but it would apply where hotels conduct construction projects on-site while their properties remain open.)

In each case, hoteliers knew of the possibility of disruptions before they happened, and had the choice to pass that information to their guests; some chose not to. Had they done so, guests could have planned accordingly and had a better experience.

Local 5 has attempted to inform consumers by reaching out to meeting planners and to visitors prior to their arrival in Hawai'i to make them aware of potential strikes, but we do not have the information that hotels have about future bookings. We have also reached out to guests while they were in Hawai'i during disruptive periods, providing them with tools they could use to redress their grievances. Based on these experiences, it is clear to us that a better practice is possible, that it would benefit the whole industry, and that SB 83 would provide the necessary incentives to ensure visitors who may be impacted by service disruptions have notification and recourse.

In order to make the bill most effective, we recommend amending it to match HB 594 HD 1, attached. With these changes, this legislation could go a long way toward protecting consumers and maintaining a positive image of Hawai'i even for those who face service disruptions.

Thank you for your consideration of this measure.

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# A BILL FOR AN ACT

RELATING TO HOTELS.

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

1       SECTION 1. The legislature finds that tourism is a major  
2 contributor to the State's economy. Travelers come from around  
3 the globe to experience Hawaii's natural beauty, culture, and  
4 diversity.

5       The legislature further finds that travelers staying at  
6 hotels are vulnerable to disruptions to hotel services. They  
7 are often unfamiliar with local conditions and lack alternative  
8 accommodations during their stay. The legislature also finds  
9 that hotel guests will frequently be unaware of pest  
10 infestations; construction work; noisy demonstrations; work  
11 stoppages, strikes, or lockouts; or the unavailability of  
12 advertised amenities at the hotel when they make reservations  
13 and may experience difficulty canceling their reservations upon  
14 arriving and discovering such disruptions.

15       The legislature additionally finds that ensuring that hotel  
16 guests are notified of any service disruption, or the  
17 possibility of a service disruption, and are permitted to

1 terminate reservations without financial consequences is  
2 essential to protect travelers from the effects of service  
3 disruptions and to ensure the continued vitality of Hawaii's  
4 tourism and hotel sector.

5 Therefore, the purpose of this Act is to:

6 (1) Require hotelkeepers to provide adequate notice of  
7 service disruptions to guests and third-party vendors  
8 under certain conditions; and

9 (2) Allow for recovery of damages by injured consumers.

10 SECTION 2. Chapter 486K, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13 **"§486K- Disruption of service; notice to third-party**  
14 **vendors and guests required; damages recoverable.** (a) At the  
15 onset of a service disruption or of notice that a service  
16 disruption may occur, a hotelkeeper shall provide, in all  
17 modifiable mediums where the hotel advertises or solicits  
18 customers, or through which customers can book or reserve rooms  
19 or hotel services, notification of the service disruption to  
20 each third-party vendor and guest who is seeking or has entered  
21 into a reservation, booking, or agreement with the keeper or a  
22 third-party vendor for the use or occupancy of a room or hotel  
23 service. The keeper shall provide notice before accepting or  
24 entering into any new reservation, booking, or agreement for the

1 use of a room or hotel service; provided that if the  
2 circumstances of the service disruption make timely notification  
3 impracticable, the keeper shall provide notice as soon as  
4 practicable.

5 (b) The notification shall describe:

6 (1) The nature of the service disruption;

7 (2) The extent of the service disruption's effect on  
8 reservations, bookings, or agreements to use the room  
9 or hotel services; and

10 (3) The right of a guest to cancel or terminate the  
11 reservation, booking, or agreement for the use of the  
12 room or hotel services with a refund, if applicable,  
13 and without the imposition of any fee, penalty, or  
14 other charge pursuant to subsections (c) and (d).

15 If the notification is included in a communication  
16 containing other information, the notification shall be in a  
17 significantly larger font and different color than the remainder  
18 of the communication.

19 (c) A keeper shall not impose any fee, penalty, or other  
20 charge or retain any deposit of a guest who cancels a  
21 reservation, booking, or agreement with the keeper for the  
22 future use of a room or hotel service if a service disruption is  
23 likely to exist during the period of the reservation, booking,  
24 or agreement for the use of a room or hotel service.

1       (d) At the onset of a service disruption or of notice that  
2 a service disruption may occur, the keeper shall immediately and  
3 clearly notify all guests and hotel service users of the service  
4 disruption pursuant to subsections (a) and (b). Regardless of  
5 whether the keeper provides the notice, a guest may terminate  
6 any remaining period of a reservation, booking, or agreement for  
7 the use of a room or hotel service and the keeper shall not  
8 impose any fee, penalty, or other charge for the termination or  
9 retain any deposit related to any unused portion of the period  
10 of the reservation, booking, or agreement following the onset of  
11 the service disruption or of notice that a service disruption  
12 may occur.

13       (e) Any keeper that violates or causes another person to  
14 violate this section shall forfeit to the injured party three  
15 times the amount of:

16       (1) The sum charged for each day that a notice was  
17 required under subsection (a) or (d) but was not  
18 provided; and

19       (2) Any fee, penalty, or other charge imposed or deposit  
20 retained in violation of subsection (c).

21       (f) Any person who is injured by any violation of this  
22 section may:

23       (1) Sue for damages sustained by the person and, if the  
24 judgment is for the plaintiff, the plaintiff shall be



1           awarded a sum of no less than \$1,000 or threefold  
2           damages sustained by the plaintiff, whichever is  
3           greater, and reasonable attorney's fees together with  
4           the costs of the suit; and

5       (2) Bring proceedings to enjoin the violation and, if the  
6           decision is for the plaintiff, the plaintiff shall be  
7           awarded reasonable attorney's fees together with the  
8           costs of the suit.

9       The remedies under this subsection are cumulative and may  
10      be brought in a single action.

11      (g) As used in this section:

12      "Hotel service" means work performed in connection with the  
13      operation of a hotel, including but not limited to the letting  
14      of guest rooms or meeting rooms, or the provision of food or  
15      beverage services, banquet services, or spa services.

16      "Service disruption" means any of the following conditions:

17      (1) Construction work in or directly related to the hotel  
18           that creates excessive noise that is likely to  
19           substantially disturb a guest, except construction  
20           that is intended to correct an emergency condition or  
21           other condition requiring immediate attention;

22      (2) Conditions that the hotelkeeper is aware of that  
23           indicate the presence in the hotel of any infestation  
24           by bed bugs, lice or other insects, rodents or other

1 vermin capable of spreading disease or being carried,  
2 including on one's person; provided that the  
3 infestation has not been fully treated by a licensed  
4 exterminator within twenty-four hours of the  
5 identification of the infestation;

6 (3) The unavailability, for a period of twenty-four hours  
7 or more, of any advertised hotel amenity, including  
8 but not limited to a pool, spa, shuttle service,  
9 internet access, or food or beverage service;

10 (4) The unavailability, for a period of twenty-four hours  
11 or more, of any advertised room appliances or  
12 technology, including but not limited to in-room  
13 refrigerators or internet services;

14 (5) The unavailability of any advertised or legally  
15 required accessibility feature, including but not  
16 limited to an elevator, wheelchair lift, ramp, or  
17 accessible bathroom in the room or in any common area  
18 of the hotel;

19 (6) The unavailability, for a period of twenty-four hours  
20 or more, of any utility, including but not limited to  
21 gas, water, or electricity when the unavailability  
22 affects only the location of the hotel;

23 (7) Any strike, lockout, or other work stoppage; or

1       (8) Any lawful picketing or demonstration at or adjacent  
2       to the hotel:

3       (A) That creates noise that disturbs a guest of the  
4       hotel; or

5       (B) That the hotel has notice of and that is likely  
6       to create noise that may disturb a guest of the  
7       hotel.

8       "Third-party vendor" means a vendor with which a  
9       hotelkeeper has an arrangement for third-party room reservations  
10      or any other entity that has reserved or entered into an  
11      agreement or booking for the use or occupancy of one or more  
12      rooms in a hotel in furtherance of the business of reselling the  
13      rooms to guests."

14       SECTION 3. This Act does not affect rights and duties that  
15      matured, penalties that were incurred, and proceedings that were  
16      begun before its effective date.

17       SECTION 4. This Act shall not be applied so as to impair  
18      any contract existing as of the effective date of this Act in a  
19      manner violative of either the Hawaii State Constitution or  
20      article I, section 10, of the United States Constitution.

21       SECTION 5. New statutory material is underscored.

22       SECTION 6. This Act shall take effect on July 1, 3000.