



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

ON THE FOLLOWING MEASURE:
H.B. NO. 594, RELATING TO HOTELS.

BEFORE THE:
HOUSE COMMITTEE ON TOURISM

DATE: Thursday, January 30, 2025 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 423

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Christopher T. Han, or Christopher J.I. Leong, Deputy Attorneys
General

Chair Tam and Members of the Committee:

The Department of the Attorney General provides the following comments.

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

This 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 insulate the bill from a challenge under the Contract Clause, article I, section 10, clause 1, of the United States Constitution as an impairment of contracts.

Courts have recognized that laws regulating business advertising and disclosures constitute a form of commercial speech regulation. *See Zauderer v. Off. of Disciplinary Couns. of Supreme 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 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.

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 the following wording after page 6, line 5:

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 suggested section 3, 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

January 29, 2025

Committee On Tourism
Rep. Adrian Tam, Chair
Rep. Shirley Ann Templo, Vice Chair

Testimony in strong support of HB 594, with comments

Chair Tam, Vice Chair Templo, 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 HB 594, but feel it should be amended as described below. 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 could have passed that information to their guests, but 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 HB 594 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 making the following amendments:

Provide consumers a means of recourse through a private right of action by adding the following as Section 486K-__(g):

(g). Suits by persons injured; amount of recovery, injunctions.

(1) Any person who is injured by reason of anything forbidden or declared unlawful by this Section 486K: (i) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorney's fees together with the costs of suit; and (ii) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorney's fees together with the costs of suit.

(2) The remedies provided in this section are cumulative and may be brought in one action.

Clarify Section 486K-__(e) as follows:

(e) Any keeper that violates or causes another person to violate this section shall forfeit to the injured party three times the amount of (1) the sum charged in excess of what the keeper is entitled to for each day that a notice was required under Section 486K(a), (b) and/or (d) but not given; and (2) any fee, penalty, or other charge or deposit retained in violation of Section 486K(c).

Modify the bill's section 486K-__ (d) as follows:

HRS 486k-__ (d). At the onset of a service disruption, (i) the keeper shall immediately and clearly notify all guests and hotel service users of the service disruption pursuant to subsections (a) and (b); ~~and~~ (ii) regardless of whether the keeper provides such notice, a guest may terminate any remaining period of a reservation, booking, or agreement for the use of a room or hotel service and the keeper shall not impose any fee, penalty, or other charge for the termination or retain any deposit related to any unused portion of the period of the reservation, booking, or agreement following the onset of the service disruption.

Revise the definition of “Service disruption” in HRS § 486K-__(f) as follows:

“Service disruption” means any of the following conditions ~~that substantially affects or likely to substantially affect a guest’s use of a room or hotel service:~~

* * *

~~(7) Any strike, lockout or picketing activity or other demonstration or event occurring for a calendar day or more at or near the hotel~~ other work stoppage; or

(8) Any lawful picketing or demonstration at or adjacent to the hotel (i) that creates noise that disturbs a guest of the hotel; or (ii) of which the operator has notice and that is likely to create noise that may disturb a guest of the hotel.

Expand HRS § 486K-__(a) and (d) and correct the inconsistency between subsections (a) and (d), as follows:

~~(a) Within twenty-four hours of the occurrence~~ At the onset of a service disruption or of notice that a service disruption may occur . . .

~~(d) At the onset of a service disruption~~ or of notice that a service disruption may occur. . . .

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.