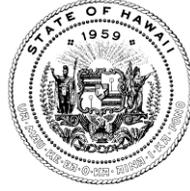


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**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

**Before the
Senate Committee on Judiciary
Friday, February 21, 2025
10:20 a.m.**

**Conference Room 016 & Videoconference
State Capitol
415 South Beretania Street**

**On the following measure:
S.B. 102, S.D. 1, RELATING TO RESTAURANTS**

Written Testimony Only

Chair Rhoads and Members of the Committee:

My name is Emma Olsen, and I am an Enforcement Attorney for the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department opposes this bill.

The purpose of this bill is to regulate third-party restaurant reservation services by prohibiting them from listing, advertising, promoting, or selling restaurant reservations without the restaurant's written consent. It also authorizes individuals charged fees by a third-party restaurant reservation service in violation of this bill to bring civil actions for injunctive relief, actual damages, and attorneys' fees.

OCP opposes this bill for several reasons. First, the bill addresses an issue that primarily injures restaurants and their reputations, with only a marginal impact on consumers. Hawaii consumer protection laws are intended to protect consumers, not businesses. The requirement for third-party restaurant reservation services to have written agreements with restaurants is designed to protect the restaurants and their reputations, not the consumers. This bill unnecessarily inserts the government in the role of policing conduct for which restaurants can already independently pursue judicial recourse under tort and contract law. Restaurants are capable of negotiating and enforcing their own agreements with third-party services, making government intervention unnecessary.

Second, similar legislation, such as New York's "[Restaurant Reservation Anti-Piracy Act](#)" addresses a specific issue not currently affecting Hawai'i consumers. The New York law targets third-party services using predatory computer bots to make and sell reservations to consumers at high costs. The legislation is not aimed at regulating third-party restaurant reservation services like Resy or OpenTable but focuses on services using bots to sell reservations at popular restaurants for exorbitant prices, ultimately harming consumers. OCP maintains a database of consumer complaints, and no previous complaints have addressed third-party restaurant reservation services. The absence of recorded complaints suggests that this issue may not be widespread among Hawai'i consumers.

OCP opposes this bill, finding it unnecessary as it addresses an issue that primarily harms restaurants, and harm to consumers is isolated and limited. If consumers are injured by third-party reservation services, existing remedies available to consumers under HRS § 480-2 for unfair or deceptive acts or practices in trade or commerce are sufficient to address any potential consumer harm.

Thank you for the opportunity to testify on this bill.



February 20, 2025

The Honorable Senator Karl Rhoads,
Chair Senate Committee on Judiciary
The Thirty-Third Legislature
State Capitol State of Hawaii Honolulu,
Hawaii 96813

The Honorable Senator Troy Hashimoto
The Thirty-Third Legislature
State Capitol State of Hawaii Honolulu,
Hawaii 96813

Re: Comments in Support of SB102 with Suggested Amendments

Dear Senator Rhoads, Senator Hashimoto and Senate Judiciary Committee members:

I write on behalf of Booking Holdings, Inc., and its subsidiary operating brand, OpenTable. OpenTable is a leader in restaurant technology with 55,000 restaurants and millions of diners worldwide. OpenTable is part of [Booking Holdings](#), the world's leading provider of online travel and related services, serving consumers and local partners in more than 220 countries and also includes [Booking.com](#), [Priceline](#), [KAYAK](#). We are proud to support our thousands of accommodations and restaurant partners across Hawaii—the vast majority of which are small businesses—empowering them to reach a global customer base.

OpenTable's mission is to help restaurants thrive—our goal is to help restaurants take care of their guests, their teams and their bottom line. The recent proliferation of restaurant reservation piracy negatively impacts restaurants, their employees, and diners. Restaurants run on razor-thin profit margins, and a few no-shows on any given day (often the byproduct of reservation piracy) can mean an independent restaurant is unprofitable or employees are unable to earn the income they rely on.

That's why Booking Holdings and OpenTable write to express our support for SB 102 combating restaurant reservation piracy. We thank the bill sponsors and the committee for their leadership and attention to this issue.

We would also like to take this opportunity to suggest three changes to the bill reflected in the redlines in the attached copy of SB102 SD1

1) Language to account for legitimate reservation listings by authorized third-parties on other websites, something our restaurant partners are fully aware of and expect and support us doing, by adding: "OR A CONTRACTUAL DESIGNEE OF THE RESTAURANT WHO OBTAINED RESERVATION DISTRIBUTION RIGHTS DIRECTLY FROM THE FOOD SERVICE ESTABLISHMENT"

2) The clause related to indemnity is unrelated to the matter at hand and should be omitted. It has not been included in any other state law or bill on this matter and seems a vestige of legislation in New York, the first state to address restaurant reservation piracy, related to restaurant delivery services which involve third-party independent contractor delivery workers which is not germane for this matter.

3) Lastly, the cause of action is written for those "charged a fee" for a pirated reservation, but that would leave out cases where the pirating platform either charges no fee, or only charges a fee to the seller (pirate) not the diner and so ensure no work arounds by reservation pirates, the language should be changed to "..charged fees OR ANY PRICE by, OR THROUGH,.."

Thank you for leading and for the opportunity to share our support for legislation addressing this important issue.

Sincerely,

Zachary Russem
Head of U.S. State and Local Policy
Booking Holdings
zachary.russem@booking.com
917-613-9829

A BILL FOR AN ACT

RELATING TO RESTAURANTS.

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

SECTION 1. The legislature finds that unauthorized restaurant reservation listings by third-party restaurant reservation services are misleading to consumers and detrimental to restaurant businesses in the State. The legislature also finds that the State has an interest in preventing this substantial misconduct. This Act advances the State's interest by prohibiting third-parties from listing restaurant reservation services without the restaurant's knowledge or prior written consent. The legislature finds that avoiding these harmful effects justify the restrictions imposed by this Act.

Accordingly, the purpose of this Act is to:

- (1) Prohibit third-party restaurant reservation services from listing, advertising, promoting, or selling restaurant reservation services without first obtaining a written agreement from the applicable restaurant authorizing the action; and
- (2) Establish civil penalties.

SECTION 2. Chapter 489J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§489J- Unauthorized restaurant reservations:

prohibited. (a) No third-party restaurant reservation service shall list, advertise, promote, or sell reservations for a restaurant through the third-party restaurant reservation service's website, mobile application, or other digital platform unless the applicable restaurant OR A CONTRACTUAL DESIGNEE OF THE RESTAURANT WHO OBTAINED RESERVATION DISTRIBUTION RIGHTS DIRECTLYFROM THE FOOD SERVICE ESTABLISHMENT agrees in writing for the third-party restaurant reservation service to list, advertise, promote, or sell reservations for that restaurant.

~~(b) No agreement executed pursuant to subsection (a) shall include a provision, clause, or covenant requiring the restaurant to indemnify the third-party restaurant reservation service, any independent contractor acting on behalf of the third party restaurant reservation service, or any registered agent of the third party restaurant reservation service for any harm arising from an act or omission initiated by the third party restaurant reservation service; provided that any~~

~~provision, clause, or covenant in violation of this subsection shall be held invalid.~~

(c) Any person who is charged fees OR ANY PRICE by, OR THROUGH, a third-party restaurant reservation service for a reservation that is listed, advertised, promoted, or sold; or restaurant for which a third-party restaurant reservation service has listed, advertised, promoted, or sold a reservation; in violation of this section may bring a civil action in any court of competent jurisdiction for the following:

- (1) Injunctive relief to restrain or enjoin any activity in violation of this section;
- (2) Actual damages: provided that the actual damages shall not exceed the total fees collected by the third-party restaurant reservation service for the subject violation; and
- (3) Attorneys' fees and costs and any other remedies that the court deems appropriate.

(d) Any action alleging a violation of this section shall be brought within one year of the occurrence of the acts alleged to have violated this section.

(e) As used in this section:

"Restaurant" means a food establishment in which food is provided free of charge or sold to consumers for consumption on or off the premises. "Restaurant" includes dine-in establishments, pushcarts, food stands, and vehicles.

"Third-party restaurant reservation service" means any website, mobile application, or other digital platform that:

- (1) Offers or arranges for reserving on-premises service for a customer at a restaurant; and
- (2) Is owned and operated by an entity other than the entity that owns the applicable restaurant."

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

SECTION 4. This Act shall not be applied so as to impair any contracts existing as of the effective date of this Act in a manner violative of the Contract Clause under article I, section 10, of the United States Constitution or the Hawaii State Constitution.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2050.

SB-102-SD-1

Submitted on: 2/19/2025 11:45:59 PM

Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Ruth Love	Individual	Support	Written Testimony Only

Comments:

Thank you for legislation to help protect our restaurants.

Mrs Ruth Love