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**To:**        Sen. Jarrett Keohokalole, Chair  
              Sen. Carol Fukunaga, Vice Chair  
              Members of Committee on Commerce and Consumer Protection

**From:**     Victor Lim, Legislative Lead

**Subj:**      SB 102 Relating to Restaurants

**Date:**      January 25, 2025

The Hawaii Restaurant Association representing 4,000 Eating and Drinking Place locations in Hawaii strongly supports SB102 that prohibits third-party restaurant reservation services from listing, advertising, promoting, or selling restaurant reservations without first obtaining a written agreement from the applicable restaurant authorizing the action and establishing civil penalties.

It is only right that when a reservation service business list restaurant on their apps and websites, they are in a sense working as an agent of that established restaurant. This required authorization ensures that the restaurant description, service, and offers are accurate, and the restaurant knows and approve what this listing service provides.

Similar legislation has also passed in many places across the United States.

Thak you for allowing us to lend our support with this Bill 102.





**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. 102, RELATING TO RESTAURANTS.

**BEFORE THE:**  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Tuesday, January 28, 2025      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 229 and Videoconference

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

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Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to prohibit third-party restaurant reservation services from listing, advertising, promoting, or selling restaurant reservations without first obtaining a written agreement from the applicable restaurant. The bill also grants individuals charged fees by a third-party restaurant reservation service in violation of the prohibition, or restaurants improperly listed without consent, the right to pursue civil action for injunctive relief, damages, and reimbursement of attorneys' fees and costs.

The bill may be subject to challenge under the First Amendment of the United States Constitution as a potential restriction on commercial speech, and 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 constitute a form of commercial speech regulation. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980); *see also Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099 (9th Cir. 2004) (upholding the constitutionality of a California statute regulating how physicians can advertise board-certification status). 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).

To strengthen the bill against potential First Amendment challenges, we recommend including a preamble clarifying that unauthorized restaurant reservation listings are misleading to consumers and detrimental to restaurants, 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 justify the restrictions imposed by the bill.

Additionally, subsection (b) of the new section to the bill, which voids indemnification provisions in existing agreements between a restaurant and a third-party restaurant reservation service, could be subject to challenge under the Contract Clause of the U.S. Constitution, which generally prohibits the substantial impairment of contractual relationships. To mitigate this issue, we recommend inserting the following wording after page 3, line 17:

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."

These additions would enhance the bill's ability to withstand constitutional challenges. Thank you for the opportunity to provide comments.