

## ACT 258

H.B. NO. 1361

A Bill for an Act Relating to Charter Tour Operators.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that existing statutory requirements that travel agencies maintain client trust accounts do not provide adequate assurances of compliance with those statutes, and therefore, do not adequately protect consumers against the risk of loss in cases of charter tour operators.

The purpose of this Act is to protect consumers against the risk of loss from advance purchases of charter tours from travel agencies by requiring travel agencies operating charter tours to provide evidence of their financial ability to perform their contractual obligations, and periodic financial reports that demonstrate compliance with client trust account requirements. This Act also provides for greater regulatory supervision of travel agencies operating charter tours by the State, including enhanced authority to conduct audits and examinations.

This Act is intended to affect only travel agencies that directly contract for charter air transportation, with or without related hotel or ground transportation. This Act is not intended to affect other types of travel agencies, such as travel agencies that sell tickets for charter tours operated by separate charter tour operators.

SECTION 2. Section 468L-1, Hawaii Revised Statutes, is amended by adding six new definitions to be appropriately inserted and to read as follows:

“Charter tour” means any travel services in which a travel agency contracts with an air carrier and offers for sale a charter, with or without related ground transportation or hotel accommodations.

“Charter tour operator” means any person who sells or offers for sale charter tours, whether offered on a wholesale or retail basis, excluding any direct air carrier as defined by Title 14, Code of Federal Regulations, section 380.2, as amended, or any other person to whom the provisions of this chapter do not apply.

“Person” means any sole proprietorship, organization, trust, group, association, partnership, joint venture, corporation, limited liability company, limited

liability partnership, society or other entity, or any combination of any of the foregoing.

“Qualified charter tour client trust assets” means cash or cash equivalents held by a bank or a similar federally-insured financial institution in one or more separate charter tour client trust accounts maintained in compliance with sections 468L-5 and 468L-C. Qualified charter tour client trust assets shall not be commingled with any other accounts, funds, or moneys held by a charter tour operator. Qualified charter tour client trust assets shall not include any of the following:

- (1) Any notes receivable;
- (2) Federal or state bonds or letters of credit; or
- (3) Any other general or administrative expenditure that is not directly related to the payment for travel services.

“Qualified charter tour client trust liabilities” means all cash or cash equivalents received by a charter tour operator for travel services, and shall be accounted for in a charter tour trust liability account on the books and records of the charter tour operator.

“Qualified prepaid charter tour client trust assets” means the following cash expenditures for future travel services made in advance of the commencement of a charter tour advance payments for:

- (1) Air transportation;
- (2) Hotel accommodations; or
- (3) Baggage handling or ground transportation charges.”

SECTION 3. Chapter 468L, Hawaii Revised Statutes, is amended by adding nine new sections to be appropriately designated and to read as follows:

**“§468L-A Charter tour operator registration as travel agency required.**

(a) No person shall engage in the business of a charter tour operator unless that person has registered as a travel agency with the director under section 468L-2 and complies with the provisions of this chapter applicable to a travel agency engaged in the business of a charter tour operator.

(b) An application for registration of a charter tour operator as a travel agency or for renewal of a registration of a charter tour operator as a travel agency shall be made on a form provided by the department. In addition to the information required to be provided by all applicants for registration as a travel agency, the form shall require an applicant for registration as a travel agency which intends to engage in the business of a charter tour operator to:

- (1) Provide evidence that a charter tour client trust account has been established in accordance with sections 468L-5 and 468L-C;
- (2) State whether the applicant intends to operate seven or more charter tours during any twelve months or shorter period of the registration period;
- (3) State whether the applicant intends to operate sixteen or more charter tours during any twelve months or shorter period of the registration period; and
- (4) Provide evidence that the applicant has complied with the financial performance requirements of section 468L-B.

**§468L-B Charter tour operator financial performance requirements. (a)**

The department shall not approve the initial registration or the renewal of registration of a travel agency that wishes to engage in the business of a charter tour operator and to operate not more than six charter tours during any twelve-month period of the registration period, or during the remainder of the registration period if less than twelve months, for which application is made unless the applicant provides proof

that the applicant has obtained a bond, letter of credit, or other security in compliance with Title 14, Code of Federal Regulation, section 380.34, as the same may be amended, or any successor or replacement federal statute or regulation thereto.

(b) The department shall not approve the initial registration or the renewal of registration of a travel agency that wishes to engage in the business of a charter tour operator and to operate seven or more charter tours during any twelve months or shorter period of the registration period for which application is made unless the applicant either:

- (1) Posts a performance or financial guaranty-type bond naming the director as the obligee that may be cancelled only if the charter tour operator gives ninety days' prior written notice to the surety and the surety gives sixty days' prior written notice to the director of cancellation of the bond; or
- (2) Obtains an irrevocable letter of credit that is a guarantee of payment for a term of one year naming the director as beneficiary, with a provision for automatic extension for additional annual periods, and that may be cancelled only if the charter tour operator gives prior written notice by certified mail to the director and to the issuer at least ninety days before the letter's expiration date or the date on which the charter tour operator intends the letter to cease being effective, or the issuer gives prior written notice by certified mail to the director at least sixty days before the expiration date.

(c) The bond or letter of credit shall be issued by a surety or federally-insured lending institution authorized to do business in the State to indemnify any consumer who may suffer loss as a result of nonperformance by a charter tour operator.

(d) A charter tour operator shall not provide the required coverage through multiple bonds or irrevocable letters of credit but shall provide either a single bond or a single irrevocable letter of credit. A charter tour operator may substitute the bond with an irrevocable letter of credit and vice versa pursuant to subsection (h), but shall not provide one in addition to the other to reach the required aggregate amount of coverage.

(e) Upon cancellation or expiration of the bond or letter of credit, the surety or insurer shall remain liable for any claims against the bond or letter of credit for a period of six months; provided that:

- (1) The debts were incurred while the bond or letter of credit was in effect; and
- (2) The director notifies the surety or insurer, as the case may be, of any claims within ninety days of discovery of any claims.

(f) The surety or insurer shall not be required to release any moneys or collateral to the charter tour operator during the six months after cancellation of the bond or expiration of the letter of credit.

(g) The amount of coverage of the bond or irrevocable letter of credit shall be:

- (1) Equal to \$300,000, less the amount of any security provided by the applicant under Title 14, Code of Federal Regulations, section 380.34, as the same may be amended, or any successor or replacement federal statute or regulation thereto, for a travel agency planning to engage in the business of a charter tour operator and to operate seven to fifteen charter tours during any twelve months or shorter period of the registration period for which application is made; or
- (2) Equal to \$1,000,000, less the amount of any security provided by the applicant under Title 14, Code of Federal Regulations, section 380.34, as the same may be amended, or any successor or replacement federal statute or regulation thereto, for a travel agency planning to engage in

the business of a charter tour operator and to operate more than fifteen charter tours during any twelve months or shorter period of the registration period for which application is made.

(h) A bond shall be accepted as replacement for another bond or an irrevocable letter of credit and an irrevocable letter of credit shall be accepted as replacement for another irrevocable letter of credit or a bond if:

- (1) The effective date of a replacement bond is prior to or on the cancellation date of the bond being replaced or the expiration date of the irrevocable letter of credit being replaced, as the case may be, and the replacement bond is received by the director before the cancellation date or the expiration date, as the case may be; or
- (2) The replacement irrevocable letter of credit is received by the director at least fifteen days prior to the expiration date of the irrevocable letter of credit being replaced or is received by the director on or before the cancellation date of the bond being replaced, as the case may be.

(i) A charter tour operator shall not operate more than six charter tours during any twelve-month period unless the charter tour operator has provided and maintains in effect a bond or letter of credit in accordance with subsection (b), in the amount specified in subsection (g)(1), if the charter tour operator operates between seven and fifteen charter tours, or in the amount specified in subsection (g)(2), if the charter tour operator operates more than fifteen charter tours.

**§468L-C Charter tour client trust account.** Every travel agency engaged in the business of a charter tour operator shall establish and maintain a separate charter tour client trust account solely for the purpose of the travel agency's charter tour business. The charter tour client trust account shall be maintained in accordance with sections 468L-5 and 468L-D.

**§468L-D Maintenance of charter tour operator accounts.** (a) Every charter tour operator shall maintain adequate books and records that provide for a proper accounting of total qualified charter tour client trust assets and qualified charter tour client trust liabilities for all charter tours for which funds have been accepted.

(b) Every charter tour operator shall maintain in its books and records a charter tour trust liability account for the purpose of accounting for qualified charter tour client trust liabilities.

(c) The charter tour trust liability account shall only be adjusted in the following manner:

- (1) The charter tour trust liability account shall be reduced by the amount of actual payments made by the charter tour operator for air transportation, hotel accommodations, baggage handling, or ground transportation charges with respect to the charter tour operator's current obligations to provide travel services or to past travel services provided by the charter tour operator; provided that the charter tour trust liability account shall not be reduced for any expenditure which constitutes a qualified pre-paid charter tour client trust asset;
- (2) The charter tour trust liability account shall be reduced by the amount of payments made by the charter tour operator of federal transportation taxes that are payable as a result of a charter tour and for commissions payable to third party travel agents; and
- (3) Only after:
  - (A) All of the liabilities described in paragraphs (1) and (2) with respect to a specific charter tour have been satisfied through payment;

(B) The obligation to provide travel services has been fully provided; and

(C) The travel has been completed;

then and only then, may any funds remaining in the charter tour client trust account relating to the specific charter tour be withdrawn from the charter tour client trust account and deposited into the general accounts of the charter tour operator, and the charter tour trust liability account shall be reduced by the amount so withdrawn from the charter tour client trust account.

**§468L-E Maintenance of qualified charter tour client trust assets by charter tour operators.** A charter tour operator shall regularly maintain qualified charter tour client trust assets in an amount which is equal to or exceeds the qualified charter tour client trust liabilities of the charter tour operator. A charter tour operator shall be deemed to be in substantial compliance with the provisions of this section even if, during any twelve month period, qualified charter tour client trust liabilities exceed qualified charter tour client trust assets for any one, but not more than one, quarterly reporting period applicable under section 468L-F; provided that qualified charter tour client trust assets at all times shall be equal to or exceed not less than ninety per cent of qualified charter tour client trust liabilities.

**§468L-F Quarterly report filing requirements for charter tour operators.** Not later than forty-five days after the end of each quarter, each registered travel agency engaging in the business of a charter tour operator, at its own expense, shall file a quarterly report that shall cover the immediately preceding quarter. Each report shall include a statement by an independent certified public accountant that the charter tour client trust account has been maintained in accordance with the requirements of sections 468L-5, 468L-C, and 468L-D, or specifying the grounds on which such a statement cannot be made.

**§468L-G Failure by charter tour operator to file required reports; lack of compliance by charter tour operators; remedies.** (a) Any registered travel agency engaged in the business of a charter tour operator which fails to file any report required to be filed under this chapter or which files a report indicating that the charter tour operator is not in compliance with the provisions of this chapter, including without limitation, any report which indicates that the charter tour client trust account is not in compliance with the requirements of this chapter, shall be deemed not to be in substantial compliance with the requirements of this chapter.

(b) In addition to any other remedy available, the director may cause a citation to be issued with respect to a registered travel agency engaged in the business of a charter tour operator that has not acted or is not acting in compliance with any provision of this chapter.

(c) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provision alleged to have been violated and may contain an order of abatement directing the travel agency to cease engaging in the business of a charter tour operator and an assessment of administrative fines as provided by this section. All fines collected under this section shall be deposited in the special fund established under section 26-9(o).

(d) Any registered travel agency engaged in the business of a charter tour operator who violates this section shall be assessed an administrative fine of up to:

- (1) \$25,000 for the first violation;
- (2) \$50,000 for the second violation; and
- (3) \$75,000 for any subsequent violations.

(e) Service of a citation issued under this section shall be made by personal service or by certified mail, restricted delivery, sent to the last known business address of the travel agency.

(f) Any person issued a citation under this section may submit a written request, within twenty days from the service of the citation, to the director for a hearing with respect to the violations alleged, the scope of the order of abatement, or the amount of the administrative fine assessed.

(g) If the person issued a citation under this section timely notifies the director of a request for a hearing, the director shall afford an opportunity for a hearing under chapter 91.

(h) If the person issued a citation under this section does not submit a written request to the director for a hearing within twenty days from the service of the citation, the citation shall be transmitted to the director for issuance of a final order.

(i) The sanctions and disposition authorized under this section shall be separate and in addition to all other remedies provided by law.

(j) The director may adopt rules pursuant to chapter 91 necessary for the purpose of this section.

**§468L-H Audit of charter tour operators.** (a) The department may audit the records of any charter tour operator with respect to its funds. For that purpose, the department shall have free access to the office and places of business of the charter tour operator. Notwithstanding section 468L-3(6), the department may contract with a private consultant to audit the records of any charter tour operator, the cost of which shall be borne by the charter tour operator regardless of whether a violation of this chapter is established.

(b) The director, upon notice and hearing pursuant to chapter 91, may temporarily suspend or may revoke the registration as a travel agency of any charter tour operator who fails to cooperate with the department in any examination or audit of the charter tour operator conducted or contracted for by the director.

**§468L-I Violation of charter tour operator provisions.** Without limitation to any other remedies or penalties that may be applicable, any person who knowingly accepts moneys for charter tours without being registered as a travel agency in compliance with this chapter, or any charter tour operator that knowingly is not in compliance with the provisions of this chapter and continues to accept moneys for charter tours, shall be guilty of a misdemeanor.”

SECTION 4. Section 468L-1, Hawaii Revised Statutes, is amended by amending the definition of “travel agency” to read as follows:

““Travel agency” means any [sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which] person who for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services.”

SECTION 5. In codifying the new sections added to chapter 468L, Hawaii Revised Statutes, by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated in this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 7.** This Act shall take effect on October 1, 1999.  
(Approved July 6, 1999.)

**Note**

1. Edited pursuant to HRS §23G-16.5.