

STAND. COM. REP. NO. **594**

Honolulu, Hawaii

MAR 05 2015

RE: S.B. No. 743
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 743 entitled:

"A BILL FOR AN ACT RELATING TO ACTIVITY DESKS,"

begs leave to report as follows:

The purpose and intent of this measure is to require an activity desk to designate a fiduciary when the activity desk terminates its business, notify the Department of Commerce and Consumer Affairs of the designation, and file monthly reports with the Department of Commerce and Consumer Affairs.

Your Committee received testimony in support of this measure from the Activities & Attractions Association of Hawaii; Lahaina Cruise Company, Inc.; Valley Isle Excursions, Inc.; Skyline Eco-Adventures, LLC; Ocean Tourism Coalition; and four individuals. Your Committee received testimony in opposition to this measure from the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs. Your Committee received comments on this measure from the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs.

Your Committee finds that activity desks are intermediaries, such as concierges, wholesalers, or resellers, who sell activities offered by an activity provider. Although existing law imposes criminal penalties for individuals who violate certain provisions of chapter 468M, Hawaii Revised Statutes, relating to activity providers and activity desks, the law does not require an activity

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desk to designate a fiduciary to be in charge of the client trust account. This lack of a fiduciary tether has enabled some activity desks to use shell corporations as a means of avoiding required client trust funding requirements. Later, these same activity desks close their doors, empty their client trust accounts, and leave behind customers with worthless tickets and activity providers with services rendered and no means to collect. This measure proposes to make a corporate officer of an activity desk the fiduciary in charge when the activity desk terminates its business.

Your Committee has heard the concerns that the amendment to the definition of "activity desk", as proposed by this measure, is inconsistent with the unamended language in the definition. Your Committee has also heard the concerns regarding requiring a corporate officer to be the fiduciary.

In response to these concerns, your Committee notes that the Regulated Industries Complaints Office and the Activities and Attractions Association of Hawaii compromised on language to protect activity providers and consumers, by creating a fiduciary requirement for activity desks and ensuring that existing criminal penalties under chapter 468M, Hawaii Revised Statutes, would be applicable. Amendments to this measure are therefore necessary to reflect this consensus language.

Accordingly, your Committee has amended this measure by:

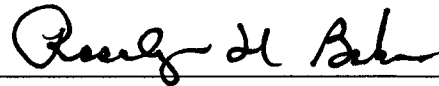
- (1) Deleting language that would have required an activity desk to designate a fiduciary when the activity desk terminates its business, notify the Department of Commerce and Consumer Affairs of the designation, and file monthly reports with the Department of Commerce and Consumer Affairs;
- (2) Requiring an activity desk to designate an individual, officer, director, member, or manager who shall be a signatory on and fully responsible for the client trust account;
- (3) Specifying responsibilities of the designated signatory and requiring the activity desk to notify the Director of Commerce and Consumer Affairs in writing within ten days of any change in the designated signatory;



- (4) Amending existing criminal penalties under chapter 468M, Hawaii Revised Statutes, to include violations of the signatory requirements for activity desks; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 743, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 743, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



