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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

TUESDAY, FEBRUARY 14, 2017
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 1262 H.D.1
RELATING TO CHARTER TOUR OPERATORS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE LINDA ICHIYAMA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1262 H.D.1, Relating to Charter Tour Operators. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). As the agency charged with enforcing a number of the State's licensing laws, including the charter tour operator law, the Department believes that this bill poses practical enforcement challenges that will complicate the job of protecting client trust funds. As such, the Department opposes this bill.

House Bill No. 1262 H.D.1 would allow travel agencies operating as charter tour operators to maintain statutorily required client trust accounts outside of the State of Hawaii. The measure requires a charter tour operator who maintains a client trust account outside of the State to file a written irrevocable agreement and authorization allowing the Department to examine and obtain copies of business records related to the client trust account.

Hawaii's charter tour operator law was enacted in 1999 following the failure and bankruptcy of a well-known Las Vegas charter tour operator. Approximately 2,500 customers were impacted with travel claims totaling over \$700,000. The resulting charter tour law provides for strict oversight of charter tour operators. The Department believes that a critical component of that oversight function includes being able to keep tabs on client trust funds and quickly move to protect those funds if there are irregularities. The law requires payments for air transportation, hotel accommodations, baggage handling, ground transportation, and federal taxes be made first. Remaining funds may only be withdrawn after obligations have been paid and travel has been completed. (See Haw. Rev. Stat. section 468L-24.)

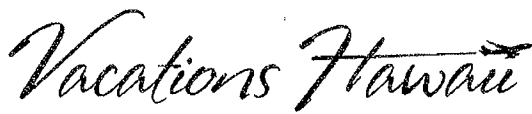
The Department believes these provisions are intended to safeguard consumer funds until travel has been completed and that enforcing these provisions may require RICO to move quickly, through a temporary restraining order or other court action, to freeze a client trust account. Although House Bill No. 1262 H.D.1 would require a licensee to provide a written agreement allowing the Department to examine and obtain copies of business records maintained by the out-of-state

financial institution, the bill does not consider the added cost of accessing account information and potential time delays, and that RICO would be required to file any action against an out-of-state financial institution in a federal or state court where the financial institution is located. Moreover, because violations of charter tour operator provisions are also misdemeanors under Hawaii law, RICO believes any enforcement challenges RICO may face would also be encountered by the Office of the Attorney General and county law enforcement agencies.

The Department has had a number of discussions with the bill proponents during the interim to explore whether there are workable options available that would provide for flexibility in the location of the client trust fund without compromising the level of consumer protection provided for in the current law. The Department carefully considered the proposal but ultimately concluded that, given the ubiquitous use of charter tours for travel outside the State, it was important to ensure that charter tour trust funds could be quickly accessed and protected in the event of an emergency.

Losses incurred by consumers when a travel agency defaults on travel booked for one or two individual consumers are damaging. Because charter tours can affect hundreds of individual consumers per flight, the Department does not support easing client trust account requirements in this area.

Thank you for the opportunity to testify on House Bill No. 1262 H.D.1. I will be happy to answer any questions the Committee may have.



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LATE

Representative Angus McKelvey, Chair
Representative Linda Ichiyama, Vice Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

**RE: HB 1262, HD1 – Relating to Charter Tour Operators
Testimony in Support**

**Tuesday, February 14, 2017 – 2:00 p.m.
Conference Room 329**

Aloha Chair McKelvey, Vice Chair Ichiyama and Members of the Committee:

My name is Bill Smith, Vice President and General Manager of Vacations Hawaii, and on behalf of Vacations Hawaii, thank you for the opportunity to provide testimony in support of HB 1262, HD1.

Since 1996, Vacations Hawaii has served over 1.5 million Hawaii residents with convenient and affordable direct charter flights to Las Vegas. Over twenty years ago, Boyd Travel, Inc. dba Vacations Hawaii began charter operations between Hawaii and Las Vegas with two charters per week. Today, Vacations Hawaii, in partnership with Omni Air International, operates four charters per week on Boeing 767 aircraft, providing Las Vegas vacations for over 870 Hawaii residents per week. Vacations Hawaii is proud to be an integral part of Hawaii's local history, community and economy with gross annual sales of over \$35 million, and with 80 employees based in both Hawaii and in Las Vegas.

The purpose of HB 1262, HD1 is to amend the statute regulating travel agencies and charter tour operators to permit a charter tour operator to maintain a client trust account in a federally insured financial institution outside the state of Hawaii, but subject to all other provisions and protections under the existing statute.

As an additional protection, the bill also amends the statute to require a charter tour operator that chooses the option to maintain a client trust account outside of Hawaii to execute an irrevocable agreement with the Department of Commerce and Consumer Affairs to permit the department to examine and obtain copies of all business records from the financial institution related to the trust account regardless of the location of that institution. The irrevocable agreement will ensure that the department will have unfettered access to the charter tour trust account records for investigative or enforcement purposes regardless of the location of

the financial institution that maintains the account. Importantly, this bill does not amend the current requirement for travel agency trust accounts to be maintained in a federally insured financial institution located in Hawaii, and that requirement will continue to apply to travel agency funds.

Vacations Hawaii, as an experienced and well-established charter tour operator, is very cognizant of the reasons for the regulation of charter tour operator trust accounts, and supports the continued regulatory requirements under state law to protect our Hawaii consumers. In addition to the state regulations, Vacations Hawaii is also subject to the federal Department of Transportation charter trust account regulations of Title 14 of the Code of Federal Regulations, which have very specific and stringent requirements for the maintenance of charter tour trust accounts. Vacations Hawaii will have copies of the federal regulations available to provide to the committee chair at the hearing.

At the same time, Vacations Hawaii supports this legislation to permit a charter tour operator the option to maintain a client trust account in a federally insured financial institution outside of Hawaii because it ensures, with reasonable protections, that charter tour operators will be able to continue to serve Hawaii residents in the event that a Hawaii financial institution is unable or unwilling to service a trust account.

In the case of Vacations Hawaii, for example, there is only one financial institution in the state of Hawaii that has agreed to maintain Vacation Hawaii's charter client trust account. Due to extensive regulatory and reporting requirements imposed on financial institutions maintaining such accounts, this financial institution expressed concerns in the past about continuing to maintain Vacations Hawaii's account, and previously informed Vacations Hawaii that it would no longer serve as the depository institution for the trust account. After several positive discussions, the financial institution agreed to continue to serve as the depository institution, and we are close to finalizing an agreement. As it currently stands, however, Vacations Hawaii is limited on how far in advance it can book charter tours because of the uncertainty over the maintenance of the account.

Vacations Hawaii, which appears to be the only charter tour company in Hawaii currently affected by this situation, is concerned that the current requirement that a client trust account must be located only in Hawaii places Vacations Hawaii and consumers at a substantial and unnecessary risk. While Vacations Hawaii, for example, is currently working on an agreement with the only financial institution in Hawaii experienced at maintaining the trust account, a change in the management of the institution or a change in policy that results in a decision to discontinue serving the account would require Vacations Hawaii, for all practical purposes, to immediately and indefinitely suspend its charter operations.

Assuming no other Hawaii financial institution is then willing to immediately service the account, such a result would be catastrophic to any charter tour operator, even an established one such as Vacations Hawaii, and such a result would be particularly unfortunate given that the charter tour operator under current law would have no other option to continue to operate in Hawaii despite its best efforts and intentions to do so. Since charter tour operators ultimately have no control over a financial institution's decision on whether to service a client

trust account (or not), this legislation reasonably mitigates against a serious risk faced by charter tour operators, and provides a reasonable option for charter tour operators to continue to serve the residents of our state.

To Vacation Hawaii's knowledge, the charter tour operator industry is one of only four industries in Hawaii subject to a statutory requirement that limits the location of a trust account solely to financial institutions in Hawaii (the other industries being legal service providers, activity desks, and travel agents). As noted above, however, federal public charter operators such as Vacations Hawaii are already subject to detailed and stringent consumer protection regulations enforced by the federal Department of Transportation, and aside from the location of the account, this legislation will not amend any other state regulations applicable to charter tour operators, including DCCA's enforcement authority over charter tour operators and its ability to review all applicable records.

DCCA has expressed concerns that permitting charter tour operators the option of using a trust account outside of Hawaii would create challenges in enforcing the charter tour operator statute because of potential added costs and time delays in obtaining records and filing court proceedings against an out of state financial institution. Vacations Hawaii respectfully believes that the stringent federal and state regulation of charter tour operators (which are not affected by this bill) militates against these concerns.

Among numerous other regulations, for example, charter tour operators are currently required to produce all trust account records within three business days of a written request by DCCA and provide quarterly audited reports on the trust account to the department. Both state and federal regulations require charter tour operators to post a security bond or irrevocable letter of credit for the protection of consumers, and both sets of regulations prescribe detailed procedures for the handling and disbursement of funds from the trust account, including strict requirements on when disbursements may be made to charter tour operators. The director may expeditiously suspend the license of any charter tour operator (or enjoin any activity) for any violation of the statute, and the federal Department of Transportation has enforcement authority over charter tour operators under federal law and in federal courts. In the unlikely event that enforcement action involving an out of state financial institution is necessary, DCCA may seek enforcement of judgments entered in Hawaii courts or file actions in other jurisdictions, as it may do with respect to the numerous other regulated industries that do not have a requirement for the maintenance of an account within the state.

We respectfully request that you approve this measure. HB 1262, HD1 provides a reasonable and balanced solution to address the charter tour trust account issue, while providing for continued regulatory oversight and continued protections for Hawaii consumers.

Thank you for the opportunity to testify in support of this measure.

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