

# **TOUR OPERATORS UNDER STATE SELLER OF TRAVEL AND RELATED STATUTES**

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## **FOREWORD**

This report was prepared in response to House Concurrent Resolution No. 162 (2015), which directs the Legislative Reference Bureau to examine if and how other states regulate tour operators within their jurisdiction.

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# TABLE OF CONTENTS

	<i>Page</i>
FOREWORD .....	iii
EXECUTIVE SUMMARY .....	v
1. INTRODUCTION .....	1
2. HAWAII'S TRAVEL AGENCIES AND ACTIVITY PROVIDERS AND ACTIVITY DESKS STATUTES .....	2
Chapter 468L, HRS, re Travel Agencies .....	2
Chapter 468M, HRS, re Activity Providers and Activity Desks .....	4
3. OTHER STATES' SELLER OF TRAVEL AND RELATED STATUTES .....	6
Features of Other States' Seller of Travel and Related Statutes .....	6
(1) <i>Who is the entity being regulated under the statute?</i> .....	6
(2) <i>Does the regulated entity include a tour operator?</i> .....	7
(3) <i>What is the level of regulation required by the statute?</i> .....	8
(4) <i>What are the regulatory requirements?</i> .....	8
(5) <i>Do the regulatory requirements address tour destinations or the subject matter of tours, specifically with regard to illegal tours?</i> .....	9
(6) <i>Can the regulated entity be penalized for engaging in a violation of the regulatory statutes?</i> .....	9
Table 3-1 Sellers of Travel and Related Statutes in Other States .....	11
4. FINDINGS AND RECOMMENDATIONS.....	13
ENDNOTES .....	15
APPENDIX	
House Concurrent Resolution No. 162, Regular Session of 2015.....	23

## EXECUTIVE SUMMARY

This study was prepared in response to House Concurrent Resolution No. 162 (2015), which directs the Bureau to examine if and how other states regulate tour operators within their jurisdiction. It appears the impetus for the resolution is the tour operators who conduct lava viewing tours and are cited by the Department of Land and Natural Resources for trespass and other related criminal offenses on public lands, which are punishable under the criminal laws as either petty misdemeanors or as misdemeanors. The Bureau researched the consumer protection statutes of other states to determine whether those statutes contain tools of enforcement that could be adopted against tour operators who conduct lava viewing tours. (See chapter 1.)

Hawaii has two sets of statutes that regulate providers in the travel and tourism industries. One is chapter 468L, Hawaii Revised Statutes (HRS), relating to travel agencies. It requires travel agencies to be registered with the Director of Commerce and Consumer Affairs prior to engaging in the business of selling or advertising to sell travel services. It also requires charter tour operators to be registered as travel agencies with the director in order to engage in the business of a charter tour operator. In other words, chapter 468L regulates those tour operators who meet the definition of a "charter tour operator," who is someone who sells charter tours, which are travel services in which a travel agency contracts with an air carrier and offers for sale a charter.

Once registered with the director, travel agencies and charter tour operators must abide by certain statutory requirements, in particular, provisions relating to prohibited acts. One of the prohibited acts relates to the destination of a tour or the subject matter of a tour. Specifically, sex tours are prohibited. The director may deny or revoke, suspend, or refuse to renew the registration of a travel agency or charter tour operator who fails to comply with, or violates, the statutory requirements.

The second is chapter 468M, HRS, relating to activity providers and activity desks. Activity desks are intermediary sellers for the activity providers, who provide specialized air, land, and sea tour excursions and activities. The chapter requires activity desks to be registered with the Director of Commerce and Consumer Affairs prior to engaging in the business of selling, contracting for, arranging, or advertising that it can or will arrange, activities that are furnished by an activity provider. No similar registration requirements are imposed upon activity providers (i.e., the tour operators). Once registered with the director, activity desks must abide by certain statutory requirements, including provisions relating to prohibited acts. However, none of the prohibited acts by an activity desk relate to the destination of a tour or the subject matter of a tour. Pursuant to administrative rule, the director may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, the registration of an activity desk for failure to comply with, or for violations of, the statute, its administrative rules, or orders of the director. (See chapter 2.)

Besides Hawaii, there are at least ten other states that have consumer protection statutes that regulate specified entities within the travel industry. These states are California, Florida, Illinois, Iowa, Minnesota, Missouri, Nevada, New York, Virginia, and Washington. The statutes

## EXECUTIVE SUMMARY

in these states appear to be collectively known as "seller of travel laws." The policy behind these statutes is to safeguard the public against fraud, false advertising, misrepresentation, and similar abuses or to protect consumers from financial hardship caused by the advertising, sales, and business practices of sellers of travel and other travel industry entities.

In these other states, the regulated entities are either sellers of their own services (providers), or sellers of other sellers' services (intermediaries). Specifically, they are "sellers of travel" (California, Florida, Nevada, and Washington), "tour brokers" and "tour operators" (Nevada), "travel agencies" (Iowa), "travel promoters" (Illinois and New York), "travel clubs" (Missouri and Virginia), "travel consultants" (New York), "travel promoters" (New York), and "membership travel operators" (Minnesota).

Tour operators are definitely a regulated entity if the state's statute expressly regulates a tour operator (as in Nevada) or regulates an entity that includes a tour operator (as in California, Florida, and Illinois). Otherwise, it is unclear, based upon the language of the statute, whether a state's statute specifically reaches a tour operator (as in Iowa, Minnesota, Missouri, New York, Virginia, and Washington).

Seven of the ten states are registration states (California, Florida, Iowa, Missouri, Nevada, Virginia, and Washington). The regulated entity in those states is required to register with a state regulatory agency in order to do business with respect to the regulated activity within the state. The remaining three states (Illinois, Minnesota, and New York) have no system of registration. However, while the regulated entity in those states is not required to be registered with a regulatory entity in order to do business as a regulated entity, they must still comply with other requirements.

The regulatory requirements in both the registration states and the non-registration states relate to matters of consumer protection. The registration states tend to impose more requirements on sellers of travel than the non-registration states, apart from the requirement of registration itself. The non-registration states specifically require consumer disclosures and the right of cancellation and refunds. In addition to these two requirements, the registration states also tend to require security deposits and trust accounts. A couple of the registration states also set forth prohibited practices or unprofessional conduct, which tend to involve various types of misrepresentations to the consumer (Virginia and Washington).

The destination of a tour, or subject matter of the tour, is generally not addressed within a state's regulatory requirements. The exception is Washington, which, like Hawaii, prohibits sex tours.

Failure to abide by any of the requirements of a statute can constitute a violation of the statute, which in turn can subject the regulated entity to penalties such as the assessment of fines. However, the assessment of fines do not prohibit the regulated entity from continuing to do business in the regulated activity. On the other hand, the revocation of the registration, or a similar penalty such as suspension, refusal to renew, or cancellation of the registration, does prohibit the regulated entity from continuing to do business in the regulated activity. It is therefore a particularly effective enforcement tool for the regulatory agency. Some, but not all,

*EXECUTIVE SUMMARY*

of the registration states authorize the revocation of registration. In particular, for Washington, which, like Hawaii, prohibits sex tours, a violation of that prohibition could result in the loss of the registrant's registration. (See chapter 3.)

In summary, there are two states, Hawaii and Washington, that have a registration statute that prohibits a particular type of tour destination, and a violation of that prohibition is a ground for the suspension, revocation, or non-renewal of the registration. However, it should be noted that Washington's registration statutes may not reach tour operators at all and Hawaii's registration statutes expressly reach "charter tour operators," but may not reach and regulate all tour operators. (See chapter 4.)

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# Chapter 1

## INTRODUCTION

House Concurrent Resolution No. 162, adopted by the Legislature during the Regular Session of 2015, directs the Bureau to "examine if and how other states regulate tour operators within their jurisdiction." The resolution further indicates that the "examination include a review of the laws, policies, and procedures adopted by other states to regulate tour operators, if any." (See Appendix A.)

The Bureau understands that the impetus for the resolution is the tour operators who conduct lava viewing tours and are cited by the Department of Land and Natural Resources for trespass and other related criminal offenses on public lands, which are punishable under the criminal laws as either petty misdemeanors or as misdemeanors.<sup>1</sup> The tour operators who lead their customers onto public lands that are closed to the public for safety reasons place themselves and their customers at risk of sustaining serious bodily injury or death.

Accordingly, the Bureau understands that the directive of the resolution is to have the Bureau research whether and how the profession of tour operators is regulated under the professional and vocational licensing statutes of other states, specifically with regard to tour destinations or the subject matter of a tour. The apparent reason for the research is to determine if these professional and vocational licensing statutes contain tools of enforcement that may be used, in addition to the imposition of minor criminal penalties, against tour operators who conduct lava viewing tours. More specifically, the tool of enforcement might be a possible revocation of a person's license, certification, or registration to do business as a tour operator if the person were to lead certain types of tours, such as a lava viewing tour. Furthermore, the Bureau's understanding of a "tour operator," based upon the resolution, is a person who acts as a tour guide or provides or furnishes a sightseeing tour.

## Chapter 2

# HAWAII'S TRAVEL AGENCIES AND ACTIVITY PROVIDERS AND ACTIVITY DESKS STATUTES

### Chapter 468L, HRS, re Travel Agencies

Hawaii has two sets of statutes that regulate providers in the travel and tourism industries. One is chapter 468L, Hawaii Revised Statutes, on travel agencies. This chapter regulates two entities, specifically:

- (1) A "travel agency," which is defined as:

*...any 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;*<sup>2</sup>

and

- (2) A "charter tour operator," which is defined as:

*...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.*<sup>3</sup>

A "charter tour" is defined, in turn, as "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."<sup>4</sup> "Travel services," in turn, are defined as including "transportation by air, sea, or rail; related ground transportation; hotel accommodations; or package tours...."<sup>5</sup> Accordingly, chapter 468L regulates a tour operator who meets the definition of a "charter tour operator." However, the chapter does not appear to regulate a *tour operator* who simply acts as a tour guide or simply provides or furnishes sightseeing tours.

A travel agency is required to be registered with the Director of Commerce and Consumer Affairs prior to engaging in the business of selling or advertising to sell travel services.<sup>6</sup> Likewise, a charter tour operator is also required to be registered as a *travel agency* with the director in order to engage in the business of a charter tour operator.<sup>7</sup>

Once registered with the director, a travel agency must abide by certain statutory requirements pertaining to written disclosures,<sup>8</sup> client trust accounts,<sup>9</sup> airline award disclosures,<sup>10</sup> consumer's rights,<sup>11</sup> and prohibited acts.<sup>12</sup> Once registered, a charter tour operator must also abide by those same statutory requirements applicable to a travel agency.<sup>13</sup> In addition, a charter tour operator must also follow statutory requirements relating to bond or irrevocable letter of

credit,<sup>14</sup> charter tour client trust accounts,<sup>15</sup> charter tour trust liability accounts,<sup>16</sup> quarterly reports,<sup>17</sup> and department audits.<sup>18</sup>

One of the prohibited acts under the chapter 468L relates to the destination of a tour or the subject matter of a tour. Specifically, sex tours are prohibited. Under section 468L-7.5(9) and (10), Hawaii Revised Statutes, no travel agency or charter tour operator shall engage in:

- (9) *Promoting travel for prostitution;*
- (10) *Selling, advertising, or otherwise offering to sell travel services or facilitate travel:*
  - (A) *For the purpose of engaging in a commercial sexual act;*
  - (B) *That consists of tourism packages or activities using and offering sexual acts as enticement for tourism; or*
  - (C) *That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services....*<sup>19</sup>

Other prohibited acts include selling travel or charter tour services without first registering with the director and conducting business as a registered travel agency or charter tour operator without establishing and maintaining a client trust account.<sup>20</sup>

The Director of Commerce and Consumer has two basic administrative tools to enforce compliance with chapter 468L when a travel agency or charter tour operator fails to comply with, or violates, its provisions, specifically:

- (1) Imposing a civil or administrative fine upon the travel agency or charter tour operator;<sup>21</sup> and
- (2) Denying<sup>22</sup> or revoking, suspending, or refusing to renew<sup>23</sup> the registration of the travel agency or charter tour operator.

The enforcement tools are generally discretionary ones; the director may, but is not required, to use them. An exception is mandatory administrative fines that must be imposed against a charter tour operator for the failure to file required reports.<sup>24</sup>

Of the two enforcement tools, the second tool, affecting the registration itself, would serve to prohibit the travel agency or charter tour operator from continuing to engage in business as a travel agency or charter tour operator. It is a particularly effective tool, since no person may engage in the business of a travel agency or charter tool operator unless the person is registered to do so. In other words, unless a person is registered to act as a travel agency or charter tour operator, the person would be acting outside of the law.

Accordingly, engaging in a prohibited act, such as promoting travel for prostitution, would allow, but would not require, the Director of Commerce and Consumer Affairs to deny, revoke, suspend, or refuse to renew the registration of the travel agency or charter tour operator.<sup>25</sup>

Other enforcement tools besides the director's administrative tools are a consumer right of action for damage suffered as a result of a violation of chapter 468L<sup>26</sup> and criminal penalties for violations relating to client trust accounts.<sup>27</sup>

## **Chapter 468M, HRS, re Activity Providers and Activity Desks**

The second set of statutes that regulate providers in the travel industry is chapter 468M, Hawaii Revised Statutes, on activity providers and activity desks. An "activity desk" is defined as:

*[A]ny sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination thereof, which for compensation or other consideration, acts or attempts to act as an intermediary to sell, contract for, arrange, or advertise that it can or will arrange, or has arranged, activities which are furnished by an activity provider....*<sup>28</sup>

Likewise, an "activity provider" is defined as:

*[A]n individual, firm, corporation, association, partnership, or any group of persons, whether incorporated or not, which provides specialized air, land, or sea tour excursions and activities, but does not mean sellers of airline coupons or tickets.*<sup>29</sup>

An activity desk is an intermediary. An activity provider appears to be a tour operator because it provides specialized air, land, or sea tour excursions and activities. Despite the name of the chapter, the chapter regulates activity desks with regard to their relationships and dealings with activity providers, but the chapter does not specifically regulate activity providers. More specifically, an activity desk is required to be registered with the Director of Commerce and Consumer Affairs prior to engaging in the business of selling, contracting for, arranging, or advertising that it can or will arrange, activities that are furnished by an activity provider.<sup>30</sup> No similar registration requirements are imposed upon an activity provider.

Once registered with the director, an activity desk must abide by certain statutory requirements pertaining to prohibited acts,<sup>31</sup> payments,<sup>32</sup> written disclosures,<sup>33</sup> client trust accounts,<sup>34</sup> and performance bonds or irrevocable letters of credit.<sup>35</sup> In contrast, no statutory requirements are imposed upon an activity provider, particularly with respect to ensuring transparency.

None of the prohibited acts by an activity desk relate to the destination of a tour or the subject matter of a tour.<sup>36</sup> Instead, several of the prohibitions appear to relate to the activity

desk's relationship or dealings with the activity provider,<sup>37</sup> particularly with respect to ensuring transparency.

The Director of Commerce and Consumer Affairs has two basic administrative tools to enforce compliance with chapter 468M. Specifically, the director:

- (1) Pursuant to statute, must impose a civil fine upon the activity desk for either the failure to register with the director<sup>38</sup> or the failure to make certain disclosures when offering discounts to recipients of the discount;<sup>39</sup> and
- (2) Pursuant to administrative rule, may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, the registration of an activity desk for failure to comply with, or for violations of, chapter 468M or its administrative rules or orders of the director.<sup>40</sup>

Of the two enforcement tools, only the second tool, affecting the registration itself, serves to prohibit the activity desk from continuing to engage in business as an activity desk. It is a particularly effective tool, since no person may engage in the business of an activity desk unless the person is registered to do so. A person engaging in the business of an activity desk without being registered would appear to be acting outside of the law.

Accordingly, engaging in a prohibited act, such as concealing the name of an activity provider in any card or brochure,<sup>41</sup> constitutes a violation of chapter 468M and allows, but does not require, the Director of Commerce and Consumer Affairs to deny, revoke, suspend, or refuse to renew the registration of an activity desk.<sup>42</sup>

Other enforcement tools besides the director's administrative tools are:

- (1) A consumer right of action for damage suffered as a result of a violation of chapter 468M;<sup>43</sup>
- (2) Criminal penalties for violations relating to client trust accounts;<sup>44</sup>
- (3) An activity provider's suit for injunctive relief to enjoin a violation of the chapter;<sup>45</sup> and
- (4) An activity provider's action for damages that result from a violation of the chapter.<sup>46</sup>

## Chapter 3

### OTHER STATES' SELLER OF TRAVEL AND RELATED STATUTES

The Bureau identified statutes in other states relating to sellers of travel and related travel industry entities. It appears that at least ten other states have consumer protection statutes that regulate specified entities within the travel industry. These states are California, Florida, Illinois, Iowa, Minnesota, Missouri, Nevada, New York, Virginia, and Washington. The statutes appear to be collectively known as "seller of travel laws."<sup>47</sup> The policy behind these statutes is to safeguard the public against fraud, false advertising, misrepresentation, and similar abuses,<sup>48</sup> or to protect consumers from financial hardship caused by the advertising, sales, and business practices of sellers of travel and other travel industry entities.<sup>49</sup>

The Bureau reviewed these regulatory statutes with regard to the following questions:

- (1) Who is the entity being regulated under the statute?
- (2) Does the regulated entity include a tour operator?
- (3) What is the level of regulation required by the statute?
- (4) What are the regulatory requirements?
- (5) Do the regulatory requirements address tour destinations or the subject matter of tours, specifically with regard to illegal tours?
- (6) Can the regulated entity be penalized for engaging in a violation of the regulatory statutes?

#### Features of Other States' Seller of Travel and Related Statutes

##### *(1) Who is the entity being regulated under the statute?*

The naming convention of a regulated entity that is specified under statute differs by state. Basically, though, whatever their label, the regulated entities are either sellers of their own services, i.e., providers, or sellers of other sellers' services, i.e., intermediaries. The regulated entities in four of these ten states are specified in statute as "sellers of travel" (California, Florida, Nevada, and Washington). In Nevada, however, another group of regulated entities are "tour brokers" and "tour operators," who are regulated separately from "sellers of travel." The regulated entities specified in the other states' statutes are "travel agencies" (Iowa), "travel promoters" (Illinois and New York), "travel clubs" (Missouri and Virginia), "travel consultants" (New York), "travel promoters" (New York), and "membership travel operators" (Minnesota).

**(2) Does the regulated entity include a tour operator?**

A tour operator is definitely a regulated entity if the state's statute expressly regulates a tour operator (Nevada) or regulates an entity that would include a tour operator (California, Florida, and Illinois). As an example of the former, in Nevada, a "tour operator" is an expressly regulated entity and is defined as "a person who, in this state, engages in the business of providing a sightseeing tour to customers."<sup>50</sup> As examples of the latter, in California, a "seller of travel" is defined to include a person who sells, provides, or furnishes travel services, *including tours and sightseeing*.<sup>51</sup> In Florida, a "seller of travel" is defined to include a person who offers *tour-guide services* for sale.<sup>52</sup> In Illinois, a "travel promoter" is defined as a person, *including a tour operator*, who sells, provides, furnishes, contracts for, arranges or advertises that the person will arrange wholesale or retail transportation by air, land, sea, or navigable stream.<sup>53</sup>

In contrast to these four states (Nevada, California, Florida, and Illinois), it is unclear in the other six states (Iowa, Minnesota, Missouri, New York, Virginia, and Washington), based merely upon the language of their statutes, whether a tour operator is a regulated entity. In other words, the statutes of those other six states neither expressly include nor expressly exclude, as a regulated entity, a person who acts as a tour guide or provides or furnishes a sightseeing tour.

For example, in Iowa, a "travel agency" is defined as a person who represents that the person is offering or undertaking to provide travel services for a fee, commission, or other valuable consideration. In turn, "travel services" means arranging or booking vacation or travel packages, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations.<sup>54</sup>

As another example, in Minnesota, a "membership travel operator" is defined as a person offering or selling membership travel contracts, which are agreements evidencing a buyer's right to make travel arrangements from or through a membership travel operator and includes a membership that provides for this use. "Travel arrangements," in turn, are defined as travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations for members.<sup>55</sup>

As a third example, in Washington, a "seller of travel" is defined as a person who transacts business with Washington consumers, excluding several specific entities, such as air carriers, operators of a vessel, motor carriers, hotels, and direct providers of transportation by air, sea, or ground, or hotel or other lodging accommodations who do not book or arrange any other travel services. In turn, "transacts business with Washington consumers" means to directly offer or sell travel services or travel-related benefits to Washington consumers. Also, "travel services" include transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration. Finally, "travel-related benefits" evidently includes travel services that are not identified at the time of the sale with respect to dates, price, or location and includes travel club memberships, vacation certificates, or travel industry member benefits.<sup>56</sup>

**(3) *What is the level of regulation required by the statute?***

The regulation of an entity means that the entity must abide by certain requirements set out in the regulatory statute or face possible sanctions from the regulatory entity for the failure to follow those requirements. As a point of reference, when observing a business or profession to ascertain if its operations are regulated by a governmental entity, the range of options can generally be characterized from unregulated on one end to highly regulated on the other. In this range, unregulated professions and businesses have no additional regulations imposed upon them other than those normally imposed on other professions or businesses practicing or doing business within the same governmental jurisdiction, such as paying excise taxes. On the other end of the regulatory spectrum, professions or businesses that are regulated by governmental licensing requirements are considered highly regulated and must generally meet strict governmental or imposed educational, professional, or other standards.<sup>57</sup> None of the states require licensure. Generally, the level of regulation found among the states' seller of travel statutes falls in the middle of this range, with most providing for regulation through registration.

Seven of the ten states are registration states (California, Florida, Iowa, Missouri, Nevada, Virginia, and Washington). In these states, the regulated entity is required to register with a state regulatory agency in order to do business with respect to the regulated activity within the state. The regulatory agency varies among secretary of state (Iowa<sup>58</sup>), the attorney general (California<sup>59</sup> and Missouri<sup>60</sup>), or a department involved with licensing (Washington<sup>61</sup>), consumer affairs (Nevada<sup>62</sup>), or agriculture and consumer services (Florida<sup>63</sup> and Virginia<sup>64</sup>).

There is no system of registration for sellers of travel and related entities in the remaining three states (Illinois, Minnesota, and New York). Nevertheless, while sellers of travel or other related entities are not required to be registered with a regulatory entity in order to do business as sellers of travel or like activity in these states, violations of other relevant statutory requirements may be enforced by a state attorney general (Illinois,<sup>65</sup> Minnesota,<sup>66</sup> and New York<sup>67</sup>) or a district attorney (New York<sup>68</sup>).

**(4) *What are the regulatory requirements?***

The regulatory requirements in both the registration states and the non-registration states relate to matters of consumer protection. The registration states tend to impose more requirements on sellers of travel than the non-registration states, apart from the requirement of registration itself. The non-registration states specifically:

- (1) Require consumer disclosures (Illinois, Minnesota, and New York); and
- (2) Establish the right of cancellation and refunds (Illinois, Minnesota, and New York).

The registration states tend to also have these same requirements. These states generally require consumer disclosures (California, Florida, Nevada, Virginia, and Washington) and



establish the right of cancellation and refunds (California, Florida, Missouri, and Washington). In addition to these requirements, the registration states generally tend to:

- (1) Require the deposit of security with the regulatory agency in the form of a performance bond, an irrevocable letter of credit, or a certificate of deposit (Florida, Iowa, Nevada, and Virginia);
- (2) Require the establishment of trust accounts or escrow accounts on behalf of a consumers in a financial institution (California, Nevada, Virginia, and Washington); and
- (3) Set forth prohibited practices or unprofessional conduct, which tend to involve various types of misrepresentations to the consumer (Virginia and Washington).
- (5) ***Do the regulatory requirements address tour destinations or the subject matter of tours, specifically with regard to illegal tours?***

The destination of a tour, or subject matter of the tour, is generally not addressed within a state's regulatory requirements. The exception is Washington, which, like Hawaii, prohibits sex tours.

The Washington statutes prohibit sellers of travel from engaging in any of the following:

- (1) Promoting travel for prostitution or promoting travel for commercial sexual abuse of a minor; or
- (2) Selling, advertising, or otherwise offering to sell travel services or facilitate travel:
  - (A) For the purposes of engaging in a commercial sex act;
  - (B) That consists of tourism packages or activities using and offering sexual acts as an enticement for tourism; or
  - (C) That provides, purports to provide access to, or facilitates the availability of sex escorts or sexual services.<sup>69</sup>
- (6) ***Can the regulated entity be penalized for engaging in a violation of the regulatory statutes?***

Failure to abide by any of the requirements of a statute can constitute a violation of the statute, which in turn can subject the regulated entity to penalties such as the assessment of fines. For example, engaging in a prohibited activity, such as promoting a sex tour, constitutes a violation of the statute, and may subject the regulated entity to a fine assessed by the regulatory

agency. However, the assessment of fines do not prohibit the regulated entity from continuing to do business in the regulated activity. On the other hand, the revocation of the registration, or a similar penalty such as suspension, refusal to renew, or cancellation of the registration, does prohibit the regulated entity from continuing to do business in the regulated activity. It is therefore a particularly effective enforcement tool for the regulatory agency.

Some, but not all, of the registration states authorize the revocation of registration. Specifically, the regulatory agency is expressly authorized to suspend, revoke, or refuse to renew the registration of a person who violates the registration statutes (California, Florida, and Washington). The person who violates provisions within the registration statutes is thereafter prohibited from doing business in the state in the regulated activity during the period of suspension, revocation, or non-renewal. In particular, for Washington, which, like Hawaii, prohibits sex tours, a violation of that prohibition could result in the loss of the registrant's registration. For example, a seller of travel in Washington who is found to have sold travel services to engage in a commercial sex act may not have its registration renewed and thus would not be able to continue to do business as a seller of travel.

In other words, precedent exists among a couple of states for a registration statute that prohibits a particular type of tour destination and provides for the suspension, revocation, or non-renewal of a person's registration who violates the prohibition. Similar to Hawaii, Washington statutes require persons to register with a regulatory agency in order to engage in certain roles in the tourism industry and authorize the regulatory agency to revoke, suspend, or refuse to renew the registration if the person promotes or sells certain types of tours. However, as noted previously, it is unclear whether the Washington statutes expressly regulate "tour operators."<sup>70</sup>

In summary, Table 3-1 lists the ten states, other than Hawaii, that impose some level of regulation on sellers of travel and is organized around the six questions presented and discussed above.

**Table 3-1**

**SELLERS OF TRAVEL AND RELATED STATUTES IN OTHER STATES**

	(1)	(2)	(3)	(4)	(5)	(6)
State	Regulated Entity	Tour Operator?	Method of Regulation	Regulatory Requirements	Illegal Tours?	Registration Revocation
California <sup>71</sup>	Seller of travel <sup>72</sup>	Yes <sup>73</sup>	Registration <sup>74</sup>	Written disclosures, <sup>75</sup> refunds, <sup>76</sup> trust accounts, <sup>77</sup> delivery of ticket <sup>78</sup>	No	Suspension <sup>79</sup>
Florida <sup>80</sup>	Seller of travel <sup>81</sup>	Yes <sup>82</sup>	Registration <sup>83</sup>	Performance bond, <sup>84</sup> filing vacation certificate documents, <sup>85</sup> vacation certificate recordkeeping, <sup>86</sup> vacation certificate disclosures, <sup>87</sup> vacation certificate cancellation and refunds, <sup>88</sup> violations <sup>89</sup>	No	Cancellation, suspension <sup>90</sup>
Illinois <sup>91</sup>	Travel promoter <sup>92</sup>	Yes <sup>93</sup>	No registration <sup>94</sup>	Advertising of transportation, <sup>95</sup> prepayment disclosures, <sup>96</sup> cancellation of transportation and refunds, <sup>97</sup> trust accounts <sup>98</sup>	No	n/a
Iowa <sup>99</sup>	Travel agency <sup>100</sup>	Unclear <sup>101</sup>	Registration <sup>102</sup>	Surety or cash performance bond <sup>103</sup>	No	No
Minnesota <sup>104</sup>	Membership travel operator <sup>105</sup>	Unclear <sup>106</sup>	No registration <sup>107</sup>	Cancellation of membership travel contract and refunds; <sup>108</sup> written disclosures of buyer's right to cancel contract; <sup>109</sup> gift disclosures; <sup>110</sup> precontract disclosures, including public offering statement <sup>111</sup>	No	n/a
Missouri <sup>112</sup>	Travel club <sup>113</sup>	Unclear <sup>114</sup>	Registration <sup>115</sup>	Cancellation of travel club membership and refunds <sup>116</sup>	No	No
Nevada <sup>117</sup>	Seller of travel; <sup>118</sup> Tour broker; <sup>119</sup> Tour operator <sup>120</sup>	Yes <sup>121</sup>	Registration <sup>122</sup>	<i>Re: sellers of travel:</i> trust account, <sup>123</sup> written notices, <sup>124</sup> security deposit (bond, irrevocable letter of credit, certificate of deposit) <sup>125</sup> <i>Re: tour brokers and tour operators:</i> total price disclosures, <sup>126</sup> security deposit (bond, irrevocable letter of credit, certificate of deposit) <sup>127</sup>	No	No
New York <sup>128</sup>	Travel consultant; <sup>129</sup> Travel promoter <sup>130</sup>	Unclear <sup>131</sup>	No registration <sup>132</sup>	Written disclosures, <sup>133</sup> cancellation of travel agreement and refunds, <sup>134</sup> prohibited practices <sup>135</sup>	No	n/a

*TOUR OPERATORS: STATE REGULATORY LAWS*

	(1)	(2)	(3)	(4)	(5)	(6)
State	Regulated Entity	Tour Operator?	Method of Regulation	Regulatory Requirements	Illegal Tours?	Registration Revocation
Virginia <sup>136</sup>	Travel club <sup>137</sup>	Unclear <sup>138</sup>	Registration <sup>139</sup>	Cash, bond, or letter of credit; <sup>140</sup> escrow accounts; <sup>141</sup> written disclosures; <sup>142</sup> public offering statement; <sup>143</sup> prohibited practices <sup>144</sup>	No	No
Washington <sup>145</sup>	Seller of travel <sup>146</sup>	Unclear <sup>147</sup>	Registration <sup>148</sup>	Advertising of travel services, <sup>149</sup> pre-payment written disclosures, <sup>150</sup> cancellation of transportation or other services and refunds, <sup>151</sup> unprofessional conduct, <sup>152</sup> trust accounts, <sup>153</sup> cancellation of contract for sale of travel-related benefits <sup>154</sup>	Sex tours <sup>155</sup>	Refusal to renew <sup>156</sup>

## Chapter 4

### FINDINGS AND RECOMMENDATIONS

The Bureau finds that there are at least eleven states, including Hawaii, that have consumer protection statutes that regulate specified entities within the travel industry. These statutes appear to be collectively known as "seller of travel laws." The policy behind these statutes is to safeguard the public against fraud, false advertising, misrepresentation, and similar abuses, or to protect consumers from financial hardship caused by the advertising, sales, and business practices of sellers of travel and other travel industry entities.

The regulated entities under these statutes are either sellers of their own services, i.e., providers, or sellers of other sellers' services, i.e., intermediaries. Whether tour operators are included among the regulated entities under the statutes of any of these states depends upon whether:

- (1) A "tour operator" is an expressly regulated entity under a state's statutes; or
- (2) The definition of a regulated entity, such as "seller of travel," includes a tour operator.

The method of regulation among the eleven states' seller of travel statutes is either regulation through registration or regulation without registration. Most of the eleven states are registration states, in which the regulated entity is required to register with a state regulatory agency in order to do business in the state and to conduct the regulated activity. In the other states, there is no system of registration required but sellers of travel and related entities must nevertheless comply with other statutory requirements.

The regulatory requirements in the registration states and the non-registration states both relate to matters of consumer protection. Both non-registration states and registration states tend to: require consumer disclosures and establish the right of cancellation and refunds. In addition, the registration states tend to:

- (1) Require the deposit of security with the regulatory agency, in the form of a performance bond, an irrevocable letter of credit, or a certificate of deposit;
- (2) Require the establishment of trust accounts or escrow accounts on behalf of a consumers in a financial institution; and
- (3) Set forth prohibited practices or unprofessional conduct, which tend to involve various types of misrepresentations to the consumer.

States generally do not address the destination or subject matter of the tour or prohibit particular tour destinations among their regulatory requirements. The exceptions are Hawaii and Washington, which both specifically prohibit sex tours.

Finally, a significant feature of some, but not all, of the registration states is the express authorization of penalties that affect the registration. Specifically, the regulatory agency is expressly authorized to suspend, revoke, or refuse to renew the registration of a person who violates the registration statutes. The person who violates the registration statutes is thereafter prohibited from doing business in the state in the regulated activity during the period of suspension, revocation, or non-renewal.

In summary, there are two states, Hawaii and Washington, that have a registration statute that prohibits a particular type of tour destination, and a violation of that prohibition is a ground for the suspension, revocation, or non-renewal of the registration. However, it should be noted that Washington's registration statutes may not reach tour operators at all and Hawaii's registration statutes expressly reach "charter tour operators," but may not reach and regulate all tour operators.

## ENDNOTES

1. See "DLNR arrests two guides for leading illegal lava viewing tours into Wao Kele O Puna forest and Kahaualea natural area reserves," December 2, 2014, and "DLNR arrests guide for illegal lava tour trespass on state land," February 12, 2015, from the website of the Department of Land and Natural Resources.
2. Hawaii Revised Statutes section 468L-1.
3. *Id.*
4. *Id.*
5. *Id.*
6. Hawaii Revised Statutes section 468L-2.
7. Hawaii Revised Statutes section 468L-21.
8. Hawaii Revised Statutes section 468L-4.
9. Hawaii Revised Statutes section 468L-5.
10. Hawaii Revised Statutes section 468L-6.
11. Hawaii Revised Statutes section 468L-7.
12. Hawaii Revised Statutes section 468L-7.5.
13. Hawaii Revised Statutes section 468L-21(a).
14. Hawaii Revised Statutes section 468L-22.
15. Hawaii Revised Statutes section 468L-23.
16. Hawaii Revised Statutes section 468L-24.
17. Hawaii Revised Statutes section 468L-26.
18. Hawaii Revised Statutes section 468L-28.
19. Hawaii Revised Statutes section 468L-7.5 (9) and (10).
20. Hawaii Revised Statutes section 468L-7.5 (1) and (2).
21. Hawaii Revised Statutes sections 468L-5.6(c) and 468L-27(d).
22. Hawaii Revised Statutes section 468L-2.5.
23. Hawaii Revised Statutes section 468L-2.6.
24. Hawaii Revised Statutes sections 468L-5.6(c) and 468L-27(d).
25. Hawaii Revised Statutes sections 468L-2.5 and 468L-2.6.
26. Hawaii Revised Statutes section 468L-10.
27. Hawaii Revised Statutes section 468L-12.
28. Hawaii Revised Statutes section 468M-1.

29. *Id.*
30. Hawaii Revised Statutes section 468M-2.
31. Hawaii Revised Statutes section 468M-3.
32. Hawaii Revised Statutes section 468M-4.
33. Hawaii Revised Statutes section 468M-8.
34. Hawaii Revised Statutes section 468M-9.
35. Hawaii Revised Statutes section 468M-10.
36. Hawaii Revised Statutes section 468M-3.
37. Under Hawaii Revised Statutes section 468M-3 (1) to (4):
  - No activity desk shall engage in any of the following practices:
  - (1) Covering, concealing, or obscuring the name, address, or telephone number of an activity provider in any card or brochure;
  - (2) Placing a telephone number, address, or other information on any card, brochure, or other advertising material produced or published by an activity provider, whether by decal, sticker, stamp, or otherwise, without identifying the activity desk by name, address, and registration number;
  - (3) Using a promotional card or brochure that does not clearly display the name and telephone number of the activity provider whose activity is being sold or booked when the activity is located in this State;
  - (4) Withdrawing any funds of a consumer from a client trust account, other than a sales commission up to a maximum of fifteen per cent or to make a refund to the consumer, until the activity provider has been paid...
38. Hawaii Revised Statutes section 468M-2(a).
39. Hawaii Revised Statutes section 468M-8.
40. Hawaii Administrative Rules sections 16-117-42 and 16-117-48.
41. Hawaii Revised Statutes section 468M-3(1).
42. Hawaii Administrative Rules section 16-117-48(7).
43. Hawaii Revised Statutes section 468M-14.
44. Hawaii Revised Statutes section 468M-16.
45. Hawaii Revised Statutes section 468M-6.
46. Hawaii Revised Statutes section 468M-7.
47. See, e.g., Guide to U.S. & Canadian Seller of Travel Laws, by Paul T. Cronin Attorney at Law, 354 Waltham St., Newton, MA 02465; and Seller of Travel Laws, by the Law Offices of Mark Pestronk, P.C. -- The Travel Law Office, at <http://www.pestronk.com>.
48. See, e.g., New York General Business Law section 155.



49. See, e.g., California Business and Professions Code section 17550; Washington Revised Code section 19.138.010.
50. Nevada Revised Statutes section 598.455.
51. California Business and Professions Code sections 17550.1(a) and 17550.9.
52. Florida Statutes section 559.927(11).
53. 815 Illinois Compiled Statutes 420/2(a).
54. Iowa Code 2015 section 9D.1.
55. Minnesota Statutes 2014 section 325G.50, subdivision 1.
56. Washington Revised Code section 19.138.021.
57. See generally, Sunrise Reviews: Regulatory Structures and Criteria, Report No. 6, 2002, Legislative Reference Bureau, at pp. 13-14. According to the report, registration is a method to use where the threat to the public health, safety, or welfare is relatively small as a result of the operation of the profession. In contrast, licensure is a method to use where it is apparent that adequate regulation cannot be achieved by any other means.
58. Iowa Code 2015 section 9D.2.
59. California Business and Professions Code section 17550.20.
60. Missouri Revised Statutes section 407.1243.
61. Washington Revised Code section 19.138.100.
62. Nevada Revised Statutes section 598.365, for sellers of travel; and section 598.471, for tour brokers and tour operators.
63. Florida Statutes section 559.928.
64. Virginia Code section 59.1-446.
65. 815 Illinois Compiled Statutes 420/7.
66. Minnesota Statutes 2014 sections 8.31 and 325G.51.
67. New York General Business Law section 159.
68. *Id.*
69. Washington Revised Code section 19.138.340(1).
70. *See*, note 52.
71. California Business and Professions Code sections 17550 to 17550.30.
72. California Business and Professions Code section 17550.1(a).
73. A "seller of travel" is defined to include a person who sells, provides or furnishes, wholesale or retail, "travel services," which, in turn, is defined to specifically include tours and sightseeing, California Business and Professions Code sections 17550.1(a) and 17550.9.

74. Registration is with the state Attorney General. California Business and Professions Code section 17550.20.
75. California Business and Professions Code section 17550.13.
76. California Business and Professions Code section 17550.14.
77. California Business and Professions Code section 17550.15.
78. California Business and Professions Code section 17550.17.
79. California Business and Professions Code section 17550.195. The registration of a seller of travel who has been convicted of certain felony offenses under section 17550.19 shall be immediately suspended by the state Attorney General.
80. Florida Statutes sections 559.926 to 559.939.
81. Florida Statutes section 559.927(11).
82. A "seller of travel" is defined to include a person who offers for sale, directly or indirectly, at wholesale or retail, tour-guide services, Florida Statutes section 559.927(11).
83. Registration is with the Department of Agriculture and Consumer Services. Florida Statutes section 559.928.
84. Florida Statutes section 559.929.
85. Florida Statutes section 559.9295.
86. Florida Statutes section 559.931.
87. Florida Statutes section 559.932.
88. Florida Statutes section 559.933.
89. Florida Statutes section 559.9335.
90. Florida Statutes section 559.9355(1)(d). The refusal to register, or the cancellation or suspension of a registration, is discretionary with the Department of Agriculture and Consumer Services.
91. 815 Illinois Compiled Statutes 420/1 to 420/7.
92. 815 Illinois Compiled Statutes 420/2(a).
93. A "travel promoter" is defined to include a tour operator, who provides or furnishes transportation by air, land, sea or navigable stream, either separately or in conjunction with other services, 815 Illinois Compiled Statutes 420/2(a).
94. But enforcement of the statutes is by the state Attorney General. 815 Illinois Compiled Statutes 420/7.
95. 815 Illinois Compiled Statutes 420/3.
96. 815 Illinois Compiled Statutes 420/4.
97. 815 Illinois Compiled Statutes 420/5.

98. 815 Illinois Compiled Statutes 420/6.
99. Iowa Code 2015 sections 9D.1 to 9D.5.
100. Iowa Code 2015 section 9D.1(7).
101. A "travel agency" is defined to include a person who represents that the person is offering to provide travel services for a fee, direct or indirect, Iowa Code 2015 section 9D.1(7). "Travel services," are defined in turn to mean arranging or booking vacation or travel packages, travel reservations, or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations, Iowa Code 2015 section 9D.1(9).
102. Registration is with the Secretary of State, Iowa Code 2015 section 9D.2.
103. Iowa Code 2015 section 9D.3.
104. Minnesota Statutes 2014 sections 325G.50 to 325G.51.
105. Minnesota Statutes 2014 section 325G.50, subdivision 1(a)(2).
106. A "membership travel operator" is defined as "a person offering or selling membership travel contracts paid for by a fee or periodic payments." A "membership travel contract" is defined, in turn, as "an agreement offered or sold in this state evidencing a buyer's right to make travel arrangements from or through a membership travel operator and includes a membership that provides for this use." Minnesota Statutes 2014 section 325G.50, subdivision 1(a).
107. But enforcement of the statutes is by the state Attorney General. Minnesota Statutes 2014 sections 8.31 and 325G.51.
108. Minnesota Statutes 2014 section 325G.50, subdivision 2.
109. Minnesota Statutes 2014 section 325G.50, subdivisions 3, 3a, and 4.
110. Minnesota Statutes 2014 section 325G.501.
111. Minnesota Statutes 2014 section 325G.505.
112. Missouri Revised Statutes sections 407.1240 to 407.1252.
113. Missouri Revised Statutes section 407.1240(7).
114. A "travel club" is defined as "any business enterprise that either directly, indirectly, or through the use of a fulfillment company or other third party offers to sell to the public the reoccurring right to purchase travel benefits at prices that are represented as being discounted from prices otherwise not generally available to the public and charges members or customers a membership fee that collectively equals no less than seven hundred fifty dollars." Missouri Revised Statutes section 407.1240(7).
115. Registration is with the state Attorney General. Missouri Revised Statutes section 407.1243.
116. Missouri Revised Statutes section 407.1249.
117. Nevada Revised Statutes sections 598.305 to 598.525.

118. Nevada Revised Statutes section 598.335.
119. Nevada Revised Statutes section 598.455.
120. Nevada Revised Statutes section 598.465.
121. A "tour operator" is defined as "a person who, in this state, engages in the business of providing a sightseeing tour to customers." Nevada Revised Statutes section 598.455.
122. A seller of travel is required to register with the Consumer Affairs Division of the Department of Business and Industry under Nevada Revised Statutes section 598.365. A tour broker or a tour operator is required to register with the division under Nevada Revised Statutes section 598.471.
123. Nevada Revised Statutes section 598.361.
124. Nevada Revised Statutes sections 598.366 and 598.367.
125. Nevada Revised Statutes section 598.375.
126. Nevada Revised Statutes section 598.475.
127. Nevada Revised Statutes section 598.495.
128. New York General Business Law sections 155 to 159-a.
129. New York General Business Law section 157 (1).
130. New York General Business Law section 157 (2).
131. A "travel consultant" is defined as "any person...who as principal or agent, sells or offers for sale any travel tickets or orders for transportation..." New York General Business Law section 157(1).  
  
A "travel promoter" is defined as "any person...who is primarily engaged in the direct solicitation of persons, by mail or telephone, for the sale of any travel...services, including, but not limited to travel or tour benefits..." New York General Business Law section 157(2).  
  
"Travel services" are defined as "transportation, accommodations in lodgings such as hotels, motels or motor courts, rental of motor vehicles, or any other service related to travel..." New York General Business Law section 157(3).
132. But enforcement of the statutes is by the District Attorney and the state Attorney General. New York General Business Law section 159.
133. New York General Business Law section 157-a(1) and (3).
134. New York General Business Law section 157-a(2), (4), (5), and (6).
135. New York General Business Law sections 158 and 158-a.
136. Virginia Code sections 59.1-445 to 59.1-454.
137. Virginia Code section 59.1-445.

138. A "travel club" is defined as a "for-profit organization that provides, in return for either an advance fee for membership or an annual charge for membership of more than \$100, the privilege for its members or participants to arrange or obtain future travel services through or from the organization..." Virginia Code section 59.1-445.
139. Registration is with the Department of Agriculture and Consumer Services. Virginia Code section 59.1-446.
140. Virginia Code section 59.1-447.
141. Virginia Code section 59.1-447.1.
142. Virginia Code section 59.1-448.
143. Virginia Code section 59.1-448.1.
144. Virginia Code section 59.1-449.
145. Washington Revised Code sections 19.138.010 to 19.138.904.
146. Washington Revised Code section 19.138.021(6).
147. A "seller of travel" is defined to include a person who directly offers or sells travel services or travel-related benefits to Washington consumers, Washington Revised Code section 19.138.021(6) and (9).
148. Registration is with the Department of Licensing. Washington Revised Code section 19.138.100.
149. Washington Revised Code section 19.138.030.
150. Washington Revised Code section 19.138.040.
151. Washington Revised Code section 19.138.050.
152. Washington Revised Code section 19.138.130.
153. Washington Revised Code section 19.138.140.
154. Washington Revised Code section 19.138.320.
155. Washington Revised Code section 19.138.340(1) specifies that:
  - No seller of travel shall engage in any of the following:
    - (a) Promoting travel for prostitution or promoting travel for commercial sexual abuse of a minor;
    - (b) Selling, advertising, or otherwise offering to sell travel services or facilitate travel:
      - (i) For the purposes of engaging in a commercial sex act;
      - (ii) That consists of tourism packages or activities using and offering sexual acts as an enticement for tourism; or
      - (iii) That provides, purports to provide access to, or facilitates the availability of sex escorts or sexual services.

A violation of section 19.138.340 constitutes a violation of the chapter under section 19.138.130(1)(c) and, therefore, appears to be a ground for a refusal to renew a registration under section 19.138.120(3).

156. Washington Revised Code section 19.138.120(3). The refusal to renew a registration is discretionary with the Director of Licensing.

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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO EXAMINE IF AND  
HOW OTHER STATES REGULATE TOUR OPERATORS WITHIN THEIR  
JURISDICTION.

1           WHEREAS, tourism, which accounted for twenty one percent of  
2 the state economy in 2013, is the largest single contributor to  
3 Hawaii's gross domestic product; and

4  
5           WHEREAS, it is in the best interest of the State to ensure  
6 the safety of all residents and visitors; and

7  
8           WHEREAS, Hawaii currently does not regulate the activities  
9 of tour and excursion groups soliciting residents or visitors;  
10 and

11  
12           WHEREAS, there has been a rise in tour activity in state  
13 parks despite the closure of Sacred Falls State Park in 1999 due  
14 to a rockslide and resulting deaths; and

15  
16           WHEREAS, in December 2014, two tour guides were charged for  
17 prohibited entry into closed areas within the Wao Kele O Puna  
18 Forest Reserve and the Kahaualea Natural Area Reserve and for  
19 engaging in illegal commercial activities on state-managed  
20 lands, including leading so-called "lava tours"; and

21  
22           WHEREAS, in February 2015, another tour guide was charged  
23 with trespassing, reckless endangering, and conducting illegal  
24 commercial activities in a natural area reserve for leading a  
25 "lava tour" group in the Kahaualea Natural Area Reserve in  
26 Paho-a-Puna; and

27  
28           WHEREAS, the Department of Land and Natural Resources  
29 imposes a fine of up to \$5,000 for a first offense of entry into  
30 closed public lands; now, therefore,



# H.C.R. NO. 162



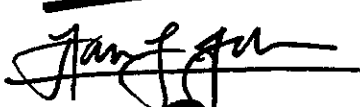

1 BE IT RESOLVED by the House of Representatives of the  
 2 Twenty-eighth Legislature of the State of Hawaii, Regular  
 3 Session of 2015, the Senate concurring, that the Legislative  
 4 Reference Bureau is requested to examine if and how other states  
 5 regulate tour operators within their jurisdiction; and


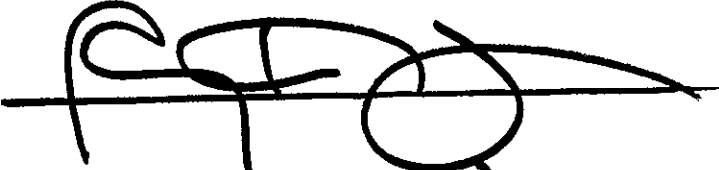


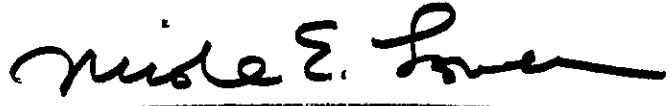
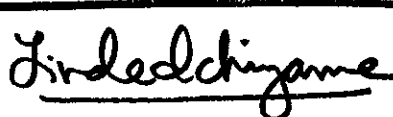
6  
 7 BE IT FURTHER RESOLVED that the examination include a  
 8 review of the laws, policies, and procedures adopted by other  
 9 states to regulate tour operators, if any; and

10  
 11 BE IT FURTHER RESOLVED that the Legislative Reference  
 12 Bureau is requested to submit a report of its findings and  
 13 recommendations, including any proposed legislation, to the  
 14 Legislature no later than twenty days prior to the convening of  
 15 the Regular Session of 2016; and

16  
 17 BE IT FURTHER RESOLVED that a certified copy of this  
 18 Concurrent Resolution be transmitted to the Director of the  
 19 Legislative Reference Bureau.  
 20  
 21  
 22

OFFERED BY:

  
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Falei Poulou

  
  
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MAR 13 2015

