
Sunset Evaluation Update: Travel Agencies

A Report to the
Governor
and the
Legislature of
the State of
Hawaii



THE AUDITOR
STATE OF HAWAII

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 93-5
September 1993

Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to its date of repeal.

This report evaluates the regulation of travel agencies under Chapter 468L, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate travel agencies to protect the health, safety, and welfare of the public. It includes our recommendation on whether the regulatory program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in the Appendix the draft legislation intended to implement our recommendations.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of travel agencies under Chapter 468L, HRS, complies with policies for occupational regulation in the Sunset Law.

Background on Travel Agencies

Travel agencies are intermediaries in distributing travel services to customers. The typical retail travel agency plans travel itineraries, makes reservations, and sells transportation, lodging, and other travel services on behalf of airlines, ship lines, hotels, tour wholesalers, and other suppliers. Generally, these services are free to customers; retail travel agencies make their income from commissions paid by the suppliers.

Wholesalers of travel services may also be considered travel agencies—for example, tour wholesalers package plane tickets, hotel accommodations, meals, and sightseeing tours for sale through retail agencies.

Many travel agencies are officially appointed sales agents for one or more transportation carriers. Carriers have joined together to form associations, such as the Airlines Reporting Corporation (ARC) and the International Airlines Travel Agency Network (IATAN). The ARC grants sales agency status to travel agencies that meet specified standards, including bonding, prior travel sales experience, and financial soundness. The IATAN serves the same function as ARC for international carriers. Only travel agencies appointed in this manner may issue tickets and receive commissions for these sales from the transportation carriers.

Nonappointed agencies may offer the same kinds of travel services. Some nonappointed agencies sell transportation tickets they purchase from appointed agencies. Others offer limited services such as local tours (including land transportation, hotel accommodations, and

sightseeing arrangements within the state) or hotel and tour bookings for out-of-state travel agencies.

In March 1993, there were 1,123 travel agencies and 218 branch offices registered in Hawaii. The majority of the registrants are on Oahu.¹

Regulation of Travel Agencies

Hawaii has regulated travel agencies for almost 20 years because of such problems as travel agency insolvencies, nonperformance, misrepresentation, and failure to make refunds. Successive laws to regulate travel agencies—Chapters 468J, 468K, and now 468L, HRS—have each taken a different approach. The Department of Commerce and Consumer Affairs (formerly the Department of Regulatory Agencies) has administered these regulatory programs. We previously performed sunset evaluations of the programs under Chapters 468J and 468K.

Enacted in 1975, Chapter 468J required travel agencies and sales representatives to be licensed and to post a bond in favor of the State. The law exempted travel agencies not officially appointed by carriers. In our 1980 sunset evaluation we recommended continuing regulation and requiring all travel agencies, regardless of their appointment status, to post a bond in order to protect consumers.²

In 1980 the Legislature replaced Chapter 468J with Chapter 468K. Consistent with our recommendations, the new chapter regulated both appointed and nonappointed agencies. But instead of requiring bonds, Chapter 468K created within the department a recovery fund for aggrieved consumers; later the fund was placed under a board of trustees. Consumers could file civil lawsuits to recover up to \$8,000 from the fund. The law also established a travel agency education fund from earnings of the recovery fund.

In our 1990 sunset evaluation we recommended that Chapter 468K be reenacted because of continued evidence of financial harm to consumers. However, we found that the law did not ensure the financial solvency of travel agencies, and the recovery fund did not adequately protect consumers. We recommended requiring a \$5,000 bond from travel agencies; substituting a simple administrative process for civil litigation to access the recovery fund; raising the recovery limit to \$10,000; making the department's director the fund trustee; and assigning enforcement to the department's Regulated Industries Complaints Office.³

A bill to implement our recommendations was introduced in the 1991 legislative session.⁴ However, the bill was amended to establish a

different approach to travel agency regulation: the client trust account. The Department of Commerce and Consumer Affairs testified that this would help ensure the proper handling of consumers' money.⁵ The bill, enacted into law as Act 285, became Chapter 468L, HRS.

Registration

Under the new law, travel agencies must register with the director of commerce and consumer affairs. An executive secretary in the department's Professional and Vocational Licensing Division administers the regulatory program on behalf of the director.

The law covers both appointed and unappointed agencies. It defines a travel agency as "any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which 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."⁶ In 1992, Act 199 exempted hotels and air carriers when not acting as travel intermediaries.

Client trust accounts

Travel agencies must deposit within five days of receipt all customer payments for travel services into a trust account maintained in a federally insured financial institution in Hawaii. The travel agency must file with the department the name of the financial institution and the trust account number.

The law restricts withdrawals from the trust account in order to ensure that the account is maintained for the benefit of consumers. The travel agency may withdraw trust account moneys to pay the direct providers of the travel services (suppliers such as airlines and hotels) or to make refunds to customers. Before any services or tickets are provided, the travel agency may also withdraw from the trust account any interest earned on the account and the amount of the sales commission up to 15 percent. After the services or tickets are issued, the travel agency may withdraw any other amounts to which it is entitled. When renewing their registration, travel agencies must file a notarized statement that they are complying with the trust account requirements.

The law authorizes the director of commerce and consumer affairs to inspect and audit the books and records of travel agencies with regard to trust account deposits and withdrawals. The director may hire a consultant to do this. The travel agency pays for the consultant if any violation is found.

Obligations to customers

Travel agencies must inform their customers in writing of the details of the services being sold, the service provider, the location of the trust account, cancellation and refund policies, and certain other consumer rights.

Enforcement

The director of commerce and consumer affairs has the power to deny, suspend, or revoke a travel agency's registration for failure to comply with the statute. The law also provides for restitution, injunctions, and treble damages through civil lawsuits.

The department's Regulated Industries Complaints Office mediates and resolves consumer complaints, pursues disciplinary action against registrants, and seeks court injunctions and fines against unregistered travel agencies. Final disciplinary decisions are made by the director following a recommended decision from the department's Office of Administrative Hearings.

Persons who knowingly or intentionally violate the trust account requirements can be prosecuted for theft.

Transition

To foster an orderly transition, Act 285 left certain provisions of Chapter 468K in effect to allow claims against the recovery fund. The law made the director of commerce and consumer affairs administrator of the fund. Moneys in the recovery fund must be held for disbursement to claimants until the fund is exhausted. Claimants seeking these moneys must file suit prior to October 1, 1993. Moneys remaining in the recovery fund after all lawsuits are resolved must go into the department's compliance resolution fund for use in travel agency cases.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of travel agencies complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate travel agencies to protect the health, safety, and welfare of the public.
2. Determine whether current regulatory requirements are appropriate for protecting the public.
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed literature on travel agencies and their regulation. We reviewed statutes and rules on travel agencies in Hawaii and the changes in these since our last sunset evaluation in 1990.

We also reviewed complaints and other evidence of potential harm to consumers. We interviewed personnel from the Department of Commerce and Consumer Affairs and representatives of the travel industry. At the department, we reviewed registration, enforcement, correspondence, and other files.

Our primary focus was on the regulatory program under Chapter 468L, the new travel agency law. We also examined some activities surrounding the phase-out of Chapter 468K, the previous law.

Our work was performed from December 1992 through August 1993 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

A new law, Chapter 468L, now regulates travel agencies. It uses a new approach—client trust accounts—to protect consumers. This approach may have merit. But some improvements could be made in the statutes, rules, and administration of the regulatory program.

Summary of Findings

1. The State should continue to regulate travel agencies to protect the public's welfare. Requiring client trust accounts appears to be an appropriate form of regulation. However, it is too soon to fully assess the protection provided by the new law.
 2. The Department of Commerce and Consumer Affairs needs to ensure effective implementation of the new law by monitoring compliance with the trust account requirements, making sure that group travelers are fully informed of their rights, and improving the administrative rules.
 3. The department has incorrectly charged both the travel agency education fund and the travel agency recovery fund.
-

State Should Continue To Regulate Travel Agencies

The Legislature should reenact Chapter 468L to continue the regulation of travel agencies. Unreliable travel agencies have caused consumers to suffer financial losses and undelivered services.

In our 1990 sunset evaluation, we reported a high volume of complaints against travel agencies and many thousands of dollars in damages caused by licensed and unlicensed travel agencies. The volume of complaints continues to be substantial. In 1992 the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs (DCCA) received 166 complaints against travel agencies—the fifth highest among the 45 occupations under RICO's jurisdiction.

Complaints that travel agencies failed to make refunds accounted for 23 percent of total complaints. Other common complaints were for unlicensed activity (20 percent); failure to account for funds or property (15 percent); dishonest, fraudulent, or deceitful acts (7 percent); and unfair or deceptive trade practices (5 percent).

Some cases were closed for lack of evidence or jurisdiction or no violations were found. But other cases resulted in advisory letters asking travel agencies to stop violating the law, refunds to customers ranging from \$93 to \$1,892, and referrals to RICO's attorneys.

Records of the Office of Administrative Hearings show that travel agencies were ordered or agreed to pay approximately \$74,400 in restitution to consumers from January 1990 through January 1993, with over \$60,000 in additional claims still pending. The recovery fund paid over \$29,000 in claims from July 1991 through January 1993. (This may greatly understate actual consumer harm since there is an \$8,000 cap on the amount the recovery fund can pay for losses caused by any one licensee.)

The new trust account law appears to be an appropriate form of regulation. It may help ensure that travel suppliers use payments from consumers to pay for purchased services or return payments to consumers if the travel agency fails to deliver the services because of insolvency, fraud, or other reasons. The law also protects consumers by requiring disclosure of their rights and authorizing license revocation, restitution, injunctions, treble damages, and criminal prosecution.

It is too early for a full assessment of the protection offered by client trust accounts. The law was enacted in 1991 and rules were adopted in November 1991 with substantial amendments in November 1992, not long before our evaluation began.

Department Needs To Ensure Implementation

To successfully implement the new law the department needs to monitor the client trust accounts, ensure that people who travel in groups are informed of their rights, and improve the administrative rules.

Monitor trust accounts

Chapter 468L originally required that at the time travel agencies renew their registration, they file a special report by a public accountant verifying that they are complying with the client trust account requirements. Travel agencies objected to this requirement because of the cost. The Legislature amended the law to allow travel agencies to simply file their own notarized statement of compliance.

This approach does not verify compliance. The department should spot check compliance by using its authority to inspect and audit the records and books of travel agencies with regard to trust account deposits and withdrawals. If the department finds compliance to be weak, it should consider proposing legislation that would require travel agencies to submit an annual statement containing the following information: the

trust account's beginning-of-year balance, total deposits from consumers, total deposits from other sources (by type of source), total withdrawals or payments for consumers' purchases, total withdrawals or payments for other purposes (by type of purpose), and end-of-year balance. This would be less costly than an accountant's report yet detailed enough to help deter noncompliance and guide enforcement efforts.

Spot checking of trust accounts could also help ensure that a recently adopted administrative rule does not undermine the trust fund concept. The rule allows travel agencies to deposit their own moneys into the client trust account as advance moneys, provided that the travel agency keeps records of the advance deposits. The former director of commerce and consumer affairs supported this rule (1) to accommodate the frequent industry practice of paying travel suppliers in advance and then collecting from the customer later and (2) to keep related transactions in the same account for easier tracking by enforcement officials.

The law does not prohibit this commingling of client and travel agency moneys in the same account. But the commingling could weaken the segregation of operating moneys and client moneys that is at the heart of the client trust account concept. Furthermore, the rules do not define advance moneys and this could lead to abuse. Spot-check audits could help determine whether the advance moneys rule has created problems that would require its modification.

Promote consumer disclosure

Section 468L-7, HRS contains a bill of rights for travel consumers, such as the right to a refund within 14 days when services are not provided. The law requires travel agencies to disclose these rights to customers by the time the ticket is issued. But for group travel, the department's rules say that travel agencies may simply make the disclosure to a group leader if they are assured that the leader will accept responsibility for informing members of the group.

Group leaders, also called tour conductors, range from full-time employees of tour companies to persons hired by travel agencies to lead a tour group to private individuals who get a free ticket in return for bringing business to the travel agency. It is not clear how travel agencies can demonstrate reliable assurance that the group leader will make the necessary disclosures. Furthermore, some of the major financial losses to consumers in the past have involved group travel.

Under these circumstances, the department should monitor implementation of the group disclosure rule to ensure that group members are being fully informed of their rights. If not, the department may wish to delete the rule and insist on individual notification.

Improve administrative rules

The administrative rules for the travel agency program are often unclear, repetitive, or contradictory. For example:

- Section 16-116-33(b) does not define advance moneys.
- Section 16-116-28 says that travel agencies may forfeit their registration by failing to submit the required documentation while Section 16-166-26 makes forfeiture automatic under these circumstances.
- The combined meaning of several sections is unclear: Section 16-116-19 (grounds for denying or rejecting registration applications), Section 16-116-28 (grounds for refusing to renew or restore registrations), and Section 16-116-39 (grounds for denying, revoking, suspending, refusing to renew, refusing to restore, or conditioning registrations).
- Section 16-116-33(a) inconsistently requires a different type of information from (1) travel agencies who prove they have established a trust fund by submitting a letter or verified document from a financial institution (they must show when the account was established) and (2) those who prove the account by submitting a copy of a blank account check (the account starting date is not required).

The department should work on making the rules clear, concise, and consistent.

Department Has Incorrectly Charged the Recovery Fund and Education Fund

The department maintains two trust funds for travel agencies: a recovery fund and an education fund. Both funds are left over from the previous travel agency law. The recovery fund is to be used to pay customers' claims against insolvent travel agencies. The education fund is to be used to inform licensees and the public about the new travel agency law.

The recovery fund has a cash deficit of \$1,359 and claims against it of approximately \$10,700, making it technically insolvent. The education fund has a cash balance of \$36,387 which the department says is no longer needed for educational purposes. The department has used both funds to pay for claims and expenses of the other without statutory authority to do so. As a result the recovery fund, although technically insolvent, owes the education fund \$1,359.

The department would like to use the balance in the education fund to pay outstanding claims of the recovery fund. To do so it needs to obtain statutory authorization.

Under the current law, any funds remaining in the recovery fund, after all claims are resolved, are to go into the department's compliance resolution fund for use in travel agency cases. When seeking statutory authorization to use the education fund for recovery fund claims, the department should also seek authorization to transfer to the compliance resolution fund any balance remaining in the education fund.

Recommendations

1. The Legislature should reenact Chapter 468L, HRS, to continue the regulation of travel agencies.
2. The Department of Commerce and Consumer Affairs should ensure effective implementation of the new law by monitoring the client trust accounts, ensuring that travel agencies inform group travelers of the consumer bill of rights, and improving the administrative rules.
3. The department should obtain statutory authorization to use the balance in the travel agency education fund to pay outstanding claims of the travel agency recovery fund and to transfer any remaining balance to the compliance resolution fund.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report* (printout), March 5, 1993, p. 46.
2. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Travel Agencies*, Report No. 80-2, February 1980.
3. Hawaii, The Auditor, *Sunset Evaluation Update: Travel Agencies*, Report No. 90-16, December 1990.
4. Senate Bill No. 390.
5. Testimony on Senate Bill No. 390 submitted by the Department of Commerce and Consumer Affairs to the Honorable Donna R. Ikeda, Chair, Senate Committee on Consumer Protection and Business Regulation, March 1, 1991.
6. Section 468L-1, HRS.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on July 30, 1993. A copy of the transmittal letter to the department is included as Attachment 1. The response from the department is included as Attachment 2.

The department agrees with our recommendation to reenact Chapter 468L, Hawaii Revised Statutes to continue the regulation of travel agencies. It is receptive to suggestions to improve compliance but it says it will do this only when problems of compliance become evident. Until then it will continue to respond to complaints and will monitor and audit client trust accounts as necessary and appropriate during its investigations. Instead of waiting for complaints, we believe that the department should take more active responsibility for ensuring that its new rules are effectively protecting the public.

The department questions that requiring travel agencies to provide an annual statement of client trust account activity would add protection to clients, and feels such a requirement would burden the department's staff. We believe, however, that such a statement with its basic financial information would make it easier for the department to monitor and spot check when needed.

The department says it appreciates our concern that the administrative rules be made clear, concise, and consistent, and it will look at these concerns when the rules are amended. Finally, the department reports that it has already introduced an administration bill seeking statutory authorization to use the balance in the travel agency education fund to pay outstanding claims of the travel agency recovery fund and to transfer any remaining balance to the department's compliance resolution fund.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor
(808) 587-0800
FAX: (808) 587-0830

July 30, 1993

C O P Y

The Honorable Clifford K. Higa, Director
Department of Commerce and Consumer Affairs
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Higa:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Sunset Evaluation Update: Travel Agencies*. We ask that you telephone us by Tuesday, August 3, 1993, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, August 30, 1993.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Marion M. Higa' with a stylized flourish at the end.

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



CLIFFORD K. HIGA
DIRECTOR

SUSAN DOYLE
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
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August 30, 1993

RECEIVED

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OFF. OF THE AUDITOR
STATE OF HAWAII

The Honorable Marion H. Higa, State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("Department") the opportunity to comment on the Travel Agency Sunset Evaluation Update. The Department will comment on the recommendations as they appear on page 11 of the report, as well as on statements in the report relative to those recommendations.

- 1) The Legislature should reenact Chapter 468L, HRS, to continue the regulation of travel agencies.

The Department has, and will continue to regulate travel agencies, and agrees with the report's finding (page 7) that the trust account law appears to be an appropriate form of regulation.

- 2) The Department of Commerce and Consumer Affairs should ensure effective implementation of the new law by monitoring the client trust accounts, ensuring that travel agencies inform group travelers of the consumer bill of rights, and improving the administrative rules.

Monitoring the client trust accounts:

Two reasons for monitoring the client trust accounts are being advanced by you: 1) Allowing agencies to file their own notarized statement of compliance does not verify compliance (page 8); and 2) The audits could help determine whether the administrative rule on advance moneys has created problems that would require modification to that rule (page 9).

The Department is receptive to suggestions to improve compliance when it is evident compliance is a problem. Until then the Department will continue to respond to complaints and will monitor and audit client trust accounts as it deems necessary and appropriate in the course of an investigation. Further, the Department is not clear how your proposal to require annual statements will add any more protection to clients, or strengthen the law. Your proposal would allow an agency to submit figures without verification, rather than attesting to compliance (as is currently required). Also, the agency would still be signing the statement with no independent person auditing the figures. Lastly, requiring annual statements, would place an unnecessary additional burden on the Department staff for the review of documents that may not necessarily provide any more information than what is collected biennially.

As for the administrative rule on advance moneys, the Regulated Industries Complaints Office, in its investigation of the 166 complaints in 1992, has not encountered any compliance problems resulting from this rule. It is our interpretation that operating expenses cannot be paid for from the client trust account. Withdrawals from the client trust account are limited under \$468L-5, HRS and \$16-114-34, HAR. This clarification hopefully alleviates the concerns expressed in your report.

Ensure that travel agencies inform group travelers of consumer rights:

There have been no complaints received regarding lack of disclosure from any group travelers. Should we begin receiving complaints of this nature, be assured the Department will respond accordingly.

Improve administrative rules:

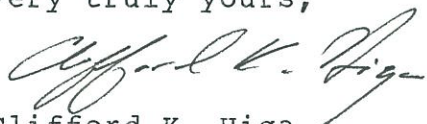
The Department is appreciative of the expressed concerns and will look at each issue presented in your report when administrative rules are amended.

- 3) The Department should obtain statutory authorization to use the balance in the travel agency education fund to pay outstanding claims from the travel agency recovery fund and to transfer any remaining balance to the compliance resolution fund.

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August 30, 1993
Page Three

The Department agrees, and has submitted an administration bill to address this recommendation.

Very truly yours,


Clifford K. Higa
Director

CKH:sg

SEVENTEENTH LEGISLATURE, 1994
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO TRAVEL AGENCIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) The following chapters are hereby repealed effective
5 December 31, 1994:

6 (1) Chapter 447 (Dental Hygienists)

7 (2) Chapter 457 (Board of Nursing)

8 (3) Chapter 457A (Nurse Aides)

9 (4) Chapter 457B (Board of Examiners of Nursing Home
10 Administrators)

11 (5) Chapter 461 (Board of Pharmacy)

12 [(6) Chapter 468L (Travel Agencies)]"

13 2. By amending subsection (g) to read:

14 "(g) The following chapters are hereby repealed effective
15 December 31, 2000:

16 (1) Chapter 439 (Board of Cosmetology)

17 (2) Chapter 448F (Electrologists)

18 (3) Chapter 454 (Mortgage Brokers and Solicitors)

19 (4) Chapter 454D (Real Estate Collection Servicing Agents)

1 (5) Chapter 466 (Board of Public Accountancy)

2 (6) Chapter 467 (Real Estate Commission)

3 (7) Chapter 468L (Travel Agencies)"

4 SECTION 7. Statutory material to be repealed is bracketed.

5 New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

7

8 INTRODUCED BY: _____