

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 117

ACTIVITY PROVIDERS AND ACTIVITY DESKS

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-117-1 Objective. This chapter is intended to clarify and implement Act 231, Session Laws of Hawaii 1992 to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 1/16/93] (Auth: § -17, Act 231, SLH 1992) (Imp: § -17, Act 231, SLH 1992)

§16-117-2 Definitions. As used in this chapter, unless the context otherwise indicates:

"Average monthly net sales revenue report" means a report which contains information on the monthly gross sales revenue of the activity desk, the

commission paid to activity desks, the net sales revenue, and the average net sales revenue.

"Branch office" means any place or location other than the principal place of business from which the activity desk conducts an activity desk business. [Eff 1/16/93] (Auth: HRS § -17, Act 231, SLH 1992) (Imp: § -17, Act 231, SLH 1992)

## SUBCHAPTER 2

### POWERS AND DUTIES OF THE DIRECTOR

§16-117-7 Powers and duties of the director. The director shall have the following powers and duties:

- (1) To grant, deny, renew, or refuse to renew permission to engage in the activity desk business;
- (2) To enforce this chapter and Act 231, Session Laws of Hawaii 1992;
- (3) To establish fees; and
- (4) To suspend or revoke any registration for any violation of this chapter and Act 231, SLH 1992. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992, HRS §436B-7) (Imp: §§ -2, -17, Act 231, SLH 1992, HRS §436B-7)

§16-117-8 Delegation of authority. The director may delegate any of the director's powers and duties as the director deems reasonable and proper, provided that the director shall not delegate the director's power and duty to:

- (1) Adopt, amend, or repeal rules;
- (2) Suspend or revoke any registration for any violation of Act 231, SLH 1992 and this chapter; and
- (3) Grant, deny, renew, refuse to renew, or otherwise condition a registration unless the granting, denying, refusal to renew, or conditioning of a registration does not require the exercise of the director's expertise and discretion. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -17, Act 231, SLH 1992; HRS §436B-8)

SUBCHAPTER 3

REGISTRATION

§16-117-12 Registration required. (a) Each activity desk and each branch office or location of an activity desk shall register prior to engaging in the business of an activity desk.

(b) Registration shall not be transferable.

(c) Any activity desk and any branch office of any activity desk shall be fined a sum of \$100 for each day the desk or branch office engages in the business of an activity desk without being registered.

(d) An activity desk holding a current travel agency registration under chapter 468L, HRS, may, upon adoption of this chapter, be issued registration with no additional fees, in accordance with Act 231, SLH 1992 and this chapter. Registration shall be converted only if the activity desk files a written election to convert from a travel agency registration to an activity desk registration.

(e) A person engaged in the travel agency business and the activity desk business is required to hold registrations under both chapter 468L, HRS, and Act 231, SLH 1992. [Eff 1/16/93] (Auth: § -2, Act 231, SLH 1992, HRS §468L-3) (Imp: § -2, Act 231, SLH 1992, HRS §468L-3)

§16-117-13 Registration requirements. (a) Application for registration shall be made under oath on a form provided by the director. The form may require the activity desk to provide:

(1) The activity desk's name and any trade names being used;

(2) Evidence of registration of the corporation, partnership, organization, association, and any trade names with the business registration division of the department;

(3) The applicant's business address and phone number and the business addresses and phone numbers of each branch office; and

(4) Evidence that a client trust account has been established, or in lieu of a client trust account, evidence that a bond or an irrevocable letter of credit has been issued. The bond or the irrevocable letter of credit shall be submitted with a notarized report verifying the average monthly net sales revenue of the activity desk and any branch offices.

(b) A separate registration shall be made for a branch office if the branch office utilizes a separate client trust account from the principal office.

(c) No separate registration shall be made for branch offices of an activity desk which provides a bond or an irrevocable letter of credit in lieu of a bond.

(d) Each application shall be accompanied with the appropriate fees.

(e) It shall be each applicant's responsibility to furnish the information or documentation required. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -10, Act 231, SLH 1992)

§16-117-14 Registration issued; notice. (a) A registration shall be issued only to activity desks meeting the requirements of Act 231, SLH 1992, and this chapter.

(b) Unless provided otherwise, in the event of any change of information or documentation, each activity desk shall notify the director, in writing, within ten days of the change.

(c) Any notices to applicants or registrants as required by law shall be deemed met if notice is sent to the address on file with the director. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: § -2, Act 231, SLH 1992)

#### SUBCHAPTER 4

##### DENIAL OR REJECTION OF REGISTRATION

§16-117-19 Denial or rejection of application. (a) An application for issuance of a registration shall be denied if an application is insufficient or incomplete. In addition, the director may deny issuance of a registration if any of the following exist:

(1) A license or registration, as the case may be, of the applicant or any officer, director, partner, or other personnel of the applicant has been terminated under section 468K-5 or chapter 468L; or

(2) A license or registration, as the case may be, of the applicant or any officer, director, partner, or other personnel has been revoked or suspended under chapter 468K or 468L; or

(3) An applicant fails to submit a notarized net sales revenue report; evidence of establishment of a client trust account, evidence of a performance or guaranty type bond, or an irrevocable letter of credit with coverage in compliance with subchapter 5.

(b) An application shall be automatically rejected when the applicant, after receiving notice:

(1) Fails to pay the appropriate fees; or

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- (2) Fails to submit any information requested by the director or the director's authorized delegate within sixty days of notification.
- (c) Any application which has been denied or rejected shall remain in the possession of the director and shall not be returned.
- (d) An applicant, whose application has been denied, may file for an administrative hearing under chapter 201, administrative practice and procedures of the department, and chapter 91, HRS. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -17, Act 231, SLH 1992)

SUBCHAPTER 5

CLIENT TRUST ACCOUNTS; BOND, IRREVOCABLE LETTER OF CREDIT

§16-117-24 Client trust account, bond, irrevocable letter of credit. (a) Each activity desk shall provide:

- (1) Evidence that a client trust account with a federally insured financial institution located in Hawaii has been established; or
  - (2) A performance or financial guaranty type bond, or an irrevocable letter of credit issued by a surety or federally insured lending institution authorized to do business in the State to indemnify any consumer who may suffer loss as a result of non-performance by an activity desk.
- (b) The amount of coverage provided by the bond or irrevocable letter of credit shall be equal to the average monthly net sales revenue of the activity desk and shall be calculated in accordance with §16-117-26.
- (c) The required coverage of the bond or the irrevocable letter of credit shall be provided for by a single bond or by a single irrevocable letter of credit.
- (d) Substitutions of bonds, or irrevocable letters of credit or the client trust account shall be made in accordance with §16-117-28. [Eff 1/16/93] (Auth: § -17, Act 231, SLH 1992) (Imp: § -10, Act 231, SLH 1992)

§16-117-25 Client trust account. (a) Within three business days of receipt, an activity desk shall deposit all sums received from a consumer in a trust account maintained in a federally insured financial institution located in Hawaii.

(b) If the excursions or activities are paid for by means of a charge, credit or debit card, the activity desk shall submit the data to the appropriate payment processing or card issuing company within five days of the charge.

(c) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the activity desk. The activity desk shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except:

- (1) In partial or full payment for excursion or activities to the activity provider directly providing the services; or
- (2) To make refunds as required by this chapter.
- (d) This section shall not prevent the withdrawal from the trust account

of:

- (1) The amount of the sales commission, up to a maximum of fifteen per cent;
- (2) Any interest earned and credited to the trust account;
- (3) Refunds; or
- (4) Remaining funds of a consumer once the activity provider has been paid.

(e) The activity desk shall notify the department of any change in the account number or location of the client trust account within one business day of the change.

(f) A client trust account shall not be replaced by a bond or an irrevocable letter of credit for at least one year. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -9, -10, Act 231, SLH 1992)

§16-117-26 Performance or guaranty type of bond and irrevocable letter or credit. (a) The bond shall be a performance or financial guaranty type bond naming the director as the obligee issued by a surety authorized to do business in this State, and which provides that:

- (1) The bond may be cancelled by the activity desk only if the activity desk gives sixty days prior written notice to the surety and to the director; or
- (2) The surety may cancel the bond if the surety gives thirty days prior written notice to the director; and
- (3) The surety shall remain liable for any claims against the bond for a period of six months after cancellation of the bond if any debts are incurred by the activity desk while the bond was in effect and the director notifies the surety of any claims within ninety days of discovery of any claims.

(b) The irrevocable letter of credit shall be a guarantee of payment to any consumer who may suffer loss as a result of non-performance by the activity desk for a term of at least one year issued by a federally insured lending institution authorized to do business in the State and shall provide that:

- (1) Automatic extensions of coverage may be made for additional annual periods;
- (2) Cancellation may be made by the activity desk only if the activity desk gives prior written notice by certified mail to the director and to the issuer at least ninety days before the letter's expiration date or the date the activity desk intends the coverage to cease being effective, or the issuer gives written notice by certified mail to the director at least sixty days before the expiration date; and
- (3) The issuer shall remain liable for any claims against the irrevocable letter of credit for a period of six months after the expiration or cancellation of coverage if any debts are incurred by the activity desk while the coverage was in effect and if the director notifies the issuer of any claims within ninety days of discovery of any claims.

(c) The amount of coverage of the bond or irrevocable letter of credit shall be equal to the average monthly net sales revenues for a twelve-month period for the activity desk and all branch offices but shall not be less than \$50,000 and shall not be more than \$100,000.

(d) A desk which provides the bond or irrevocable letter of credit for the maximum amount of \$100,000 need not submit a notarized report on the monthly net revenues.

(e) All applicants applying after March 31, 1993 shall be required to provide coverage of not less than \$75,000.

(f) Activity desks applying for registration upon adoption of this chapter through March 31, 1993 shall base the initial coverage amount on the average monthly net sales revenues of the activity desk and all branch offices for the twelve-month period ending on June 30, 1992. However, if an activity desk does not have a full twelve-month revenue period on which to base the amount, the coverage amount shall not be less than the average monthly net sales revenue as determined by the months available; provided that the coverage shall not be less than \$75,000.

(g) The required coverage shall be provided by a single bond or by a single irrevocable letter of credit and shall cover all branch offices of the activity desk. In no case shall the required coverage amount be provided for by multiple bonds or letters of credit or by any combination of bonds or letters of credits. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: § -10, Act 231, SLH 1992)



§16-117-27 Renewal of bond or irrevocable letter of credit coverage. (a) Each activity desk providing a bond or a letter of credit with a coverage amount of less than \$100,000 shall submit a notarized annual report at least four months before the anniversary date of the activity desk's coverage.

(b) Replacement bonds or letters of credit shall provide coverage as necessary according to the average monthly net sales revenue of the preceding twelve-month period in accordance with §16-117-26.

(c) Any downward adjustment of coverage shall not be less than \$50,000. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: § -10, Act 231, SLH 1992)

§16-117-28 Substitution and maintenance of bond, irrevocable letter of credit, or client trust account; automatic forfeiture. (a) An activity desk shall maintain the client trust account or the bond, or the irrevocable letter of credit.

(b) Substitutions for the client trust account or the bond or irrevocable letter of credit may be made provided:

- (1) Coverage of any replacement bond or irrevocable letter of credit for a bond is effective prior to or on the same day of the bond which is scheduled to expire, and, further provided the replacement bond or irrevocable letter of credit is received by the director at least one business day before the bond expiration date;
- (2) Coverage of a bond replacing an irrevocable letter of credit is effective prior to or on the same day the irrevocable letter of credit is scheduled to expire, and further provided the bond is received by the director at least one business day prior to the expiration date of the irrevocable letter of credit;
- (3) Coverage of a letter of credit replacing a letter of credit is effective prior to or on the same day the irrevocable letter of credit is scheduled to expire and further provided the replacement letter of credit is received by the director at least fifteen days prior to the expiration date of the letter of credit; or
- (4) Evidence that a client trust account was established at least two months prior to the expiration of the bond or the irrevocable letter of credit is received by the director within one day of establishment of the client trust account.

(c) An activity desk shall not be allowed to replace a client trust account with a bond or letter of credit for at least one year.

(d) Registration of any activity desk which fails to have current requisite coverage provided by a bond or irrevocable letter of credit, or any activity desk which fails to maintain a client trust account shall be automatically

forfeited and the activity desk shall be required to apply as a new applicant. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -9 -10, Act 231, SLH 1992)

## SUBCHAPTER 6

### RENEWAL

§16-117-38 Notice of renewal. (a) All registrations shall expire on December 31 of each odd-numbered year.

(b) Before November 15 of the odd-numbered year, the director or the director's authorized delegate shall mail to every current registrant a renewal application to the address of the registrant on record. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: § -2, Act 231, SLH 1992)

§16-117-39 Date for filing. (a) All registrants shall complete and submit a renewal application, together with the required documentation and fees on or before December 31 of each odd-numbered year.

(b) Activity desks providing a bond or letter of credit shall have a current bond or letter of credit in effect.

(c) Activity desks which have established client trust accounts shall provide evidence that the activity desk's practices are in accordance with Act 231, SLH 1992 and this chapter.

(d) A completed renewal application with the required fees and documents sent by United States mail shall be considered timely filed if the envelope bears a postmark no later than December 31 of the odd-numbered year. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: § -2, Act 231, SLH 1992)

§16-117-40 Automatic forfeiture of registration. The failure to timely renew the registration, submit the required documentation, have a current client trust account, bond or irrevocable letter of credit in effect, or pay the required fees with a check which is honored upon first deposit shall cause the registration to be automatically forfeited. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -17, Act 231, SLH 1992)

§16-117-41 Restoration of a forfeited license. (a) A registration which has been forfeited for failing to renew the registration may be restored within six months of the forfeiture, provided the applicant pays the appropriate fees, including restoration fees, and submits evidence of establishment of a client trust account or a notarized average monthly net sales revenue report with either the bond or a letter of credit; provided further that an activity desk that had established a client trust account for less than one year shall not be allowed to provide a bond or letter of credit in lieu of a client trust account.

(b) An applicant who fails to restore the registration as provided in subsection (a) shall apply as a new applicant. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -17, Act 231, SLH 1992)

§16-117-42 Director may refuse to renew or restore. (a) The director may refuse to renew or restore the registration for failure or refusal of the applicant or registrant:

- (1) To properly complete or timely submit the application, all fees, and required documentation;
- (2) To provide evidence that the activity desk's practices are in accordance with Act 231, SLH 1992, and this chapter; or
- (3) To provide evidence of establishment and maintenance of a client trust account, or current bond or letter of credit coverage.

(b) In addition, the director may refuse to renew or restore registration to any activity desk whose activities have been enjoined by court order. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -17, Act 231, SLH 1992)

## SUBCHAPTER 7

### GROUND FOR DENIAL, REVOCATION, SUSPENSION, REFUSAL TO RENEW OR RESTORE, OR TO CONDITION REGISTRATION

§16-117-48 Grounds for denial, revocation, suspension, refusal to renew or restore, or to condition registration. In addition to any other acts or conditions provided by law, the director may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, any registration for any one or more of the following acts or conditions:

- (1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of registration;

- (2) Failure to establish or maintain a client trust account in accordance with Act 231, SLH 1992, or to provide a bond or irrevocable letter of credit;
- (3) Failure to notify the director of any change of the client trust account number or location in accordance with section -9, Act 231, SLH 1992;
- (4) Failure to notify the director of any change of information, documentation, or mailing address in accordance with section 16-117-14, and subchapter 5;
- (5) Violating any condition or limitation upon which the conditional registration was issued;
- (6) Failure to comply with the deposit and withdrawal provisions of Act 231, SLH 1992, and this chapter;
- (7) Violating this chapter, the applicable registration laws, or any rule or order of the director; or
- (8) Knowingly or intentionally violating sections -9(a), (b) or (c) of Act 231, SLH 1992. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -17, Act 231, SLH 1992)

## SUBCHAPTER 8

### ADMINISTRATIVE PROCEDURES

§16-117-60 Administrative practice and procedure. The rules of practice and procedure for activity desks shall be as provided in chapter 16-201. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§91-2, -17, Act 231, SLH 1992)

## SUBCHAPTER 9

### FEES

§16-117-65 Fees established. (a) The fees for applications, registration, renewal, restoration, and compliance resolution shall be as follows:

- (1) Application fee . . . . . \$20
- (2) Registration fee . . . . . \$40
- (3) Biennial renewal fee . . . . . \$20

- (4) Restoration fee for failure to renew shall be the renewal fee, plus . . . . . \$20
- (5) Compliance resolution fund
  - (A) Compliance resolution fund fee . . . . . \$25
  - (B) Annual compliance resolution fund fee . . . . . \$25
  - (C) Biennial compliance resolution fund fee . . . . . \$50

(b) The fees shall be as provided in subsection (a), until fees are adopted by the director in chapter 16-53, after hearing, pursuant to chapter 91, Hawaii Revised Statutes.

(c) The application fees shall be non-refundable. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: HRS §26-9, §§ -2, -17, Act 231, SLH 1992)

§16-117-66 Form of fee. The fees, if in the form of money order or check, shall be made payable to the department of commerce and consumer affairs. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: § -2, Act 231, SLH 1992)

§16-117-67 Dishonored checks considered failure to meet requirements. The dishonoring of any check upon first presentment shall be considered a failure to meet the requirements herein. [Eff 1/16/93] (Auth: §§ -2, -17, Act 231, SLH 1992) (Imp: §§ -2, -17, Act 231, SLH 1992)

The adoption of Chapter 16-117, Hawaii Administrative Rules, on the Summary page dated November 5, 1992, were adopted on November 5, 1992, after public notices were given in the Honolulu Star-Bulletin and Advertiser, West Hawaii Today, Hawaii Tribune-Herald, Maui News and Kauai Times on October 4, 1992.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Robert A. Alm

ROBERT A. ALM, DIRECTOR  
Commerce and Consumer Affairs

APPROVED AS TO FORM:           Date 1/6/93

/s/ Diane Erickson

Deputy Attorney General

APPROVED:                           Date 1/6/93

/s/ John Waihee

JOHN D. WAIHEE  
GOVERNOR OF HAWAII

January 6, 1993

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments and Compilation of Chapter 16-117  
Hawaii Administrative Rules

November 5, 1992

SUMMARY

Chapter 16-117, Hawaii Administrative Rules, entitled "Activity Providers and Activity Desks" is adopted.