

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 116

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Historical Note: Chapter 16-116, Travel Agencies, replaces chapter 16-105 of the rules of the Travel Agencies and Travel Sales Representatives. [Eff 12/27/84; R 2/3/92]

## SUBCHAPTER 1

### GENERAL PROVISIONS

§16-116-1 Objective. This chapter is intended to clarify and implement sections 468K-3, 468K-4, 468K-5, 468K-6, 468K-8, 468K-9, 468K-10, 468K-11, and chapter 468L, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served.

[Eff 2/3/92, am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468K-3, 468K-4, 468K-5, 468K-6, 468K-8, 468K-9, 468K-10, 468K-11, 468L-3)

§16-116-2 Definitions. As used in sections 468K-3, 468K-4, 468K-5, 468K-6, 468K-8, 468K-9, 468K-10, 468K-11, chapter 468L, HRS, and this chapter:

"Branch office" means any place or location, other than the principal place of business, from which a travel agency conducts a travel agency business.

"Travel agency" or "agency" includes any branch office of a travel agency which maintains a separate client trust account from the principal agency. [Eff 2/3/92; am and comp 1/16/93] (Auth: HRS §§468L-2, 468L-3) (Imp: HRS §§468K-3, 468K-4, 468K-5, 468K-6, 468K-10, 468K-11, 468L)

## SUBCHAPTER 2

### POWERS AND DUTIES OF THE DIRECTOR

§16-116-7 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 chapters 468K, 468L, HRS, or 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 2/3/92, comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§436B-7, 468K-5, 468L-3)

## SUBCHAPTER 3

### REGISTRATION

§16-116-12 Registration requirements. (a) Application for registration shall be made under oath on a form provided by the director. The form may require the agency to provide:

- (1) The travel agency's name and any trade names being used;

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- (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 the client trust account has been established in compliance with subchapter 6.
- (b) Each application shall be accompanied with the appropriate fees.
  - (c) It shall be each applicant's responsibility to furnish the information or documentation requested. [Eff 2/3/92, am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468L-2, 468L-3, 468L-5)

§16-116-13 Registration issued; notice of change. A registration shall be issued only to agencies meeting the requirements of chapter 468L and of this chapter and shall not be transferable. Unless provided otherwise, in the event of any change of information or documentation each agency or applicant shall notify the director, in writing, within ten days of the change. Notice to registrants, as required by law, shall be deemed met if notice is sent to the address on file with the director. [Eff 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468L-2, 468L-3, 468L-5)

#### SUBCHAPTER 4

##### DENIAL OR REJECTION OF REGISTRATION

§16-116-19 Denial or rejection of application. (a) An application for issuance of a registration shall be denied when an application is insufficient or incomplete. In addition, the director may deny issuance of a registration:

- (1) When a license of the applicant or any officer, director, partner, or other personnel of the applicant has been terminated under section 468K-5, HRS; or
- (2) When 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 chapters 468K, 468L, HRS, or this chapter; or
- (3) When an applicant fails to submit evidence of establishment or maintenance of a client trust account which is in compliance with subchapter 6.

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

- (1) Fails to pay the appropriate fees; or
- (2) Fails to submit any information or documentation requested by the director within sixty days from the date of notice.

(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 practices and procedures of the department and chapter 91, HRS. [Eff 2/3/92, am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§91-2, 468K-5, 468L-3)

## SUBCHAPTER 5

### RENEWAL

§16-116-24 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 2/3/92, am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468L-2, 468L-3)

§16-116-25 Date for filing. (a) All registrants shall complete and submit a renewal application, together with the required fees and a notarized statement which shall be in compliance with subchapter 6, on or before December 31, 1993, and every subsequent odd-numbered year.

(b) 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.

(c) Failure to submit the notarized statement commencing with the 1994-95 renewal and each biennium thereafter shall cause the registration to be automatically forfeited. [Eff 2/3/92, am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468L-2, 468L-5)

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§16-116-26 Automatic forfeiture of registration. The failure to timely renew the registration, pay the required fees, submit the required documentation, or pay fees with a check which is honored upon first deposit shall cause the registration to be automatically forfeited. [Eff 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468L-2, 468L-5)

§16-116-27 Restoration of a forfeited registration. (a) A registration which has been forfeited may be restored within six months of the forfeiture provided the applicant pays the appropriate fees, including restoration fees, and submits the notarized statement in compliance with subchapter 6.

(b) An applicant who fails to restore the registration as provided above shall apply as a new applicant. [Eff 2/3/92; am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468L-2, 468L-3)

§16-116-28 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 travel agency's practices are in accordance with chapter 468L, HRS, and this chapter; or
  - (3) To provide evidence of establishment and maintenance of a client trust account.
- (b) In addition, the director may refuse to renew or restore registration:
- (1) To any agency whose activities have been enjoined by court order; or
  - (2) To any agency who having been previously licensed under chapter 468K, HRS, and on whose behalf payment from the recovery fund was made, has not repaid the fund in accordance with section 468K-5, HRS. [Eff 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468K-3, 468K-4, 468K-5, 468K-6, 468K-8, 468K-9, 468K-10, 468K-11, 468L-2, 468L-3 )

SUBCHAPTER 6

CLIENT TRUST ACCOUNTS, NOTARIZED STATEMENTS,  
DISCLOSURE OF CONSUMER RIGHTS

§16-116-33 Client trust accounts. (a) Each travel agency shall provide evidence of the establishment of the client trust account or accounts, which may be either a checking or savings account, by letter or a verified document from a federally insured financial institution located in Hawaii which states when the account was established, and the account number, or a copy of a blank, void check which bears the name and address of the financial institution, identifies the account as a client trust account, the name of the travel agency, and the client trust account number.

(b) A travel agency may deposit the agency's own moneys into the client trust account as advance moneys; provided that records regarding the amount of the advance deposit are maintained by the agency. An agency may withdraw the agency's own moneys; provided the date and amount of withdrawal is clearly identified in the agency's records. [Eff 2/3/92; am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §468L-5)

§16-116-34 Notarized statement. (a) Each agency shall provide, by way of notarized verification by the principal owner or a responsible person of the travel agency, the following information on a form provided by the director:

- (1) The date the account was established, account number, name and address of the federally insured financial institution located in Hawaii;
- (2) That sums received from consumers for travel services have been deposited, or charged to the appropriate payment processing or card issuing company, by the agency within five business days of receipt or charge, as the case may be;
- (3) That withdrawals made were:
  - (A) For partial or full payment for travel services to the entity or an authorized representative of the entity directly providing the travel services;
  - (B) For partial or full payment to another registered travel agency who in turn will be paying the travel services provider from the travel agency's account;
  - (C) To provide refunds to consumers;
  - (D) To withdraw advance deposits made by the agency;
  - (E) To withdraw the amount of the sales commissions, up to a maximum of fifteen per cent;

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- (F) To withdraw any interest earned and credited to the trust account; or
  - (G) Subsequent to providing all travel services, tickets, or other documentation binding upon the ultimate provider to the consumer; and
- (4) That the account has not been closed.
  - (5) All notarized statements shall have been prepared within three months of the due date to the director.
- (b) A travel agency shall make available for inspection and audit the agency's books and records, including books and records of any branch office within three business days of a written request by the director or the director's authorized delegate. [Eff 2/3/92; am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468L-3, 468L-5)

§16-116-35 Disclosure of consumer rights. (a) Every travel agency shall provide to a consumer a written disclosure of the consumer's rights under section 468L-7, HRS, no later than at the time the travel agency issues tickets, vouchers, or documents for travel services to the consumer.

(b) In the case of repeat customers or business accounts, the disclosure need only be given once, provided the travel agency is assured that the customer or business is aware of the provisions under section 468L-7, HRS.

(c) In the case of group travel, the agency need not provide a form to each group member, but shall be required to provide a form to the group leader; provided the agency is assured that the group leader will accept responsibility to inform members of the group of the provisions under section 468L-7, HRS.

(d) A travel agency shall obtain approval from the director or the director's authorized delegate prior to using the consumer's rights form developed by the agency. Approval may be withheld if the form:

- (1) Does not contain all provisions under section 468L-7, HRS;
- (2) Is less than 8 point helvetica size print; or
- (3) Fails to make necessary disclosures in a clear manner. [Eff 2/3/92; am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §468L-7)



SUBCHAPTER 7

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

§16-116-39 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 section 468L-5, HRS, and subchapter 6;
- (3) Failure to notify the director of any change in the travel agency's client trust account number or location within three business days of the change;
- (4) Failure to allow the inspection or audit of books and records in accordance with section 468L-3(6), HRS, and section 16-116-34;
- (5) Failure to notify the director of any change of information, documentation, or mailing address in accordance with section 16-116-13;
- (6) Violating any condition or limitation upon which the conditional registration was issued;
- (7) Violating this chapter, the applicable licensing laws, or any rule or order of the director;
- (8) Failure to comply with the deposit and withdrawal provisions of chapter 468L-5, HRS, and this chapter; or
- (9) Having a travel agency license issued under chapter 468K, HRS, terminated upon the issuance of a court order authorizing payment from the travel agency recovery fund. [Eff 2/3/92; am and comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§436B-19, 468K-5, 468L-3, 468L-5)

SUBCHAPTER 8

FEES

§16-116-44 Fees established. (a) The fees for applications, registration, renewal, restoration, and compliance resolution shall be as follows:

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- (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 above, until fees are adopted by the director in chapter 16-53, after hearing, pursuant to chapter 91, HRS.
- (c) The application fees shall be non-refundable. [Eff 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§26-9, 468L-3)

§16-116-45 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 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §468L-3)

§16-116-46 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 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §468L-3)

SUBCHAPTER 9

RECOVERY FUND

§16-116-51 Recovery fund claims. Claims for payment from the travel agency recovery fund shall be limited to claims arising from travel services purchased prior to October 1, 1991, provided that no claim may be paid based upon a lawsuit commenced on or after October 1, 1993; and provided further that a claim shall be paid only if made against an eligible travel agency duly registered during the time period in question. An eligible travel agency is an agency or a travel sales representative that previously, under section 468K-3, HRS, contributed to the recovery fund. [Eff 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468K-3, 468K-5, 468L-3)

SUBCHAPTER 10

CIVIL PROCEEDING

§16-116-55 Civil proceeding. A consumer who may have a claim against a travel agency may elect to sue to recover damages which may result in recovery of three times the actual damages or \$1,000 whichever is greater. The consumer, if successful in obtaining a judgment, who elects to recover from the recovery fund as outlined in section 16-116-51, shall be limited to the amount provided for under section 468K-3, HRS. [Eff 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §§468K-3, 468K-5, 468L-8, 468L-10, 468L-11)

SUBCHAPTER 11

ADMINISTRATIVE PROCEDURES

§16-116-60 Administrative practice and procedure. The rules of practice and procedure for travel agencies shall be as provided in chapter 16-201, the rules of practice and procedure of the department as adopted and as may subsequently be amended which are incorporated by reference and made part of this chapter. [Eff 2/3/92; comp 1/16/93] (Auth: HRS §468L-3) (Imp: HRS §468L-3)

Amendments to and compilation of Chapter 16-116, 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 D. Waihee

JOHN D. WAIHEE  
GOVERNOR OF HAWAII

January 6, 1993

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments and Compilation of Chapter 16-116  
Hawaii Administrative Rules

November 5, 1992

SUMMARY

1. §16-116-1 through §16-116-2 is amended.
2. §16-116-12 through §16-116-13 is amended.
3. §16-116-19 is amended.
4. §16-116-24 through §16-116-25 is amended.
5. §16-116-27 is amended.
6. §16-116-33 through §16-116-35 is amended.
7. §16-116-39 is amended.
8. Chapter 116 is compiled.