



GOV. MSG. NO. 1443

EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 11, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin K.Y. Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say, and Members of the Legislature:

Re: House Bill No. 2078, H.D. 2, S.D. 2, C.D. 1

On July 10, 2012, House Bill No. 2078, H.D. 2, S.D. 2, C.D. 1, entitled "A Bill for an Act Relating to Taxation," became law as Act 326 without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

The purpose of this bill is to require any operator of a transient accommodation to designate a local contact residing on the same island as the transient accommodation, and to require that all advertisements and solicitations on websites for transient accommodations display registration identification numbers.

Concerns have been expressed to me that certain nongovernmental entities identified in this bill, such as condominium associations, will be subject to penalties under section 231-35, Hawaii Revised Statutes (HRS), for not providing relevant information that is not maintained in the nongovernmental entities' records. I have confirmed with the Department of the Attorney General that neither this new law nor its legislative history supports this fear. This new law clearly provides that certain nongovernmental entities are only required to provide "all relevant information, maintained in its records, related to all operators who may be leasing their property as transient accommodations" (emphasis added). Page 4, lines 12-15. Conference Committee Report No. 64-12 also clearly reflects that it was the legislative intent to clarify that such nongovernmental entities "must provide the Department of Taxation with relevant information related to all owners of transient accommodations maintained in its records to avoid penalties" (emphasis added). Moreover, under the law, a nongovernmental entity is subject to the penalties under

section 231-35, HRS, only if it "wilfully fails to supply information required" (emphasis added). Page 4, lines 18-19.

It appears that there are also concerns that the penalties that may be imposed may be excessive. If these nongovernmental entities "wilfully" fail to supply the information required under the new law, they are subject to a fine of not more than \$25,000 provided that a corporation shall be fined not more than \$100,000. This reflects the seriousness of the problems this bill attempts to address. Nonetheless, I will re-examine the penalties and consider proposing legislation to reduce the maximum fine next year.

Therefore, notwithstanding my concerns, I have allowed House Bill No. 2078, H.D. 2, S.D. 2, C.D. 1, to become law as Act 326, on July 10, 2012, without my signature.

*Aloha*  
Sincerely,  
*Neil Abercrombie*

NEIL ABERCROMBIE  
Governor, State of Hawaii

Permitted to become law without the  
Governor's signature JUL 10 2012

ORIGINAL

ACT 326

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

H.B. NO. 2078  
H.D. 2  
S.D. 2  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that although many  
2 operators of transient accommodations are in compliance with  
3 applicable state and county laws, there are a sizeable number of  
4 operators who are not. Failure to comply denies the State and  
5 counties of the transient accommodations taxes and general  
6 excise taxes they are due.

7           The legislature further finds that section 521-43(f),  
8 Hawaii Revised Statutes, as part of the landlord-tenant code,  
9 requires a landlord who lives without the State or on a  
10 different island to designate an agent who resides on the same  
11 island where the rental unit is located to act in the landlord's  
12 behalf.

13           Section 521-7, Hawaii Revised Statutes, also clearly states  
14 that the only exemption from the landlord-tenant code for  
15 transient rentals is transient occupancy on a day-to-day basis  
16 in a hotel or motel. Since all other transient accommodations  
17 are subject to the requirements of the landlord-tenant code,



1 operators of transient accommodations who live without the State  
2 or on a different island are already required by law to  
3 designate an on-island agent to act on their behalf. This Act  
4 is intended to clarify that this requirement applies to all  
5 operators of transient accommodations who live without the State  
6 or on a different island.

7 The legislature also finds that the landlord-tenant code  
8 focuses on consumer protection. Requiring operators who live on  
9 a different island from their transient accommodation property  
10 or out of state to designate a local contact is an important  
11 aspect of consumer protection. A contact person located on the  
12 same island as the transient accommodation is essential in the  
13 case of an emergency or natural disaster. An on-island contact  
14 is also vital if any questions, concerns, or property issues  
15 arise regarding the transient accommodation.

16 The legislature also finds that requiring community,  
17 condominium, and other similar associations to provide relevant  
18 information to the department of taxation on all operators who  
19 may be leasing their property as a transient accommodation will  
20 help ensure compliance with appropriate state and county tax  
21 laws. Requiring the counties to provide the department of



1 taxation with relevant information about operators of transient  
2 accommodations will permit additional enforcement of relevant  
3 state and county tax laws.

4 Accordingly, the purpose of this Act is to foster consumer  
5 protection in the State's transient accommodations market and  
6 ensure greater compliance with applicable state and county laws  
7 by operators of transient accommodations in the State.

8 SECTION 2. Chapter 237D, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11 "§237D- Local contact; relevant information;  
12 advertisements; transient accommodations. (a) Any operator of  
13 a transient accommodation shall designate a local contact  
14 residing on the same island where the transient accommodation is  
15 located.

16 (b) The operator shall furnish the name, address, and  
17 contact information of the local contact to any association of  
18 homeowners, community association, condominium association,  
19 cooperative, or any other nongovernmental entity with covenants,  
20 bylaws, and administrative provisions with which the operator's  
21 compliance is required for the property where the transient



1 accommodation is located. The operator shall notify and provide  
2 updated information to that association or nongovernmental  
3 entity within sixty calendar days of any change in the name,  
4 address, and contact information of the local contact.

5 Any person or entity who wilfully fails to supply  
6 information required under this subsection shall be subject to  
7 the penalties under section 231-35; provided that a person or  
8 entity shall not be subject to any term of imprisonment or  
9 probation under section 231-35.

10 (c) Any nongovernmental entity with covenants, bylaws, and  
11 administrative provisions which is formed pursuant to chapter  
12 514A, 514B, or 421J, shall provide the department with all  
13 relevant information, maintained in its records, related to all  
14 operators who may be leasing their property as transient  
15 accommodations by December 31 of each year, or within sixty  
16 calendar days of any change in the relevant information,  
17 operation, or ownership of the transient accommodation. Any  
18 person or entity who wilfully fails to supply information  
19 required under this subsection shall be subject to the penalties  
20 under section 231-35; provided that a person or entity shall not



1 be subject to any term of imprisonment or probation under  
2 section 231-35.

3 (d) Each county shall provide the department with  
4 information necessary to enforce this section. Notwithstanding  
5 any provision of title 14 to the contrary, the department shall  
6 provide the counties with information necessary for the  
7 enforcement of county real property tax laws.

8 (e) The name and phone number of the local contact for  
9 each transient accommodation shall be included in any transient  
10 accommodation contract or written rental agreement and shall be  
11 prominently posted in the transient accommodation. The local  
12 contact shall reside on the same island as the transient  
13 accommodation, and shall meet all other requirements under  
14 subsection (a). Any person or entity who wilfully fails to  
15 supply information required under this subsection shall be  
16 subject to the penalties under section 231-35; provided that a  
17 person or entity shall not be subject to any term of  
18 imprisonment or probation under section 231-35.

19 (f) The registration identification number issued pursuant  
20 to section 237D-4 shall be provided on a website or by online  
21 link and displayed in all advertisements and solicitations on



1 websites regarding transient accommodations for which the  
2 registration number is issued.

3 (g) The payment of any penalty assessed under this section  
4 shall be in addition to the requirements under section 237D-9.

5 (h) For the purposes of this section:

6 "Local contact" means an individual or company contracted  
7 by the operator of the transient accommodation to provide  
8 services required by this section. Nothing in this section  
9 shall be deemed to create an employer-employee relationship  
10 between an operator and its local contact.

11 "Relevant information" means the operator's name, address,  
12 contact information, registration identification number issued  
13 pursuant to section 237D-4, and website address if advertising  
14 or soliciting the transient accommodation on the Internet."

15 SECTION 3. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2012;  
17 provided that this Act shall be repealed on December 31, 2015.

APPROVED this            day of            , 2012

GOVERNOR OF THE STATE OF HAWAII

