

LATE

accommodation for 30 days or less to rent the property through a licensed real estate broker or salesperson.

While RICO generally supports strong enforcement efforts, it does not support this bill in its current form and offers the following comments:

1. If the purpose of the bill is to ensure that transient accommodation guests have a local property manager for contact purposes, RICO suggests that the bill require the licensee to provide local contact information and be available in person to assist the guest.

2. Although many owners of transient accommodations operate in compliance with applicable county laws, it is no secret that there are a sizeable number of owners that do not. If owners of illegal vacation rentals hire licensed real estate salespersons or brokers to assist them, those licensees run the risk of committing a licensing violation because they cannot engage in conduct that violates laws. This bill would create a quandary for both owners and licensees.

3. RICO is aware, anecdotally, that there are owners of illegal vacation rentals that pay taxes. If the bill is designed to facilitate the collection of taxes, the practical effect of requiring the participation of a licensed real estate salesperson or broker may be that it will be more difficult for these owners to pay taxes because licensed property managers may be reluctant to engage in conduct that violates licensing laws.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

KEALI'I S. LOPEZ
DIRECTOR
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS

JO ANN M. UCHIDA
COMPLAINTS AND
ENFORCEMENT OFFICER

STATE OF HAWAII
REGULATED INDUSTRIES COMPLAINTS OFFICE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
LEIOPAPA A KAMEHAMEHA BUILDING
235 SOUTH BERETANIA STREET, NINTH FLOOR
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-2666
FAX: (808) 586-2670
www.hawaii.gov/dcca

HILO OFFICE
345 KEKUANAOA STREET, SUITE 12
HILO, HAWAII 96720

KONA OFFICE
HUALALAI CENTER
75-170 HUALALAI ROAD, ROOM C-309
KAILUA-KONA, HAWAII 96740

MAUI OFFICE
1063 LOWER MAIN STREET, SUITE C-216
WAILUKU, HAWAII 96793

KAUAI OFFICE
3050 EWA STREET, SUITE 204
LIIHE, HAWAII 96766

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
TOURISM

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

MONDAY, JANUARY 30, 2012
10:00 A.M.

TESTIMONY ON HOUSE BILL NO. 1707
RELATING TO TRANSIENT ACCOMMODATIONS

TO THE HONORABLE TOM BROWER, CHAIR,
AND TO THE HONORABLE JAMES KUNANE TOKIOKA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1707, Relating To Transient Accommodations. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer.

House Bill 1707 requires nonresident owners of single family dwellings, apartments, condominiums, or townhouses who rent their property as a transient

4. RICO's enforcement jurisdiction is limited to cases involving license violations and unlicensed activity. To the extent the bill places requirements on nonresident property owners who are not licensees and establishes fines for noncompliance, RICO suggests that the mechanism to enforce this section be clarified.

5. If the Committee is inclined to adopt this measure, RICO suggests that conforming revisions be made to the language of section 467-2(1), Hawaii Revised Statutes. This section authorizes owners to engage in real estate activity relating to their own property. RICO also suggests that the term "non-resident" be defined.

Thank you for this opportunity to testify on House Bill No. 1707. I will be happy to answer any questions that the members of the Committee may have.

Regulated Industries Complaint Office (RICO):

Residents and home buyers can file a complaint regarding a Realtor with State of Hawaii's Department of Commerce and Consumers Affairs RICO office at (808) 587-3222 or mail complaints to 235 S. Beretania St., 9th Floor, Honolulu, Hawaii 96813.

RICO has issued numerous administrative actions against Realtors offering, advertising and promoting illegal vacation rentals and B&B lodges ([see link](#)).

- Home
- Keep It Residential
- Illegal Visitor Lodging
- Realtors
- Visitors
- Mission Statement
- Contact Us

Neighbors Make Kailua Special!

Posted on [January 29, 2012](#) by [admin](#)

Permanent "neighbors" foster security, social interaction and create a sense of community and neighborliness. The residential character of a community is primarily defined by the active participation of permanent residents. Help us keep Kailua a strong and vibrant residential community by getting involved in the following ways:



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- [Illegal Visitor Lodging](#)

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- [Illegal Visitor Lodging](#)

THE NECESSITY OF THIS BILL IS QUESTIONABLE—The Department believes that this legislation is unnecessary. One issue that arose in prior committees was the status of the Department's efforts with the HTA regarding the audits of transient accommodations providers, including bed and breakfasts.

The HTA employed a consultant to search the Internet for advertisements for bed and breakfast operators and vacation rentals in Hawaii. HTA provided the results of this search to the Department. HTA's consultant located 1,452 advertisements for bed and breakfast operators and 6,902 advertisements for vacation rentals. Many advertisements were redundant because many operators and renters advertise on more than one website.

After correlating HTA's information with the Department's files and other information that was available, the Department initiated 123 audits on bed and breakfast operators that the Department believed were not properly reporting Hawaii taxes. The Department also initiated 182 audits on vacation renters.

Of the 305 combined cases, the Department has closed 68 audits and assessed \$1,473,219 in delinquent taxes.

THIS BILL CORRECTLY PLACES THE ONUS OF IDENTIFYING RENTALS ON THE COUNTIES—The issue of "illegal" transient accommodations is primarily a county issue. The recent complaints received by neighborhoods where transient accommodations are of great concern relates to zoning violations—not tax violations. As stated above, the Department concluded that, for the most part, transient accommodations providers are tax compliant. Whether the structure is zoning compliant is another matter. Zoning laws are strictly a matter for the county. The Department supports that this legislation shifts the onus of identifying and investigating the location of the suspect rentals on the counties. The counties should not be using the tax system to police its zoning laws. Nonetheless, the Department is more than willing to assist in order to assure maximum revenue. Though, as stated above, the Committee must be cognizant that increased scrutiny on these rentals may drive otherwise tax compliant taxpayers underground.

SPECIFIC MULTI-AGENCY TASKFORCE, RESOURCES—Furthermore, if the Committee is considering the Department to dedicate resources to targeting the residential vacation rental and transient accommodations tax enforcement, the Department would need additional resources that can be used to focus on this one area of tax collections with the assistance of other entities. The Committee provided the Department with an appropriation. The Department had previously requested an appropriation in the amount of approximately \$980,000 in order to staff an investigative office, auditors, and other facilities needs in order to comply with this legislation. In addition, the bill now requires the Department to prepare additional reports to the Legislature and requests an appropriation to handle this request.

However, as discussed, the Department questions whether this legislation is necessary. The Department does not believe there is substantial non-compliance with tax obligations.

Based upon the foregoing, the Department opposes this bill and requests that it be held as burdensome and unnecessary.

Department of Taxation Testimony
SB 750 SD 3 HD 1
April 3, 2007
Page 4 of 4

Thank you for the opportunity to testify.

Respectfully submitted,



KURT KAWAFUCHI
Director of Taxation

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

HOUSE COMMITTEE ON FINANCE

TESTIMONY REGARDING SB 750 SD 3 HD 1 RELATING TO TRANSIENT ACCOMMODATIONS TAX

April 3, 2007

This bill requires the Department of Taxation (Department) to coordinate with the Hawaii Tourism Authority (HTA) and the various counties to:

- Investigate into current nonresidential transient uses of residential property;
- Report on various developments of transient accommodations tax collections; and
- Analyze the current transient accommodations tax return forms.

The Senate Committee on Tourism & Government Operations made various amendments to the bill.

The Senate Committee on Economic Development & Taxation made various substantive amendments to the bill.

The Senate Committee on Ways & Means made technical, nonsubstantive amendments to the measure.

The Senate passed the measure on third reading.

The Joint House Committee on Tourism & Culture and Economic Development & Business Concerns amended the bill by eliminating provisions requiring the Department to share confidential tax information and requiring HTA and the counties to provide information to the Department; requiring the Department to report on tax statistics and investigation performance; and requiring the counties to develop identification and permitting of vacation rentals.

The Department of Taxation supports the amendments that eliminate the Department's requirement to disclose confidential taxpayer information. However, the Department **opposes this measure as burdensome and unnecessary.**

The Department supports legislation that is aimed at assuring optimum revenue collections, especially from delinquent or unpaid sources. Though the issue of illegal transient accommodation units has primarily been an issue for the counties, the Department recognizes the shared interest with the counties to assure that transient accommodation providers are in full compliance with the various

laws, including tax laws. However, the Department believes this bill is the wrong vehicle.

The Department has the following comments and concerns—

AMENDING THE BILL TO MAINTAIN TAXPAYER CONFIDENTIALITY WAS CRITICAL—The Department supports the recent amendments that eliminated the requirement that the Department share confidential taxpayer information with the counties. The Department holds taxpayer information in confidence as is required by law and to the betterment of the self-reporting tax system.

Presently, HRS § 237D-13 provides the Department with limited ability to discuss taxpayer information with third parties, including other government entities. The Senate Committee on Ways & Means pointed out this provision and asserted that it allows counties to access tax information. However, the Committee did not take into account that in order to obtain specific taxpayer information, there must be a finding of a "material interest." Since Department personnel are subject to criminal liability for improper disclosure, the determination of whether a material interest exists should not be made haphazardly. Moreover, tax information can only be released for "tax purposes only." Again, with criminal liability at stake, the determination of a tax purpose cannot be made haphazardly. With regard to illegal vacation units, the purposes for which counties are seeking tax information is to enforce zoning laws—not tax laws. Thus, the counties have no legitimate tax purpose for taxpayer information.

The Department will be unable to share information of taxpayers that rent property and who do not currently pay transient accommodations tax. During the last audit project, information of non-reporters was obtained from federal tax information. This information cannot be shared with the counties under any circumstances. Any information on non-reporters cannot be shared because the information can only be obtained from federal information; not any state returns.

The Department's ability to release taxpayer information, such as specific addresses or locations, is very limited because releasing the address, as was required in prior drafts of this bill, obviously identifies the taxpayer.

The Department appreciates the amendment that allows the Department to accept tips from third parties; however, the Department notes that the ability to receive information from third parties exists under current law. Essentially, information regarding this legislation will only flow one direction, from the counties to the Department.

INCREASED SCRUTINY MAY DRIVE TAXPAYERS UNDERGROUND—The Department points out that after its last audit project with HTA, the Department concluded that, in general, those that rent transient accommodations are tax compliant. The Department fears that any increased scrutiny could potentially backfire and drive otherwise tax compliance individuals "underground." Taxpayers that are forced "underground" can have a direct impact on collections.

Economic Impact of Transient Vacation Rentals (TVRs) on Maui County

January 8, 2008

Dr. Thomas Loudat, President, TAL Associates, Honolulu, HI
Dr. Prahlad Kasturi, Professor, Economics Department Radford University, VA

Executive Summary

Background

This study was commissioned by the Realtors Association of Maui (RAM) to update a previous study conducted by the Kauaiian Institute addressing the economic contribution to Maui County of the Transient Vacation Rental industry (TVR). The intended purpose of our results is to not only inform policy makers of the TVR economic contribution to the County but also to scrutinize the industry itself in the context of the overall Maui lodging industry. The TVR industry is concerned about the apparent existence of an uninformed anti-TVIR bias in Maui County government; about an ongoing enforcement of unreasonable rules; the potential enactment of legislation meant to marginalize this industry; and the potential economic consequences of such policies. This research effort is to inform the County policy makers of the level of these potential negative economic consequences. Informed policy-making can reduce both government and community concerns related to TVR operation while minimizing negative consequences of any new policy or enforcement of an existing policy.

Our study uses the 2002 Input-Output Tables to study the economic impact of transient vacation rentals (TVRs) on Maui County. Data from the American Community Survey conducted by the US Census Bureau, the Hawaii Visitor Research Report published by the Department of Business Economic Development and Tourism (DBEDT) State of Hawaii and UHERO EIS portal have been used in the analysis. A review of relevant studies and other information sources investigating the impact of TVRs provides an information backdrop for our analysis results and conclusions, which may also prove useful to policy makers.

Research Conclusion

Our essential research conclusion is that the TVR accommodation industry generates significant, positive economic benefits to Maui County and the State of Hawaii. At the high end of our estimation range, our results indicate positive economic benefits approaching: \$318.8 million in total output (i.e. sales), \$100.6 million in labor income, 3,478 jobs, \$19.7 million in Hawaii State taxes and \$191.1 thousand for Maui County's share of the TAT (transient accommodations tax). These are significant economic values being generated by an industry utilizing only 1.7 percent of all housing units available in Maui County.

Elimination of the TVR industry could result in the full loss of the TVR industry's economic value. The extent of the loss of the TVR industry due to government regulations depends to what extent TVR visitors substitute an alternative Maui County accommodation type to TVRs if they are unavailable or not sufficiently available to meet the current and expected future demand level for their accommodation type. In a global market place with alternatives to Maui destinations offering a literal potpourri of accommodation experiences, the modern, well-informed and sophisticated visitor can find the accommodations experience that best fits their tastes and preferences.

1.

For years now I have been trying to figure out a way to stabilize the vacation rental industry in Hawaii. It has gotten so out of control with VRBOs (Vacation Rentals By Owners), etc that no one even knows what is legal anymore. The current laws are not very clear and are left for misinterpretation. I have posted blogs throughout the web and have found many Hawaii real estate professionals in agreeance with me.

Just recently a bill was brought forth to the Hawaii House. You can [click here](#) to view the bill. It will require all non-resident vacation home owners to use a licensed real estate broker or salesperson for their vacation rental. That broker or salesperson would be required to collect the taxes and pay it on behalf of the owner. If it is passed on Monday, February 6, 2012 it would be a huge step forward for the State of Hawaii to regulate the vacation rental industry and most importantly be assured they collect the appropriate taxes.

If the owners do not comply, there is a substantial fine (up to \$1000/night).

I think this will help the vacation rental community in Hawaii substantially on several different levels. First, if licensed professionals are required to be used they will maintain the current ethics required or could potentially have to forfeit their license. Currently most vacation rental homeowners don't even know what those ethics or regulations are. Second, the correct amount of taxes will be collected and submitted to the State of Hawaii. Third, I feel it will raise overall rates and quality due to more standards.

Let me know what you think. **Leave a comment if you support HB 1707.** Let us know why it is

From: Exclusive Getaways Web Site.

Exclusive Getaways was developed to provide the means for you to easily and safely secure vacation rental homes and condos here in Hawaii. Created by long time property managers, who also own and operate Abbey Vacation Rentals on Hawaii's Big Island, we recognized the vacationer's need for a single website where the best vacation rental properties throughout Hawaii could be viewed, searched, compared, and reserved.

Exclusive Getaways is the largest collection of professionally managed Hawaii Vacation Rental homes on the web. All properties displayed on Exclusive Getaways are managed by the leading licensed property managers for each Hawaiian island with established reputations, and track records of providing great service to visitors like you. You are never alone. When you arrive at your Hawaii home, rest assured that an on-island professional is here to provide any support or assistance you may need during your stay should the need arise.

There are no "Rent by Owner" marketed properties permitted on Exclusive Getaways. **You and your family's vacation is too important to rely upon an unlicensed private individual, who may not have the required on-island representation, and the means to help you in the event of any problem or question while you are here. Also with no history or reputation of service, and with no business insurance to protect you and your family's vacation should the need ever arise, we cannot endorse using these individuals.**

Exclusive Getaways uses powerful features to optimize your property search. All aspects of Exclusive Getaways' website are "Real Time", which means the availability calendars for each property you view are accurate up to the minute. Use our Price Quote capability to receive live and complete quotations for any home's rental for your dates of interest. Once you have developed your "short list", you can use our Compare capability which permits you to view your choices side by side, and compare their individual features, locations, and prices.

Because our Price Quotes are live "Real Time" direct quotations, they are the lowest prices available for your properties of interest.

Once you have determined your units of interest, you may save the selected homes using our Favorites functionality, so you can quickly return to this listing upon your next visit, or to show your travel companions. Of course you can email property listings of interest to your friends and family throughout Exclusive Getaways, from our Search, Compare or Favorites areas.

Your privacy and safety is of utmost importance to us. Exclusive Getaways utilizes web security standards more stringent than those used by most banks, so you can rest assured that when you make an online reservation with us, your transaction is both private and secure.

DAMON KEY LEONG KUPCHAK HASTERT
A LAW CORPORATION

February 21, 2012

Attorneys at Law

1003 Bishop Street, Suite 1600
Honolulu, Hawaii 96813-6452

Telephone (808) 531-8031
Facsimile (808) 533-2242
E-Mail: info@hawaiilawyer.com
Website: www.hawaiilawyer.com

Noelle B. Catalan
Rebecca A. Copeland¹
Matthew T. Evans
Tred R. Eyerly
Steven R. Gray
Diane D. Hastert
Caron N. Ikeda
Courtney S. Kajikawa²
Christine A. Kubota
Christi-Anne H. Kudo Chock
Gregory W. Kugle
Kenneth R. Kupchak
Denis C.H. Leong
David P. McCauley
James C. McWhinnie
Sara Mostafa-Ray²
Mark M. Murakami
Anna H. Oshiro
Christopher Pan²
Michelle M. Shin
Douglas C. Smith
Robert H. Thomas²
Michael A. Yoshida

Of Counsel
R. Charles Bocken
C.F. Damon, Jr.
Harry A. Inman³

Charles W. Key
(1929-2008)

¹Admitted in Texas

²Admitted in Hawaii and California

³Admitted in New York and
District of Columbia



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HAND DELIVER

The Honorable Marcus Oshiro
House of Representatives
415 South Beretania Street
Hawaii State Capital, Room 306
Honolulu, Hawaii 96813

Re: HB 1707 HD 2

Dear Representative Oshiro:

We represent the Hawaii Vacation Rental Owners Association (“HVROA”) in opposition to House Bill 1707 HD 2, which purports to require non-resident owners of residential units to hire licensed real estate brokers or salespersons when renting their homes for thirty (30) days or less.

Bill 1707 is patently unconstitutional discrimination against non-resident property owners by the State of Hawai’i, in violation of the United States Constitution. The Constitution prohibits discrimination against non-residents through the Equal Protection, Privileges and Immunities and Commerce Clauses. It is well-settled law that the right to own and dispose of privately-held property is a “fundamental right” for purposes of the Constitution. *Daly v. Harris*, 215 F. Supp. 2d 1098, 1101 (D. Haw. 2002) (Honolulu’s Hanauma Bay non-resident fee ordinance). Under the Equal Protection and Privileges and Immunities Clauses, discrimination on the basis of residency is reviewed under strict scrutiny. The statute is unconstitutional if it is not necessary to further a compelling state interest. *Walsh v. City and County of Honolulu*, 460 F. Supp. 2d 1207 (granting injunction against Hawai’i’s residency requirements). In fact, the Hawai’i Supreme Court has held that Hawai’i’s durational residency requirement “exists without a rational basis.” *York v. State*, 53 Haw. 557, 561 (1972).

Likewise, under the Commerce Clause, the inquiry is whether the law regulates evenhandedly with only incidental effects on interstate commerce, or whether it discriminates against interstate commerce, which means different treatment of in-state and out-of-state economic interests. “If a restriction on commerce is

DAMON KEY LEONG KUPCHAK HASTERT
The Honorable Marcus Oshiro
February 21, 2012
Page 2

discriminatory, it is virtually per se invalid.” *Barber v. State of Hawai’i*, 42 F.3d 1185, 1194 (9th Cir. 1994).

Under any analysis, HB 1707 will not pass constitutional muster. Laws requiring the payment of transient accommodation tax already exist. Taxes are paid, or not paid, by residents and non-residents alike. The Bill has absolutely no purpose other than to significantly increase the cost of owning and renting property for non-residents.

In addition to these insurmountable constitutional infirmities, the Bill has many other fatal flaws. It impermissibly infringes on the four Counties’ home rule powers, each of which can differently define transient accommodations for purposes of their zoning laws. In addition, property owners are statutorily exempt from using a licensed realtor when renting their own property. Even the State’s own agencies oppose the Bill, including the Real Estate Commission and the Regulated Industries Complaints Office.

For the foregoing reasons, and others, HVROA respectfully requests that HB 1707 not be passed.

Very truly yours,

DAMON KEY LEONG KUPCHAK HASTERT



Gregory W. Kugle

GWK:ds
160710

LATE TESTIMONY

Feb 23, 2012

OPPOSE HB 1707

Chair Oshiro and Members of the House Finance Committee:

My name is Angie Larson and I am President of the Hawaii Vacation Rental Owners Association.

We oppose HB 1707 but we support paying taxes. Everyone needs to give their share. You do not just take without giving back!

1. If the intent of this bill is to bolster taxes it is doing just the opposite. The amendments also conflict with existing laws.
 - a. In the Rico testimony of Jan 30, 2012, Page 2. “ If owners of non-permitted Vacation rentals hire licensed real estate salespersons or brokers to assist them, those licensees run the risk of committing a licensing violation because they cannot engage in conduct that violates the law. The rental owner cannot pay taxes on their own and if a realtor represents them as this bill is requiring they are violating the law. **Most rental owners will close down and some will become creative. Because of the recession, a number of rental owners cannot afford the commissions that booking/managing businesses, realtors, charge.**
 - b. Go to www.keepitkailua.com and click on realtors. Realtors have been turned into RICO regularly by this vocal minority and anti visitor group for representing vacation rental homes. “RICO has issued numerous administrative actions against Realtors offering, advertising, and promoting illegal vacation rentals and B&B lodges (see RICO administrative actions).” This bill will close down a gross amount of non-resident rental owners state wide. This bill is conflicting.
2. There is no substantiated data that shows non-residents are not paying taxes. The only way to verify is to hire professionals to audit advertisement. See testimony, April 3, 2007, by the taxation board. An audit was performed. Per taxation board: for the most part transient accommodations are tax compliant. Increased scrutiny may drive otherwise tax compliant taxpayers underground. Their hired consultants located 8,354 advertisements. Recently the present taxation board said they have no way of knowing who does not pay their taxes. I respectfully disagree. They need only to look back at the past tax board and follow their lead for auditing.

One of the most important comments to note by the 2007 taxation board testimony “MANY ADVERTISEMENTS WERE REDUNDANT BECAUSE MANY OPERATORS ADVERTISE ON MORE THAN ONE WEBSITE”.
3. Why are a small group of realtors who advertise, book, and manage rentals so concerned about payment of taxes that they have traveled to Oahu to testify for this bill? Answer, they have a vested interest. This group says they only rent in resort areas so they would

not be considered in violation. They neglect to say this bill would force ALL non-resident rental owners in these resort areas to be compelled to sign up for their services, or close. Any rental outside the resort areas would not be able to hire a realtor. Price control by the few who are pushing this bill would exist. Right now rates offered by independent owners in resort areas are frequently lower than from the booking/managing companies. Why? Because an individual owner is advertising, and booking themselves. They hire local residents to property manage and a list of maintenance workers are on call when needed. Simply lowering overhead and passing on the savings in the rate charged.

Conclusion:

There is no data to warrant this bill. Only an official audit would produce substantiated data.

This bill is asking realtors to violate a licensing law.

The vast number of advertisement on the internet is redundant because many rental owners use more than one site.

This bill if passed will result in price control, eliminate free enterprise and cause monopoly.

Thank You for Allowing Me to Speak,
Angie Larson
Hawaii Vacation Rental Owners Association