

# SB 1186

Measure Title: RELATING TO TRANSIENT ACCOMMODATIONS TAX.  
Report Title: Transient Accommodations Tax; Penalties  
Description: Amends the penalties imposed for failure to comply with Act 326, Session Laws of Hawaii 2012 and imposes civil penalties instead of criminal penalties.  
Companion: [HB955](#)  
Package: Gov  
Current Referral: CPN/THA, WAM  
Introducer(s): KIM (Introduced by request of another party)

<b><u>Sort by</u></b> <b><u>Date</u></b>		<b>Status Text</b>
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to CPN/THA, WAM.
1/28/2013	S	The committee(s) on CPN/THA has scheduled a public hearing on 02-04-13 2:50PM in conference room 224.

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



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DEPARTMENT OF TAXATION  
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FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

To: The Honorable Rosalyn H. Baker, Chair  
and Members of the Senate Committee on Commerce and Consumer Protection

The Honorable Brickwood Galuteria, Chair  
And Members of the Senate Committee on Tourism and Hawaiian Affairs

Date: Monday, February 4, 2013  
Time: 2:50 P.M.  
Place: Conference Room 224, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. 1186, Relating to Transient Accommodations Tax

The Department strongly supports S.B. 1186, and offers the following information and comments for your consideration.

S.B. 1186 amends Act 326, Session Laws of Hawaii (SLH) 2012, replacing the criminal penalty provisions with civil fines. Under current law, the penalty for failure to comply with Act 326 allows for criminal penalties, except for imprisonment and probation.

The Department is recommending modifying the penalty provisions of Act 326, SLH 2012, from a criminal penalty to a civil fine due to concerns raised last year regarding whether criminal penalties are needed to encourage compliance. Furthermore, the Department notes that the existing criminal penalty language in Act 326 creates an inconsistency with section 231-35, HRS. Therefore, the Department supports amendments to Act 326, as set forth in S.B. 1186.

The Department also suggests an additional amendment be made to further clarify the penalty provision of Act 326, SLH 2012. After each reference to the civil penalty of \$1,000, the following should be added:

"The penalty shall be imposed no more than once per year."

Thank you for the opportunity to provide testimony.



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Neil Abercrombie  
Governor

Mike McCartney  
President and Chief Executive Officer

**Testimony of  
Mike McCartney  
President and Chief Executive Officer  
Hawai'i Tourism Authority  
On  
S.B. 1186  
Relating to Transient Accommodations Tax  
Senate Committee on Commerce and Consumer Protection  
Senate Committee on Tourism and Hawaiian Affairs  
Monday, February 4, 2013  
2:50 p.m.  
Conference Room 224**

The Hawai'i Tourism Authority (HTA) supports S.B. 1186, which proposes to impose a civil penalty of \$1,000, for willfully failing to provide information required by law relating to the local contact for a transient accommodations by an owner residing outside the State or on another island from the location of the transient accommodation.

Act 326, Session Laws of Hawaii 2012, was intended to address the problem of enforcement of the transient accommodations tax law, where individual properties are rented out by individual owners. This is particularly difficult if the property owner and the renters are nonresidents. It is especially difficult when payment occurs outside the state.

The penalties imposed by section 231-35, which Act 326 imposes are criminal penalties and include one or a any combination of:

- A fine of not more than \$25,000;
- Imprisonment of not more than one year; or
- Probation.

The imposition of a \$1,000 civil penalty is more appropriate and may be sufficient to bring the operators of such transient accommodations into compliance.

Mahalo for the opportunity to offer these comments.

# TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** TRANSIENT ACCOMMODATION, Amend penalty provisions

**BILL NUMBER:** SB 1186; HB 955 (Identical)

**INTRODUCED BY:** SB by Kim by request; HB by Souki by request

**BRIEF SUMMARY:** Amends Act 326, SLH 2012, to provide that the failure to supply a local contact residing on the same island where the transient accommodation is located shall be subject to a civil penalty of \$1,000 rather than a criminal penalty.

**EFFECTIVE DATE:** Upon approval

**STAFF COMMENTS:** This is an administration measure submitted by the department of taxation TAX-04 (13). The landlord tenant code requires a landlord who lives out of state or on a different island to designate an agent who resides on the same island where a rental unit is located to act on the landlord's behalf. The landlord tenant code also states that while transient rentals on a day-to-day basis in a hotel or motel are exempt from this requirement, all other transient accommodation rentals are subject to the landlord tenant code.

The legislature by Act 326, SLH 2012, required an operator of a transient accommodation to designate a local contact residing on the same island where the transient accommodation is located. The act also provided that the failure to designate a local contact person is subject to the criminal penalties under HRS 231-35 provided that the violator shall not be subject to imprisonment or probation. HRS 231-35 also provides that the penalty shall be subject to a fine of \$25,000. The proposed measure replaces the penalties under HRS 231-35 and provides that the failure to provide such information shall be subject to a civil penalty of \$1,000 rather than a criminal penalty.

Digested 1/31/13

888 Mililani Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813-2918  
February 1, 2013

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
SENATE COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS  
REGARDING SENATE BILL 1186

Hearing Date: . MONDAY, February 4, 2013  
Time : 2:50 p.m.  
Place : Conference Room 224

Chairs, Vice Chairs, and Members of the Committees,

My name is John Morris and I am testifying in support of Senate Bill 1186. Act 326 (SLH 2012) created significant apprehension among condominium and other homeowner associations because of the potential criminal liability for what were essentially the actions of their members. Condominium and other homeowner associations are primarily property maintenance organizations and should not be placed in the position of being exposed to significant criminal penalties for failing to help enforce the tax laws, as act 326 proposed last year.

Therefore, the decision to eliminate those criminal penalties reduces the burden on condominium and other homeowner associations.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,



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John A. Morris