

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Consumer Protection and Commerce

Date: Wednesday, January 22, 2014
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 474, Relating to Transient Accommodations

The Department of Taxation (Department) supports H.B. 474, which clarifies the reporting requirements of Act 326, Session Laws of Hawaii 2012, and also softens the penalties imposed upon associations who fail to report the required information.

Regarding the clarification that operators must report relevant information to associations, the Department is strongly in support. However, the Department suggests amending the definition of "relevant information" as follows:

"Relevant information" means the operator's name, address, contact information, registration identification number issued pursuant to section 237D-4, and website address if advertising or soliciting the transient accommodation on the Internet. Relevant information also includes the name, address and contact information of the local contact designated under subsection (a)."

This definition will ensure that all information transmitted from operators to associations is then transmitted from the associations to the Department.

The Department also supports the softening of penalties and offers the following suggestions for your consideration.

First, in addition to replacing the criminal penalties imposed on non-compliant associations with a civil fine, as in this measure's subsection (c), the Department recommends similarly replacing the criminal penalties imposed on non-compliant operators under subsection (b) with a civil fine. The Department believes that a criminal penalty is an unduly harsh penalty for failure to report this information.

Second, the Department suggests clarifying that the fine of no more than \$2,500 may only be applied once per year.

Third, the Department suggests the following sentence be inserted into subsection (c):
"However, nothing in this subsection shall excuse a willful failure to receive or accept relevant information made available by operators."

Thank you for the opportunity to provide comments.



January 22, 2014

The Honorable Angus L. K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 474, RELATING TO TRANSIENT ACCOMMODATIONS.

Aloha Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

I am Dan Monck, here to testify on behalf of the Hawai'i Association of Vacation Rental Managers ("HAVRM").

This letter is written in **SUPPORT of HB 474 with changes.**

The Hawaii Association of Vacation Rental Managers, representing tourism professionals providing transient accommodations on Hawaii's four major islands, supports the objective of HB 474 to correct the many defects inherent within ACT 326, Session Laws Hawaii 2012.

There is presently over \$40,000,000 annually of Hawaii tax collection placed at risk due to the off-island owner rental activity ACT 326 attempts to recover taxes upon. For this reason, it is important to correct ACT 326's defects, so collection of these Hawaii tax revenues may be maximized by the State, while minimizing the cost and time impact of pursuing these tax revenues to the greatest degree possible.

HAVRM would like to suggest an approach for the committee's consideration which adroitly addresses the tax collection objectives of ACT 326, while removing the administrative complexities, and added cost, ACT 326 imposed upon the Department of Taxation, Condominium, and Home Owner Associations. We propose the use of an existing attribute of Hawaii's TAT code 237D-8.5, the "Third Party Rent Collector", as described below:

Out of state owners of transient accommodations located within Hawaii be required to have a Hawaii domiciled third party rent collector. This Hawaii domiciled third party rent collector be required to deposit all rental revenues collected in a Hawaii banking institution in a FDIC insured account. As required by HRS 237D-8.5, this third party rent collector would provide the Department of Taxation a copy of federal Internal Revenue Service form 1099, the property

owner's social security or federal identification number, and if available the Hawaii GET and TAT license numbers.

The out of state owner of a Hawaii transient accommodation be required to identify to the Department of Taxation, the identity of their Hawaii domiciled third party rent collector annually, or within 30 days of any change.

The third party rent collector should have bonding and/or insurance as required by the Hawaii Department of Taxation.

The "Local Contact" and its requirement within ACT 326 is replaced by the requirement for a Hawaii domiciled third party rent collector, with these new requirements as described above.

Advantages of this proposed change

Based upon an existing tax law, 237D-8.5, this change will very simply and effectively generate significant additional tax collection, with no increase in Hawaii tax rates.

This approach complements, and is consistent with, Hawaii's third party rent collector practice of the past and present.

The third party rent collector replacement would also remove Hawaii's AOAOs and HOAs from involvement in ACT 326. The mandatory involvement of these associations in assisting the Department of Taxation in tax collection has been a point of major concern, distress and confusion for these associations. This is an activity AOAOs and HOAs are not well suited for as they pursue their natural operations. Replacing the "Local Contact" of ACT 326 with a third party rent collector places the identification of the rental revenues of this activity seamlessly between the Department of Taxation and the property owner's third party rent collector; a much cleaner and effective administrative process.

While the approach of requiring a third party rent collector versus a "Local Contact" dramatically improves rental revenue tax collection by the State, it also greatly simplifies the Department of Taxation's collection verification activities, saving both time and expense for the Department.

Replacing ACT 326's "Local Contact" with a third party rent collector is a logical extension of HRS 237D-8.5. This replacement of the "Local Contact" also removes the ambiguity, confusion, and inconsistency of this aspect of ACT 326 with other Hawaii Statute.

Sincerely yours,



Dan Monck
President
Hawaii Association of Vacation Rental Managers



P.O. Box 976
Honolulu, Hawaii 96808

January 21, 2014

Honorable Angus L.K. McKelvey
Consumer Protection and Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 474/SUPPORT**

Dear Chair McKelvey and Committee Members:

I am the Chair of the Community Associations Institute's Legislative Action Committee ("CAI"). CAI has the following comments in **support** of **HB 474**.

First, **HB 474** will serve to **clarify** the reporting requirements for associations in connection with operators of transient rentals in their communities. Currently the members of such associations that serve on their boards are confused about the reporting requirements, and thus, we support the clarification offered by **HB 474**, *i.e., only the information provided by operators to associations will then be reported to the appropriate tax authority, and there is no duty for such volunteer board members to conduct an independent inquiry for such information.*

Second, Act 326 currently provides for excessive penalties for such volunteer board's failure to report the activity that the Act targets, yet such boards and associations receive no benefit from that activity. The penalties should remain to sanction the operators that fail to comply with the Act 326 reporting requirements. However, the **reduction of the penalty for associations** is appropriate as reflected in **HB 474**.

CAI represents the association industry, and endorses this approach. We respectfully request the Committee to pass **HB 474**. Thank you.

Honorable Angus L.K. McKelvey

January 21, 2014

Page 2 of 2

Very truly yours,

A handwritten signature in black ink, appearing to read 'CP', with a long horizontal flourish extending to the right.

Christian P. Porter



Princeville *at Hanalei* Community Association

Enhancing the Quality of Life and Princeville Experience for its Members

January 21, 2014

The Princeville at Hanalei Community Association (PHCA) supports the passage of HB474. PHCA has over 3,200 living units within the community and is the third largest community association in the state. The passage of Act 326 in 2012, requires our association to report information regarding transient vacation rentals (TVR's) which is not currently reported to us. The burden of reporting this information and fines for not doing so should be placed upon the TVR operators not the association.

Thank you for your support.

Regards,

Rory R. Enright
General Manager
Princeville at Hanalei Community Association
Gen_mgr@pcaonline.org

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 20, 2014 4:48 PM
To: CPCtestimony
Cc: richard@hawaiifirst.com
Subject: Submitted testimony for HB474 on Jan 22, 2014 14:00PM

HB474

Submitted on: 1/20/2014

Testimony for CPC on Jan 22, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	HawaiiFirst, Inc.	Support	No

Comments: I represent 165 Hawaii associations and am familiar with their operations. Associations have limited information and power to know the use of a unit by its owner. Associations should only be required to submit any information it has in its possession and not be subject to penalties or some greater requirement to try to determine an owner's true use. I support the Bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 21, 2014 10:12 AM
To: CPCtestimony
Cc: nalan@myhawaiiilaw.com
Subject: *Submitted testimony for HB474 on Jan 22, 2014 14:00PM*

HB474

Submitted on: 1/21/2014

Testimony for CPC on Jan 22, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Na Lan	CAI LAC	Support	No

Comments:

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kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 21, 2014 9:21 AM
To: CPCtestimony
Cc: joanipt@hawaii.rr.com
Subject: *Submitted testimony for HB474 on Jan 22, 2014 14:00PM*

HB474

Submitted on: 1/21/2014

Testimony for CPC on Jan 22, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joanne Taylor	Individual	Support	No

Comments:

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kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 21, 2014 9:30 AM
To: CPCtestimony
Cc: Alan@AssociaHawaii.com
Subject: Submitted testimony for HB474 on Jan 22, 2014 14:00PM

HB474

Submitted on: 1/21/2014

Testimony for CPC on Jan 22, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Takumi	Individual	Support	No

Comments: I am a community association manager and this will help our volunteer board understand requirements and they should not be fined for something that the owners/landlords should be responsible for.

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kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 21, 2014 12:59 PM
To: CPCtestimony
Cc: twalkey@clearwire.net
Subject: *Submitted testimony for HB474 on Jan 22, 2014 14:00PM*

HB474

Submitted on: 1/21/2014

Testimony for CPC on Jan 22, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Walkey	Individual	Support	No

Comments:

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5333 Likini St. #1506
Honolulu, Hawaii 96818
January 21, 2014

LATE

Honorable Angus L.K. McKelvey
Consumer Protection and Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 474/SUPPORT**

Dear Chair McKelvey and Committee Members:

I am the Treasurer of two condominium boards, AOA Tradewinds Plaza and AOA Plaza Landmark.

I **support HB 474** as it serves to clarify the reporting requirements for associations in connection with transient rentals and it reduces the penalty for associations.

As you know, condominium board members are volunteers. The current penalties for the volunteer boards failure to report transient activity are excessive - especially in light of the fact that the boards and associations do not receive any benefit from the activities that the legislature is targeting.

The legislature should target the people that are conducting transient activities, not the communities where the activities take place.

I respectfully request the Committee to pass **HB 474**.

Sincerely,



Neil Bates