



- 1           (2) A multi-family dwelling unit;
- 2           (3) A bed and breakfast establishment or bed and breakfast
- 3                 home; or
- 4           (4) An "apartment" defined in section 514A-3 or "unit"
- 5                 defined in section 514B-3 that is not part of a hotel-
- 6                 condominium defined in section 486K-1.

7           "Let" means to rent a transient vacation rental for  
8 compensation or fees.

9           "Local contact" means the owner or an operator, lessee, or  
10 any individual or company contracted by the owner, operator, or  
11 lessee, residing on or having a principal place of business on  
12 the same island where the transient vacation rental property is  
13 located who shall be available on a twenty-four-hour, seven-  
14 days-per-week basis.

15           "Lodging" means temporary sleeping accommodations in a  
16 dwelling or portion of a dwelling.

17           "Nongovernmental entity" includes an association of  
18 homeowners, a community association, association of apartment  
19 owners as defined in section 514A-3, and board or board of  
20 directors as defined in section 514B-3.



1 "Online rental service provider" means any company,  
2 organization, club, group, or application that offers a  
3 transient vacation rental service via the Internet.

4 "Owner" means the grantee in the deed and instrument for  
5 the transient vacation rental recorded in the bureau of  
6 conveyances.

7 "Transient vacation rental" means a dwelling or lodging  
8 located in the State let by an owner, operator, or lessee for  
9 compensation or fees, including club fees, for one hundred  
10 eighty days or less per rental. Transient vacation rental does  
11 not include any facility owned or used by a government agency or  
12 a tenement home, group home, group residence, group living  
13 arrangement, boarding house, or rooming house certified pursuant  
14 to section 445-94.

15 **§ -2 Powers and duties of the director.** In addition to  
16 any other powers and duties authorized by law, the director may:

- 17 (1) Grant licenses to transient vacation rental owners
- 18 pursuant to this chapter;
- 19 (2) Adopt, amend, or repeal rules as the director deems
- 20 proper to fully effectuate this chapter;

1 (3) Fine, suspend, terminate, or revoke any license for  
2 any cause prescribed by this chapter, or for any  
3 violation of the rules, and refuse to grant any  
4 license for any cause which would be grounds for  
5 revocation, termination, or suspension of a license;  
6 and

7 (4) Investigate the actions of any unlicensed person  
8 acting or alleged to be acting in the capacity of a  
9 licensee under this chapter.

10 **§ -3 License; requirements; renewal.** (a) No transient  
11 vacation rental shall operate or do business in this State  
12 unless the owner first obtains a license under this chapter.  
13 The application for a license shall be submitted on forms  
14 prescribed by the director and with the appropriate fees,  
15 prescribed by the director, which shall be deposited into the  
16 compliance resolution fund under section 26-9(o).

17 (b) The application shall include:

18 (1) The address and tax map key number of the transient  
19 vacation rental;

20 (2) The name, address, and contact information of the  
21 owner of the transient vacation rental;



- 1           (3) The name, phone number, and address of the local  
2           contact for the transient vacation rental;
- 3           (4) The name, address, and contact information of any  
4           nongovernmental entity with authority over the  
5           property on which the transient vacation rental is  
6           located, along with a copy of the covenants, by-laws,  
7           and administrative provisions with which compliance of  
8           the transient vacation rental is required;
- 9           (5) Proof of compliance with county ordinances relating to  
10          the regulation of transient vacation rentals,  
11          including any registration number, license, permit,  
12          special use permit, or non-conforming use permit that  
13          may be required by the county;
- 14          (6) The account number and the name of the financial  
15          institution at which the client trust account required  
16          by section     -6 is held;
- 17          (7) Submission of:
- 18                (A) The general excise tax license number issued  
19                pursuant to chapter 237;
- 20                (B) The transient accommodations tax registration  
21                number issued pursuant to chapter 237D; and



1 (C) The general excise tax and transient  
2 accommodations tax filings for the previous two  
3 years, for any transient vacation rental existing  
4 on the effective date of Act , Session Laws  
5 of Hawaii 2015, of which the applicant is the  
6 owner; and

7 (8) The name of the application or app, name of the online  
8 rental service provider or providers, address of any  
9 website on the Internet, or other means of mass  
10 communications being utilized for advertisements or  
11 solicitations of the transient vacation rental.

12 The owner shall notify the department within sixty days of any  
13 change in the information required by this subsection.

14 (c) The owner of a transient vacation rental shall renew  
15 its license each year on or before December 31 on a form  
16 provided by the department, which shall provide the owner an  
17 opportunity to verify or update the information required in  
18 subsection (b).

19 (d) No license may be assigned, sold, leased, encumbered,  
20 or otherwise transferred, except upon the written application to  
21 and approval by the director.



1           **§ -4 Issuance of license and seal; provision of**  
2 **information to the county.** (a) Each license shall be in a form  
3 prescribed and signed by the director, and issued in the name of  
4 the department with an official seal as evidence of the validity  
5 of the license.

6           (b) The department shall maintain and annually update a  
7 list of the licensed transient vacation rentals, and shall  
8 provide each county agency charged with the administration of  
9 county zoning laws all the information required by section -3  
10 regarding the transient vacation rentals licensed in the county.

11           **§ -5 Transient vacation rentals; requirements.** (a) The  
12 owner or lessor of a transient vacation rental shall:

- 13           (1) Prominently post the name and phone number of the  
14 local contact in the transient vacation rental, and  
15 include the information in any transient vacation  
16 rental contract or rental agreement; and
- 17           (2) Include the license number and official seal of the  
18 transient vacation rental in any advertisements or  
19 solicitations of the transient vacation rental through  
20 an online rental service provider, an application or  
21 app, or other means of mass communication.



1 (b) The owner shall submit to the applicable  
2 nongovernmental entity all covenants, bylaws, and administrative  
3 provisions with which the owner's compliance is required for the  
4 property on which the transient vacation rental is located,  
5 along with the following:

6 (1) The address of the transient vacation rental;

7 (2) The name, address, and contact information of the  
8 owner of the transient vacation rental, and license  
9 number of the transient vacation rental; and

10 (3) The name, phone number, and address of the local  
11 contact, who shall be available on a twenty-four-hour,  
12 seven-days-per-week basis.

13 The owner shall notify and provide updated information to the  
14 nongovernmental entity within sixty calendar days of any change  
15 in the required information.

16 (c) The owner shall comply with all county ordinances  
17 relating to the posting of information in the transient vacation  
18 rental, posting of signs, provision of safety information,  
19 parking, notification of neighbors, and other requirements  
20 established by the county.





1           **§ -6 Client trust account.** (a) Each owner of a  
2 transient vacation rental licensed under this chapter shall  
3 establish a client trust account in a federally insured  
4 financial institution located in Hawaii into which shall be  
5 deposited all sums received from a consumer for transient  
6 vacation rental services. The trust account shall be  
7 established and maintained for the protection of the consumers  
8 paying the money to the owner of the transient vacation rental.  
9 The moneys in the account shall not be encumbered except for  
10 partial or full payment for the provision of the transient  
11 vacation rental purchased or to make refunds for services not  
12 performed, less any amounts for cancellation fees that were  
13 previously disclosed to the consumer.

14           (b) The owner of a transient vacation rental shall  
15 maintain all books and records necessary to comply with this  
16 chapter and the rules adopted by the department. The owner shall  
17 keep and maintain for a period of at least two years copies of all  
18 bank statements, deposit slips, canceled checks, drafts, and wire  
19 or electronic transaction documents relating to client trust  
20 accounts. The owner shall make such records available for  
21 inspection and audit within three business days of a written



1 request by the director or any county officer or agency charged  
2 with the administration of county zoning laws or the licensing  
3 of transient vacation rentals.

4       **§ -7 Prohibited acts.** (a) No owner of a transient  
5 vacation rental shall:

6       (1) Sell or advertise a transient vacation rental located  
7           in the State of Hawaii without first being licensed by  
8           the director under this chapter and including the  
9           license number and official seal in any advertisement  
10          or solicitation of the transient vacation rental;

11       (2) Conduct business as a licensed transient vacation  
12          rental without establishing and maintaining a client  
13          trust account, as required in section -6; or

14       (3) Otherwise violate any of the provisions of this  
15          chapter or rules adopted pursuant to this chapter.

16       (b) Any advertisement or written, graphic, or oral  
17          statement in connection with the solicitation of business for a  
18          transient vacation rental through an online rental service  
19          provider, an application or app, or other means of mass  
20          communication is prima facie evidence of the selling,



1 advertising, or conducting of business of a transient vacation  
2 rental.

3       **§ -8 Enforcement; inspection.** (a) The director may  
4 contract with qualified persons, including investigators, who  
5 shall be exempt from chapter 76, or delegate to the agency  
6 charged with the administration of county zoning laws to enforce  
7 this chapter.

8       (b) The officer or agent of the department or officer or  
9 agent of the agency charged with the administration of county  
10 zoning laws delegated by the department to enforce this chapter  
11 shall have the power to serve and execute warrants or issue  
12 citations to enforce this chapter.

13       (c) Any employee or agent of the department or officer or  
14 agent of the county charged with the administration of county  
15 zoning laws delegated by the department to enforce this chapter  
16 or the terms and conditions for licensing of transient vacation  
17 rentals under this chapter, upon written notification to the  
18 owner or local contact for the transient vacation rental, may  
19 enter upon, cross over, be upon, or remain upon privately owned  
20 land for the purpose of:



1 (1) Investigating and enforcing the compliance of the  
2 transient vacation rental with this chapter; and

3 (2) Investigating and enforcing the compliance of the  
4 vacation rental with the ordinances of the county in  
5 which the transient vacation rental is located.

6 (d) The employee or agent of the department or officer or  
7 agent of the county charged with the administration of county  
8 zoning laws delegated by the department to enforce this chapter  
9 shall have the powers and duties deemed necessary for the  
10 efficient and effective enforcement of this chapter. Whenever  
11 the employee or agent of the department or officer or agent of  
12 the county is refused entry upon land or to a building for the  
13 purpose of inspection under this section, the department or  
14 county may make a complaint to the district judge in whose  
15 circuit the land or building is located, and the district judge  
16 may thereupon issue a warrant, directed to any police officer of  
17 the circuit, commanding the police officer to render sufficient  
18 assistance to the employee or agent. Whenever the existence of  
19 an illegal operation is discovered by an inspection under this  
20 section, the judge in whose circuit the land or building is



1 located shall allow a writ of injunction to abate and prevent  
2 the continuance of the illegal operation.

3 (e) The owner shall be required to pay an amount estimated  
4 to be necessary to cover the actual expenses of the inspection.  
5 The department or the county agency delegated to enforce this  
6 chapter shall establish by rule a fee schedule of reasonable  
7 expenses, which may include expenses for travel time and costs,  
8 time for the inspection of transient vacation rentals, and  
9 administrative costs for the enforcement of compliance with  
10 applicable state and county laws and ordinances.

11 (f) The penalties and fees for expenses collected by a  
12 county agency delegated by the department to enforce this  
13 chapter shall be realizations of the county enforcing this  
14 chapter to be deposited into a fund established by the county  
15 agency delegated by the department to enforce this chapter for  
16 the purpose of enforcing this chapter. The revenues from the  
17 penalties and fees collected by the county enforcing this  
18 chapter shall be deemed to satisfy article VIII, section 5, of  
19 the state constitution.

20 **§ -9 Penalty.** Any owner of a transient vacation rental  
21 who fails to comply with this chapter shall be assessed a civil



1 penalty of \$10,000 for each separate offense; provided that  
2 following a warning issued by the director or an agent of the  
3 county agency charged with the enforcement of this chapter, the  
4 owner shall be subject to a fine of \$2,000 for each separate  
5 offense."

6 SECTION 2. Section 237D-1, Hawaii Revised Statutes, is  
7 amended as follows:

8 1. By amending the definition of "gross rental" or "gross  
9 rental proceeds" to read:

10 "Gross rental" or "gross rental proceeds" means the gross  
11 receipts, including club fees, cash or accrued, of the taxpayer  
12 received as compensation for the furnishing of transient  
13 accommodations and the value proceeding or accruing from the  
14 furnishing of such accommodations without any deductions on  
15 account of the cost of property or services sold, the cost of  
16 materials used, labor cost, taxes, royalties, interest,  
17 discounts, or any other expenses whatsoever. Every taxpayer  
18 shall be presumed to be dealing on a cash basis unless the  
19 taxpayer proves to the satisfaction of the department of  
20 taxation that the taxpayer is dealing on an accrual basis and  
21 the taxpayer's books are so kept, or unless the taxpayer employs



1 or is required to employ the accrual basis for the purposes of  
2 the tax imposed by chapter 237 for any taxable year in which  
3 event the taxpayer shall report the taxpayer's gross income for  
4 the purposes of this chapter on the accrual basis for the same  
5 period.

6       The words "gross rental" or "gross rental proceeds" shall  
7 not be construed to include the amounts of taxes imposed by  
8 chapter 237 or this chapter on operators of transient  
9 accommodations and passed on, collected, and received from the  
10 consumer as part of the receipts received as compensation for  
11 the furnishing of transient accommodations. Where transient  
12 accommodations are furnished through arrangements made by a  
13 travel agency or tour packager at noncommissionable negotiated  
14 contract rates and the gross income is divided between the  
15 operator of transient accommodations on the one hand and the  
16 travel agency or tour packager on the other hand, gross rental  
17 or gross rental proceeds to the operator means only the  
18 respective portion allocated or distributed to the operator, and  
19 no more. For purposes of this definition, where the operator  
20 maintains a schedule of rates for identifiable groups of  
21 individuals, such as kamaainas, upon which the accommodations



1 are leased, let, or rented, gross rental or gross rental  
2 proceeds means the receipts collected and received based upon  
3 the scheduled rates and recorded as receipts in its books and  
4 records."

5 2. By amending the definition of "transient  
6 accommodations" to read:

7 "Transient accommodations" means the furnishing of a room,  
8 apartment, suite, or the like which is customarily occupied by a  
9 transient for less than one hundred eighty consecutive days for  
10 each letting by a hotel, apartment hotel, motel, [~~condominium~~  
11 ~~property regime or apartment as defined in chapter 514A or unit~~  
12 ~~as defined in chapter 514B, cooperative apartment, or rooming~~  
13 ~~house that provides living quarters, sleeping, or housekeeping~~  
14 ~~accommodations,]~~ condominium hotel as defined in section 467-30,  
15 transient vacation rental as defined in section -1, or other  
16 place in which lodgings are regularly furnished to transients  
17 for consideration."

18 SECTION 3. Section 237D-16, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) The director of taxation shall administer and enforce  
21 this chapter. In respect of:





1           (1) The examinations of books and records and of taxpayers  
2                   and other persons,  
3           (2) Procedure and powers upon failure or refusal by a  
4                   taxpayer to make a return or proper return, and  
5           (3) The general administration of this chapter,  
6 the director of taxation shall have all rights and powers  
7 conferred by chapter 237 with respect to taxes thereby or  
8 thereunder imposed; and, without restriction upon these rights  
9 and powers, sections 237-8 and 237-36 to [~~237-41~~] 237-41.5 are  
10 made applicable to and with respect to the taxes, taxpayers, tax  
11 officers, and other persons, and the matters and things affected  
12 or covered by this chapter, insofar as not inconsistent with  
13 this chapter, in the same manner, as nearly as may be, as in  
14 similar cases covered by chapter 237."

15           SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17           SECTION 5. This Act shall take effect on July 1, 2020.



**Report Title:**

Department of Commerce and Consumer Affairs; Transient Vacation Rentals

**Description:**

Establishes licensing requirements and enforcement provisions for transient vacation rentals to be administered by the department of commerce and consumer affairs. (HB825 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

