

JAN 28 2015

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

1 SECTION 1. Act 326, Session Laws of Hawaii 2012, is
2 amended as follows:

3 1. By amending section 1 to read:

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

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

16 Section 521-7, Hawaii Revised Statutes, also clearly states
17 that the only exemption from the landlord-tenant code for



1 transient rentals is transient occupancy on a day-to-day basis
2 in a hotel or motel. Since all other transient accommodations
3 are subject to the requirements of the landlord-tenant code,
4 operators of transient accommodations who live [~~without~~] out of
5 the State or on a different island are already required by law
6 to designate an on-island agent to act on their behalf. This
7 Act is intended to clarify that this requirement applies to all
8 operators of transient accommodations who live [~~without~~] out of
9 the State or on a different island.

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

19 The legislature also finds that requiring community,
20 condominium, and other similar associations to provide relevant
21 information to the department of taxation on all operators who



1 may be leasing their property as a transient accommodation will
2 help ensure compliance with appropriate state and county tax
3 laws. Requiring the counties to provide the department of
4 taxation with relevant information about operators of transient
5 accommodations will permit additional enforcement of relevant
6 state and county tax laws.

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

11 2. By amending section 2 to read:

12 "SECTION 2. Chapter 237D, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§237D- ~~[Local contact;]~~ On-island agent; relevant
16 information; advertisements; transient accommodations. (a) Any
17 operator of a transient accommodation shall designate [~~a local~~
18 ~~contact]~~ an on-island agent residing on the same island where
19 the transient accommodation is located.

20 (b) The operator shall furnish the name, address, and
21 contact information of the [~~local contact]~~ on-island agent to



1 any association of homeowners, community association,
2 condominium association, cooperative, or any other
3 nongovernmental entity with covenants, bylaws, and
4 administrative provisions with which the operator's compliance
5 is required for the property where the transient accommodation
6 is located. The operator shall notify and provide updated
7 information to that association or nongovernmental entity within
8 sixty calendar days of any change in the name, address, and
9 contact information of the [~~local contact.~~] on-island agent.

10 Any person or entity who wilfully fails to supply
11 information required under this subsection shall be subject to
12 the penalties under section 231-35; provided that a person or
13 entity shall not be subject to any term of imprisonment or
14 probation under section 231-35.

15 (c) Any nongovernmental entity with covenants, bylaws, and
16 administrative provisions which is formed pursuant to chapter
17 514A, 514B, or 421J, shall provide the department with all
18 relevant information[7] provided to them by its members,
19 maintained in its records, related to all operators who may be
20 leasing their property as transient accommodations by December
21 31 of each year, or within sixty calendar days of any change in



1 the relevant information, operation, or ownership of the
 2 transient accommodation. Any person or entity who wilfully
 3 fails to supply information required under this subsection shall
 4 ~~[be subject to the penalties under section 231-35, provided that~~
 5 ~~a person or entity shall not be subject to any term of~~
 6 ~~imprisonment or probation under section 231-35.]~~ pay a civil
 7 penalty equal to \$75 multiplied by the number of members
 8 comprising the entity.

9 (d) Each county shall provide the department with
 10 information necessary to enforce this section. Notwithstanding
 11 any provision of title 14 to the contrary, the department shall
 12 provide the counties with information necessary for the
 13 enforcement of county real property tax laws.

14 (e) The name and phone number of the ~~[local contact]~~ on-
 15 island agent for each transient accommodation shall be included
 16 in any transient accommodation contract or written rental
 17 agreement and shall be prominently posted in the transient
 18 accommodation. The ~~[local contact]~~ on-island agent shall reside
 19 on the same island as the transient accommodation, and shall
 20 meet all other requirements under subsection (a) ~~[+]~~ and chapter
 21 467. Any person or entity who wilfully fails to supply



1 information required under this subsection, or operator who does
2 not secure an on-island agent meeting the requirements of this
3 section, shall be subject to the penalties under section 231-35;
4 provided that a person or entity shall not be subject to any
5 term of imprisonment or probation under section 231-35.

6 (f) The registration identification number issued pursuant
7 to section 237D-4 shall be provided on a website or by online
8 link and displayed in all advertisements and solicitations on
9 websites regarding transient accommodations for which the
10 registration number is issued.

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

13 (h) For the purposes of this section:

14 [~~"Local contact"~~] "On-island agent" means [~~an individual or~~
15 ~~company~~]:

16 (1) A real estate broker, real estate salesperson under
17 the direction of a real estate broker, condominium
18 hotel operator, or real estate brokerage that is
19 licensed or registered under chapter 467 and
20 contracted by the operator of the transient



1 accommodation to provide services required by this
2 section[-]; or

3 (2) A custodian or caretaker, as defined in section 467-1,
4 who is an individual employed by the operator of the
5 transient accommodation to provide services required
6 by this section.

7 [~~Nothing in this section shall be deemed to create an employer-~~
8 ~~employee relationship between an operator and its local~~
9 ~~contact.~~] If the person performing the role of an operator's on-
10 island agent is not licensed or registered under chapter 467,
11 the person shall be considered to be acting as a custodian or
12 caretaker, as defined in section 467-1. The unlicensed person
13 shall be an employee of the operator and may act as an on-island
14 agent for only one operator.

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

19 3. By amending section 4 to read:

20 "SECTION 4. This Act shall take effect on July 1, 2012[+
21 ~~provided that this Act shall be repealed on December 31, 2015]."~~



S.B. NO. 1031

1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2015.

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INTRODUCED BY: Randy H. Palko
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[Signature]



S.B. NO. 1031

Report Title:

Transient Accommodations; Owners and Operators; Reporting Requirements; Penalties

Description:

Amends Act 326, Session Laws of Hawaii 2012, by (1) Replacing the term "local contact" with "on-island agent"; (2) Defining the term "on-island agent"; (3) Clarifying that an association's duty to report to DOTAX is limited to the relevant information an association actually receives from a transient accommodation operator; (4) Amending penalties imposed on associations for failure to report; and (5) Repealing the sunset date.

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

