

JAN 29 2015

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 TRANSIENT VACATION RENTALS

6 § -1 Definitions. As used in this chapter:

7 "Application" or "app" means a type of software that allows
8 access to an online rental service provider.

9 "Bed and breakfast establishment" or "bed and breakfast
10 home" means a single-family dwelling occupied by an owner or a
11 guest house let for consideration for less than thirty days.

12 "Department" means the department of commerce and consumer
13 affairs.

14 "Director" means the director of commerce and consumer
15 affairs.

16 "Dwelling" means:

17 (1) A single-family dwelling unit;



- 1 (2) A multi-family dwelling unit;
- 2 (3) A bed and breakfast establishment or bed and breakfast
- 3 home; and
- 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 or lessee,
11 residing on or having a principal place of business on the same
12 island where the transient vacation rental property is located
13 who shall be available on a twenty-four-hour, seven-days-per-
14 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" means any person who rents or uses a transient
8 vacation rental for compensation or fees for less than thirty
9 days.

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

17 § -2 Powers and duties of the director. In addition to
18 any other powers and duties authorized by law, the director may:

19 (1) Grant licenses to transient vacation rental owners
20 pursuant to this chapter;



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1 (2) Adopt, amend, or repeal rules as the director deems
2 proper to fully effectuate this chapter;

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

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

12 § -3 License; requirements; renewal. (a) No transient
13 vacation rental shall operate or do business in this State
14 without the owner first obtaining a license under this chapter.
15 The application for a license shall be submitted on forms
16 prescribed by the director and with the appropriate fees,
17 prescribed by the director, which shall be deposited into the
18 compliance resolution fund under section 26-9(o).

19 (b) The application shall include:

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



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



1 (B) The transient accommodations tax registration
2 number issued pursuant to chapter 237D; and

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

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

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

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



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

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

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

14 § -5 Transient vacation rentals; requirements. (a) The
15 owner or lessor of a transient vacation rental shall:

16 (1) Prominently post the name and phone number of the
17 local contact in the transient vacation rental, and
18 include the information in any transient vacation
19 rental contract or rental agreement; and

20 (2) Include the license number and official seal of the
21 transient vacation rental in any advertisements or



1 solicitations of the transient vacation rental through
2 an online rental service provider, an application or
3 app, or other means of mass communication.

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

- 9 (1) The address of the transient vacation rental;
- 10 (2) The name, address, and contact information of the
11 owner of the transient vacation rental, and license
12 number of the transient vacation rental; and
- 13 (3) The name, phone number, and address of the local
14 contact, who shall be available on a twenty-four-hour,
15 seven-days-per-week basis.

16 The owner shall notify and provide updated information to the
17 nongovernmental entity within sixty calendar days of any change
18 in the required information.

19 (c) The owner shall comply with all county ordinances
20 relating to the posting of information in the transient vacation
21 rental, posting of signs, provision of safety information,



1 parking, notification of neighbors, and other requirements
2 required by the county.

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

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



1 accounts. The owner shall make such records available for
2 inspection and audit within three business days of a written
3 request by the director or the officer or agency charged with the
4 administration of county zoning laws or the licensing of
5 transient vacation rentals.

6 § -7 Prohibited acts. (a) No owner of a transient
7 vacation rental shall:

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

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

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

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



1 communication is prima facie evidence of the selling,
2 advertising, or conducting of business of a transient vacation
3 rental.

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

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

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



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

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

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

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



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

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



1 proceeds means the receipts collected and received based upon
2 the scheduled rates and recorded as receipts in its books and
3 records."

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

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

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on January 1, 2016.

20

INTRODUCED BY:

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S.B. NO. 1237

Report Title:

Department of Commerce and Consumer Affairs; Transient Vacation Rentals

Description:

Proscribes licensing requirements and enforcement provisions for transient vacation rentals under the department of commerce and consumer affairs. Takes effect on 1/1/2016.

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