

JAN 20 2016

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

1 SECTION 1. The legislature finds that there are
2 communities in Hawaii that are zoned as residential that have
3 become transient accommodation communities. There is an
4 abundance of web listings on the Internet for vacation rentals
5 throughout the State, and the owners and operators of some of
6 these vacation rentals are not paying transient accommodations
7 taxes or general excise taxes, resulting in a loss of state
8 revenue. Counties are also losing revenue when an owner of a
9 vacation rental receives "home owners" discounts on property
10 taxes paid for a residential home that is used for commercial
11 purposes without a commercial property rate. The Hawaii
12 Visitors and Convention Bureau reports that at least forty per
13 cent of all visitors to the islands are now staying in vacation
14 rentals. The increase in vacation rentals is creating negative
15 impacts on the State. The number of long-term rental units has
16 decreased because owners see greater profit in vacation rentals,
17 the cost of housing is increasing because houses are being



1 purchased specifically to be used as vacation rentals and not as
2 primary residences, and there is a loss of revenue to permitted
3 hotels, lodges, and bed and breakfast establishments that pay
4 transient accommodations taxes and general excise taxes.

5 The legislature further finds that visitors who stay in
6 vacation rentals may not be getting what is advertised, which
7 can be detrimental to Hawaii's reputation. Visitors are not
8 receiving personal services that are provided by hotels, lodges,
9 and bed and breakfast establishments that ensure quality and
10 safety. Visitors also are receiving less information concerning
11 where to hike and not, where it is safe to swim, and other
12 safety information regarding weather, rips and undertows, and
13 surf conditions.

14 The purpose of this Act is to establish additional
15 registration requirements and other regulations for transient
16 vacation rentals to ensure that these commercial enterprises
17 contribute the proper amount of tax moneys to state and county
18 revenue streams, verify that transient vacation rentals are
19 abiding by all county zoning ordinances, and guarantee quality
20 experiences to visitors that are safe and contribute positively
21 to the State's reputation as a prime tourist destination.



1 SECTION 2. 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;
18 (2) A multi-family dwelling unit;
19 (3) A bed and breakfast establishment or bed and breakfast
20 home; or



1 (4) An "apartment" defined in section 514A-3 or "unit"
2 defined in section 514B-3 that is not part of a hotel-
3 condominium defined in section 486K-1.

4 "Enforcement agent" means a qualified person, agent, or
5 officer, including an investigator, with whom the director
6 contracts, who shall be exempt from chapter 76, or a delegate of
7 the agency charged with the administration of county zoning laws
8 designated by the director to enforce this chapter.

9 "Lease", "let", or "rental" means the leasing or rental of
10 lodgings in a transient vacation rental for compensation or
11 fees, including club fees.

12 "Local contact" means an individual residing on the same
13 island as the transient vacation rental or an entity with a
14 place of business and at least one employee, officer, partner,
15 member, or other person working on behalf of the company who is
16 residing on the same island as the transient vacation rental who
17 shall be available on a twenty-four-hour, seven-days-per-week
18 basis.

19 "Lodging" means temporary sleeping accommodations in a
20 dwelling or portion of a dwelling.



1 "Nongovernmental entity" includes an association of
2 homeowners, a community association, association of apartment
3 owners as defined in section 514A-3, and board or board of
4 directors as defined in section 514B-3.

5 "Online rental service provider" means any company,
6 organization, club, group, or application that offers a
7 transient vacation rental service via the Internet.

8 "Operator" means any person operating a transient vacation
9 rental, whether as owner or proprietor or as lessee, sublessee,
10 mortgagee in possession, licensee, or otherwise, or engaging or
11 continuing in any service business which involves the actual
12 furnishing of a transient vacation rental.

13 "Owner" means the grantee in the deed and instrument for
14 the transient vacation rental recorded in the bureau of
15 conveyances.

16 "Transient vacation rental" means a dwelling or lodging
17 located in the State let by an owner, operator, or lessee for
18 less than one hundred eighty days. Transient vacation rental
19 does not include any facility owned or used by a government
20 agency or a tenement home, group home, group residence, group



1 living arrangement, boarding house, or rooming house certified
2 pursuant to section 445-94.

3 **§ -2 Powers and duties of the director.** In addition to
4 any other powers and duties authorized by law, the director may:

5 (1) Grant licenses to transient vacation rental owners and
6 operators pursuant to this chapter;

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

9 (3) Fine, suspend, terminate, or revoke any license for
10 any cause prescribed by this chapter, or for any
11 violation of the rules, and refuse to grant any
12 license for any cause which would be grounds for
13 revocation, termination, or suspension of a license;
14 and

15 (4) Investigate the actions of any unlicensed person
16 acting or alleged to be acting in the capacity of a
17 licensee under this chapter.

18 **§ -3 License; requirements; renewal.** (a) Beginning
19 January 1, 2017, no owner or operator of a transient vacation
20 rental shall operate or do business in this State without a
21 license granted by the director under this chapter. The



1 application for a license shall be submitted on forms prescribed
2 by the director and with the appropriate fees, prescribed by the
3 director, which shall be deposited into the compliance
4 resolution fund under section 26-9(o).

5 (b) The application shall include:

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

8 (2) The name, address, and contact information of the
9 owner or operator of the transient vacation rental;

10 (3) The name, address, and contact information of the
11 local contact for the transient vacation rental;

12 (4) The name, address, and contact information of any
13 nongovernmental entity with authority over the
14 property on which the transient vacation rental is
15 located, along with a copy of the covenants, by-laws,
16 and administrative provisions with which compliance of
17 the transient vacation rental is required;

18 (5) Proof of compliance with all county ordinances
19 relating to the regulation of transient vacation
20 rentals, including any registration number, license,



1 permit, special use permit, or non-conforming use
2 permit required by the county;

3 (6) Submission of:

4 (A) The general excise tax license number issued
5 pursuant to chapter 237;

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

8 (C) The general excise tax and transient
9 accommodations tax filings for the previous two
10 years, for any transient vacation rental existing
11 on the effective date of Act , Session Laws
12 of Hawaii 2016, for which the applicant is the
13 owner or operator; and

14 (7) The name of the application or app, name of the online
15 rental service provider or providers, the address of
16 any website on the Internet, or other means of mass
17 communications utilized for advertisements or
18 solicitations of the transient vacation rental.

19 The owner or operator shall notify the department within sixty
20 days of any change in the information required by this
21 subsection.



1 (c) The owner or operator of a transient vacation rental
2 shall renew the license each year on or before December 31 on a
3 form provided by the department. The owner or operator shall
4 verify and update the information required in subsection (b) if
5 necessary upon renewal.

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

9 **§ -4 Issuance of license and seal; provision of**
10 **information to the county.** (a) Each license shall be in a form
11 prescribed and signed by the director and issued in the name of
12 the department with an official seal as evidence of the validity
13 of the license.

14 (b) The department shall maintain and annually update a
15 list of the licensed transient vacation rentals, and shall
16 provide the county agency charged with the administration of
17 county zoning laws all the information required by section -3
18 regarding the transient vacation rentals licensed in the county.

19 **§ -5 Transient vacation rentals; requirements.** (a) The
20 owner or operator of a transient vacation rental shall:



- 1 (1) Prominently post the name and phone number of the
2 local contact in the transient vacation rental, and
3 include the information in any transient vacation
4 rental contract or rental agreement; and
- 5 (2) Include the license number and official seal of the
6 transient vacation rental in any advertisements or
7 solicitations of the transient vacation rental through
8 an online rental service provider, an application or
9 app, or other means of mass communication.
- 10 (b) The owner or operator shall submit to the applicable
11 nongovernmental entity all covenants, bylaws, and administrative
12 provisions with which compliance is required for the property on
13 which the transient vacation rental is located, along with the
14 following:
- 15 (1) The address of the transient vacation rental;
- 16 (2) The name, address, and contact information of the
17 owner or operator of the transient vacation rental;
- 18 (3) The name, address, and contact information of the
19 local contact;
- 20 (4) The general excise tax license number issued pursuant
21 to chapter 237;



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

3 (6) The license number of the transient vacation rental.

4 The owner or operator shall notify and provide updated
5 information to the nongovernmental entity within sixty calendar
6 days of any change in the required information.

7 (c) The owner or operator shall comply with all county
8 ordinances relating to the posting of information in the
9 transient vacation rental, posting of signs, provision of safety
10 information, parking, notification of neighbors, and other
11 requirements established by the county.

12 **§ -6 Prohibited acts; penalty.** (a) No owner or
13 operator of a transient vacation rental shall:

14 (1) Operate or conduct the business of a transient
15 vacation rental located in the State without a license
16 granted by the director under this chapter;

17 (2) Sell or advertise a transient vacation rental located
18 in the State without a license granted by the director
19 under this chapter or fail to include the license
20 number and official seal in any advertisement or
21 solicitation of the transient vacation rental; or



1 (3) Otherwise violate any provision of this chapter or
2 rules adopted pursuant to this chapter.

3 (b) Any advertisement or written, graphic, or oral
4 statement in connection with the solicitation of business for a
5 transient vacation rental through an online rental service
6 provider, an application or app, or other means of mass
7 communication is prima facie evidence of the selling,
8 advertising, operation, or conducting of business of a transient
9 vacation rental.

10 (c) Any owner or operator of a transient vacation rental
11 who sells, advertises, operates, or conducts the business of a
12 transient vacation rental without a license granted by the
13 director under this chapter shall pay a civil penalty of \$1,000
14 for each separate offense.

15 (d) All penalties collected by the department shall be
16 deposited into the compliance resolution fund under section
17 26-9(o) for the purpose of enforcing this chapter.

18 **§ -7 Enforcement; inspection.** (a) The director may
19 contract with qualified persons, including investigators, who
20 shall be exempt from chapter 76, or delegate the agency charged



1 with the administration of county zoning laws to enforce this
2 chapter as enforcement agents.

3 (b) An enforcement agent shall have the power to serve and
4 execute warrants or issue citations to enforce any of the
5 provisions of this chapter.

6 (c) Any enforcement agent, upon written notification to
7 the owner, operator, or local contact for the transient vacation
8 rental, may enter upon, cross over, be upon, or remain upon
9 privately owned land for the purpose of:

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

12 (2) Investigating and enforcing the compliance of the
13 vacation rental with the ordinances of the county in
14 which the transient vacation rental is located.

15 (d) The enforcement agent shall have the powers and duties
16 deemed necessary for the efficient and effective enforcement of
17 this chapter. Whenever the enforcement agent is refused entry
18 upon land or to a building for the purpose of inspection under
19 this section, the department or county may make a complaint to
20 the district judge in whose circuit the land or building is
21 located, and the district judge may thereupon issue a warrant,



1 directed to any police officer of the circuit, commanding the
2 police officer to render sufficient assistance to the employee
3 or agent. Whenever the existence of an illegal operation is
4 discovered by an inspection under this section, the judge in
5 whose circuit the land or building is located shall allow a writ
6 of injunction to abate and prevent the continuance of the
7 illegal operation.

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

16 (f) The penalties and fees for expenses collected by a
17 county agency delegated by the department to enforce this
18 chapter shall be realizations of the county enforcing this
19 chapter to be deposited into a fund established by the county
20 agency delegated by the department to enforce this chapter for
21 the purpose of enforcing this chapter. The revenues from the



1 penalties and fees collected by the county enforcing this
2 chapter shall be deemed to satisfy article VIII, section 5, of
3 the state constitution."

4 SECTION 3. Section 87A-42, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) In any fiscal year subsequent to the 2017-2018 fiscal
7 year in which a county public employer's contributions into the
8 fund are less than the amount of the annual required
9 contribution, the amount that represents the excess of the
10 annual required contribution over the county public employer's
11 contributions shall be deposited into the fund from a portion of
12 all transient accommodations tax revenues collected by the
13 department of taxation under section [~~237D-6.5(b)(4)~~.]
14 237D-6.5(b)(5). . The director of finance shall deduct the amount
15 necessary to meet the county public employer's annual required
16 contribution from the revenues derived under section
17 [~~237D-6.5(b)(4)~~] 237D-6.5(b)(5) and transfer the amount to the
18 board for deposit into the appropriate account of the separate
19 trust fund."

20 SECTION 4. Section 171-19, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) There is created in the department a special fund to
2 be designated as the "special land and development fund".
3 Subject to the Hawaiian Homes Commission Act of 1920, as
4 amended, and section 5(f) of the Admission Act of 1959, all
5 proceeds of sale of public lands, including interest on deferred
6 payments; all moneys collected under section 171-58 for mineral
7 and water rights; all rents from leases, licenses, and permits
8 derived from public lands; all moneys collected from lessees of
9 public lands within industrial parks; all fees, fines, and other
10 administrative charges collected under this chapter and chapter
11 183C; a portion of the highway fuel tax collected under chapter
12 243; all moneys collected by the department for the commercial
13 use of public trails and trail accesses under the jurisdiction
14 of the department; transient accommodations tax revenues
15 collected pursuant to section [~~237D-6.5(b)-(5)+~~] 237D-6.5(b)(6);
16 and private contributions for the management, maintenance, and
17 development of trails and accesses shall be set apart in the
18 fund and shall be used only as authorized by the legislature for
19 the following purposes:

20 (1) To reimburse the general fund of the State for
21 advances made that are required to be reimbursed from



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- 1 the proceeds derived from sales, leases, licenses, or
2 permits of public lands;
- 3 (2) For the planning, development, management, operations,
4 or maintenance of all lands and improvements under the
5 control and management of the board pursuant to title
6 12, including but not limited to permanent or
7 temporary staff positions who may be appointed without
8 regard to chapter 76; provided that transient
9 accommodations tax revenues allocated to the fund
10 shall be expended as provided in section
11 ~~[237D-6.5(b)(5);]~~ 237D-6.5(b)(6);
- 12 (3) To repurchase any land, including improvements, in the
13 exercise by the board of any right of repurchase
14 specifically reserved in any patent, deed, lease, or
15 other documents or as provided by law;
- 16 (4) For the payment of all appraisal fees; provided that
17 all fees reimbursed to the board shall be deposited in
18 the fund;
- 19 (5) For the payment of publication notices as required
20 under this chapter; provided that all or a portion of
21 the expenditures may be charged to the purchaser or



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- 1 lessee of public lands or any interest therein under
2 rules adopted by the board;
- 3 (6) For the management, maintenance, and development of
4 trails and trail accesses under the jurisdiction of
5 the department;
- 6 (7) For the payment to private land developers who have
7 contracted with the board for development of public
8 lands under section 171-60;
- 9 (8) For the payment of debt service on revenue bonds
10 issued by the department, and the establishment of
11 debt service and other reserves deemed necessary by
12 the board;
- 13 (9) To reimburse the general fund for debt service on
14 general obligation bonds issued to finance
15 departmental projects, where the bonds are designated
16 to be reimbursed from the special land and development
17 fund;
- 18 (10) For the protection, planning, management, and
19 regulation of water resources under chapter 174C; and
20 (11) For other purposes of this chapter."



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1 SECTION 5. Section 201B-10, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) There is established outside the state treasury a
4 tourism emergency special fund to be administered by the board,
5 into which shall be deposited the revenues prescribed by
6 ~~[section 237D-6.5(b).]~~ section 237D-6.5(b)(4)(C). All
7 investment earnings from moneys in the special fund shall be
8 credited to the tourism special fund established pursuant to
9 section 201B-11."

10 SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Revenues collected under this chapter shall be
13 distributed in the following priority, with the excess revenues
14 to be deposited into the general fund:

15 (1) Fifty per cent shall be allocated to the counties with
16 established county regulations for transient vacation
17 rentals under chapter ; provided that an additional
18 five per cent shall be allocated to the department of
19 commerce and consumer affairs for enforcement of
20 chapter ;



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1 [~~+1~~] (2) \$1,500,000 shall be allocated to the Turtle Bay
2 conservation easement special fund beginning July 1,
3 2015, for the reimbursement to the state general fund
4 of debt service on reimbursable general obligation
5 bonds, including ongoing expenses related to the
6 issuance of the bonds, the proceeds of which were used
7 to acquire the conservation easement and other real
8 property interests in Turtle Bay, Oahu, for the
9 protection, preservation, and enhancement of natural
10 resources important to the State, until the bonds are
11 fully amortized;

12 [~~+2~~] (3) \$26,500,000 shall be allocated to the convention
13 center enterprise special fund established under
14 section 201B-8;

15 [~~+3~~] (4) \$82,000,000 shall be allocated to the tourism
16 special fund established under section 201B-11;
17 provided that:

18 (A) Beginning on July 1, 2012, and ending on June 30,
19 2015, \$2,000,000 shall be expended from the
20 tourism special fund for development and
21 implementation of initiatives to take advantage



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1 of expanded visa programs and increased travel
2 opportunities for international visitors to
3 Hawaii;

4 (B) Of the \$82,000,000 allocated:

5 (i) \$1,000,000 shall be allocated for the
6 operation of a Hawaiian center and the
7 museum of Hawaiian music and dance at the
8 Hawaii convention center; and

9 (ii) 0.5 per cent of the \$82,000,000 shall be
10 transferred to a sub-account in the tourism
11 special fund to provide funding for a safety
12 and security budget, in accordance with the
13 Hawaii tourism strategic plan 2005-2015; and

14 (C) Of the revenues remaining in the tourism special
15 fund after revenues have been deposited as
16 provided in this paragraph and except for any sum
17 authorized by the legislature for expenditure
18 from revenues subject to this paragraph,
19 beginning July 1, 2007, funds shall be deposited
20 into the tourism emergency special fund,
21 established in section 201B-10, in a manner



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1 sufficient to maintain a fund balance of
2 \$5,000,000 in the tourism emergency special fund;
3 ~~[(4)]~~ (5) \$103,000,000 for fiscal year 2014-2015,
4 \$103,000,000 for fiscal year 2015-2016, and
5 \$93,000,000 for each fiscal year thereafter shall be
6 allocated as follows: Kauai county shall receive 14.5
7 per cent, Hawaii county shall receive 18.6 per cent,
8 city and county of Honolulu shall receive 44.1 per
9 cent, and Maui county shall receive 22.8 per cent;
10 provided that commencing with fiscal year 2018-2019, a
11 sum that represents the difference between a county
12 public employer's annual required contribution for the
13 separate trust fund established under section 87A-42
14 and the amount of the county public employer's
15 contributions into that trust fund shall be retained
16 by the state director of finance and deposited to the
17 credit of the county public employer's annual required
18 contribution into that trust fund in each fiscal year,
19 as provided in section 87A-42, if the respective
20 county fails to remit the total amount of the county's



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1 required annual contributions, as required under
2 section 87A-43; and
3 [+5+] (6) \$3,000,000 shall be allocated to the special land
4 and development fund established under section 171-19;
5 provided that the allocation shall be expended in
6 accordance with the Hawaii tourism authority strategic
7 plan for:

- 8 (A) The protection, preservation, maintenance, and
9 enhancement of natural resources, including
10 beaches, important to the visitor industry;
- 11 (B) Planning, construction, and repair of facilities;
12 and
- 13 (C) Operation and maintenance costs of public lands,
14 including beaches, connected with enhancing the
15 visitor experience.

16 All transient accommodations taxes shall be paid into the
17 state treasury each month within ten days after collection and
18 shall be kept by the state director of finance in special
19 accounts for distribution as provided in this subsection.



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1 As used in this subsection, "fiscal year" means the twelve-
2 month period beginning on July 1 of a calendar year and ending
3 on June 30 of the following calendar year."

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 2016.

7

INTRODUCED BY:
By Request

Will Egan



S.B. NO. 2048

Report Title:

Department of Commerce and Consumer Affairs; Transient Vacation Rentals; Licensing

Description:

Proscribes licensing requirements and enforcement provisions for transient vacation rentals under the department of commerce and consumer affairs. Requires license beginning on 1/1/2017.

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

