

JAN 27 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 is an
2 increasing number of illegal vacation rentals in the State that
3 contributes to a reduction in state tax revenue. Data indicates
4 that while hotels continue to be the preferred type of
5 accommodation, a growing number of visitors to the State are
6 using single family homes and residential condominiums as short-
7 term vacation rentals. According to a recent study by the
8 Hawaii tourism authority, approximately 22,238 residential units
9 across the State are being offered on websites as available for
10 short-term vacation rentals for under thirty days. Based on the
11 Hawaii tourism authority's estimate of vacation rentals in
12 Hawaii, many of the vacation rentals available on the island of
13 Oahu are operating without a legal permit.

14 The legislature further finds that although local county
15 agencies have successfully shut down many illegal vacation
16 rentals in past years, the rise of online marketing has worsened
17 the problem and made it difficult for authorities to ensure that



1 vacation rental operators are paying the required taxes
2 associated with such rentals. Unauthorized short-term vacation
3 rentals significantly impact the communities in which they are
4 located, by decreasing the availability of long-term rental
5 housing for local residents and reducing revenue for the State.

6 The purpose of this Act is to establish licensing
7 requirements, penalties, and enforcement provisions for
8 transient vacation rentals under the department of commerce and
9 consumer affairs.

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

13 **"CHAPTER**

14 **TRANSIENT VACATION RENTALS**

15 § -1 **Definitions.** As used in this chapter:

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

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



1 "Department" means the department of commerce and consumer
2 affairs.

3 "Director" means the director of commerce and consumer
4 affairs.

5 "Dwelling" means:

6 (1) A single-family dwelling unit;

7 (2) A multi-family dwelling unit;

8 (3) A bed and breakfast establishment or bed and breakfast
9 home; and

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

13 "Let" means to rent a transient vacation rental for
14 compensation or fees.

15 "Local contact" means the owner or an operator, lessee, or
16 any individual or company, contracted by the owner or lessee,
17 residing on or having a principal place of business on the same
18 island where the transient vacation rental property is located
19 who shall be available on a twenty-four-hour, seven-days-per-
20 week basis.



1 "Lodging" means temporary sleeping accommodations in a
2 dwelling or portion of a dwelling.

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

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

10 "Owner" means the grantee in the deed and instrument for
11 the transient vacation rental recorded in the bureau of
12 conveyances.

13 "Transient" means any person who rents or uses a transient
14 vacation rental for compensation or fees for less than thirty
15 days.

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



1 home, group residence, group living arrangement, boarding house,
2 or rooming house certified 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
6 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) No transient
19 vacation rental shall operate or do business in this State
20 without the owner first obtaining a license under this chapter.
21 The application for a license shall be submitted on forms



1 prescribed by the director and with the appropriate fees,
2 prescribed by the director, which shall be deposited into the
3 compliance resolution fund under section 26-9(o).

4 (b) The application shall include:

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

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

9 (3) The name, phone number, and address of the local
10 contact for the transient vacation rental;

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

17 (5) Proof of compliance with county ordinances relating to
18 the regulation of transient vacation rentals,
19 including any registration number, license, permit,
20 special use permit, or non-conforming use permit that
21 may be required by the county;



- 1 (6) Submission of:
- 2 (A) The general excise tax license number issued
- 3 pursuant to chapter 237;
- 4 (B) The transient accommodations tax registration
- 5 number issued pursuant to chapter 237D; and
- 6 (C) The general excise tax and transient
- 7 accommodations tax filings for the previous two
- 8 years, for any transient vacation rental existing
- 9 on the effective date of this Act for which the
- 10 applicant is the owner; and
- 11 (7) The name of the application or app, name of the online
- 12 rental service provider or providers, the address of
- 13 any website on the Internet, or other means of mass
- 14 communications being utilized for advertisements or
- 15 solicitations of the transient vacation rental.
- 16 The owner shall notify the department within sixty days of any
- 17 change in the information required by this subsection.
- 18 (c) The owner of a transient vacation rental shall renew
- 19 its license each year on or before December 31 on a form
- 20 provided by the department, which shall provide the owner an



1 opportunity to verify or update the information required in
2 subsection (b).

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

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

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

16 § -5 Transient vacation rentals; requirements. (a) The
17 owner or lessor of a transient vacation rental shall:

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



1 (2) Include the license number and official seal of the
2 transient vacation rental in any advertisements or
3 solicitations of the transient vacation rental through
4 an online rental service provider, an application or
5 app, or other means of mass communication.

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

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

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



1 (c) The owner shall comply with all county ordinances
2 relating to the posting of information in the transient vacation
3 rental, posting of signs, provision of safety information,
4 parking, notification of neighbors, and other requirements
5 required by the county.

6 § -6 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 without first being licensed by the
10 director under this chapter and including the license
11 number and official seal in any advertisement or
12 solicitation of the transient vacation rental; or

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

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



1 § -7 **Enforcement; inspection.** (a) The director may
2 contract with qualified persons, including investigators, who
3 shall be exempt from chapter 76, or delegate to the agency
4 charged with the administration of county zoning laws to enforce
5 this chapter.

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

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

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



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

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



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

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

18 § -8 **Penalty.** Any owner of a transient vacation rental
19 who fails to comply with this chapter shall pay a civil penalty
20 of \$10,000 for each separate offense; provided that following a
21 warning issued by the director or an agent of the county charged



1 with the enforcement of this chapter, the owner shall be subject
2 to a fine of \$2,000 for each separate offense."

3 SECTION 3. Section 237D-1, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending the definition of "gross rental" or "gross
6 rental proceeds" to read:

7 ""Gross rental" or "gross rental proceeds" means the gross
8 receipts, including club fees, cash or accrued, of the taxpayer
9 received as compensation for the furnishing of transient
10 accommodations and the value proceeding or accruing from the
11 furnishing of such accommodations without any deductions on
12 account of the cost of property or services sold, the cost of
13 materials used, labor cost, taxes, royalties, interest,
14 discounts, or any other expenses whatsoever. Every taxpayer
15 shall be presumed to be dealing on a cash basis unless the
16 taxpayer proves to the satisfaction of the department of
17 taxation that the taxpayer is dealing on an accrual basis and
18 the taxpayer's books are so kept, or unless the taxpayer employs
19 or is required to employ the accrual basis for the purposes of
20 the tax imposed by chapter 237 for any taxable year in which
21 event the taxpayer shall report the taxpayer's gross income for



1 the purposes of this chapter on the accrual basis for the same
2 period.

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



1 the scheduled rates and recorded as receipts in its books and
2 records."

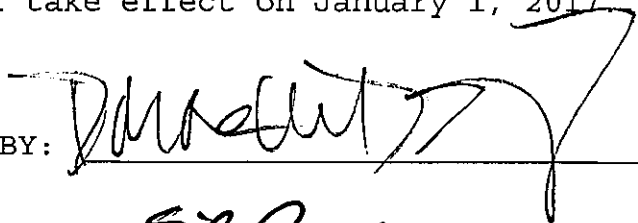
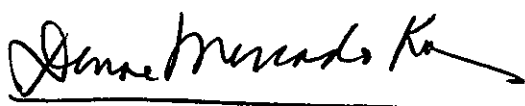

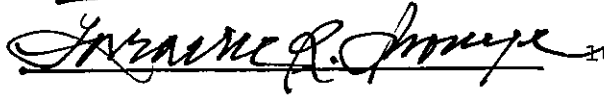
3 2. By amending the definition of "transient
4 accommodations" to read:

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

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

18 SECTION 5. This Act shall take effect on January 1, 2017.

19 INTRODUCED BY:



S.B. NO. 2794

Report Title:

Department of Commerce and Consumer Affairs; Transient Vacation Rentals

Description:

Establishes licensing requirements, penalties, and enforcement provisions for transient vacation rentals under the department of commerce and consumer affairs. Takes effect on 1/1/2017.

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