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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that, under certain  
2 circumstances, allowing a private person to act as a tax  
3 collection agent is likely to ease the burden of collecting  
4 taxes. Section 237-9(e), Hawaii Revised Statutes, allows a  
5 person engaged in network marketing, multi-level marketing, or  
6 other similar business to enter into an agreement with the  
7 department of taxation to act as a tax collection agent on  
8 behalf of its direct sellers. The legislature finds that  
9 similarly allowing a transient accommodations broker to act as a  
10 tax collection agent on behalf of providers of transient  
11 accommodations that utilize the services of the transient  
12 accommodations broker may facilitate the collection of transient  
13 accommodations taxes and general excise taxes.

14           The purpose of this Act is to require a transient  
15 accommodations broker to register as a tax collection agent with  
16 respect to transient accommodations taxes and general excise  
17 taxes for its operators and plan managers in a manner that



1 recognizes the dynamic changes occurring in the transient  
2 accommodations sector. This Act is not intended to preempt or  
3 otherwise limit the authority of the counties to adopt, monitor,  
4 and enforce local land use regulations, nor is this Act intended  
5 to transfer the authority to monitor and enforce such  
6 regulations away from the counties.

7 SECTION 2. Chapter 237, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 **"§237- Transient accommodations broker as tax collection**  
11 **agent.** (a) The director shall require a transient  
12 accommodations broker to register as a tax collection agent on  
13 behalf of all of its operators and plan managers by entering  
14 into a tax collection agreement with the director or by  
15 submitting a transient accommodations broker tax collection  
16 agent registration statement to the director.

17 The director may deny an application for registration as a  
18 transient accommodations broker tax collection agent under this  
19 section for any cause authorized by law, including any violation  
20 of this chapter or rules adopted pursuant thereto, violation of  
21 any prior tax collection agreement, or failure to meet minimum



1 criteria that may be set forth by the department in rules  
2 adopted pursuant to chapter 91.

3 Execution of a tax collection agreement shall not be a  
4 requirement for registration as a transient accommodations  
5 broker tax collection agent.

6 The director shall issue a certificate of registration or  
7 letter of denial within thirty days after a transient  
8 accommodations broker submits to the director a completed and  
9 signed transient accommodations broker tax collection agent  
10 registration statement, in a form prescribed by the department.

11 The registration shall be valid only for the transient  
12 accommodations broker tax collection agent in whose name it is  
13 issued, and for the website or platform designated therein, and  
14 shall not be transferable.

15 A registered transient accommodations broker tax collection  
16 agent shall be issued separate licenses under this chapter with  
17 respect to taxes payable on behalf of its operators and plan  
18 managers in its capacity as a registered transient  
19 accommodations broker tax collection agent and, if applicable,  
20 with respect to any taxes payable under this chapter for its own  
21 business activities. A registered transient accommodations



1 broker tax collection agent shall file with the department  
2 monthly or other periodic returns as required by section 237-30.  
3 The required reporting information shall include gross transient  
4 accommodations rentals, exemptions, and taxable income from the  
5 registered transient accommodations broker tax collection  
6 agent's business activity.

7 (b) In addition to its own responsibilities under this  
8 chapter, a registered transient accommodations broker tax  
9 collection agent shall report, collect, and pay over the taxes  
10 due under this chapter on behalf of all of its operators and  
11 plan managers from the date of registration until the  
12 registration is canceled as provided in subsection (h); provided  
13 that the registered transient accommodations broker tax  
14 collection agent's obligation to report, collect, and pay taxes  
15 on behalf of all of its operators and plan managers shall apply  
16 solely to transient accommodations in the State that are  
17 arranged or booked directly through the registered transient  
18 accommodations broker tax collection agent.

19 (c) The registered transient accommodations broker tax  
20 collection agent's operators and plan managers shall be deemed  
21 licensed under this chapter; provided that the licensure shall



1 apply solely to the business activity conducted directly through  
2 the registered transient accommodations broker tax collection  
3 agent from the date of registration until the registration is  
4 canceled as provided in subsection (h). For purposes of any  
5 other business activity, the operators and plan managers are  
6 subject to all requirements of title 14 as if this section did  
7 not exist.

8 (d) Under this section, a registered transient  
9 accommodations broker tax collection agent shall assume all  
10 obligations, rights, and responsibilities imposed by this  
11 chapter upon its operators and plan managers with respect to  
12 their business activities conducted directly through the  
13 registered transient accommodations broker tax collection agent  
14 from the date of registration until the registration is canceled  
15 as provided in subsection (h).

16 (e) A transient accommodations broker tax collection agent  
17 collects taxes imposed by this chapter on behalf of operators  
18 and plan managers, but if the agent does not report or pay the  
19 taxes due, then the agent shall be personally liable, together  
20 with penalties and interest as provided by law.



1       (f) All returns and other information provided by a  
2 registered transient accommodations broker tax collection agent,  
3 including the application for registration as a transient  
4 accommodations broker tax collection agent or any tax collection  
5 agreement, shall be confidential, and disclosure thereof shall  
6 be prohibited as provided in section 237-34; provided that:

7       (1) No disclosure of returns or information provided by  
8 the transient accommodations broker tax collection  
9 agent with respect to its operators and plan managers  
10 shall be made pursuant to section 237-34(b)(9), (10),  
11 or (11); and

12       (2) All returns and the names and addresses provided by a  
13 registered transient accommodations broker tax  
14 collection agent shall be disclosed to a duly  
15 authorized county tax official for the limited purpose  
16 of real property tax administration.

17       (g) A registered transient accommodations broker tax  
18 collection agent shall notify all of its operators and plan  
19 managers in the State that it has been designated to collect,  
20 report, and pay over the tax imposed by this chapter on their  
21 behalf.



1       The director may require the transient accommodations  
2 broker tax collection agent, as a condition of obtaining a  
3 license, to furnish with an annual return, a list including the  
4 federal tax identification number of all operators and plan  
5 managers for the taxable year to whom the transient  
6 accommodations broker tax collection agent has provided  
7 information returns required under the Internal Revenue Code,  
8 and any other information that is relevant to ensure proper  
9 payment of taxes under title 14.

10       A transient accommodations broker tax collection agent  
11 shall provide the names or addresses of any of its operators and  
12 plan managers to the director when such a request is made  
13 through a lawful and valid administrative process or upon waiver  
14 by the operator or plan manager.

15       (h) The registration provided for under this section shall  
16 be effective until canceled in writing.

17       A registered transient accommodations broker tax collection  
18 agent may cancel its registration under this section by  
19 delivering written notice of cancellation to the director and  
20 each of its operators and plan managers furnishing transient



1 accommodations in the State no later than ninety days prior to  
2 the effective date of cancellation.

3 The director may cancel a transient accommodations broker  
4 tax collection agent's registration under this section for any  
5 cause authorized by law, including any violation of this chapter  
6 or rules adopted pursuant thereto, or for violation of any  
7 applicable tax collection agreement, by delivering written  
8 notice of cancellation to the transient accommodations broker  
9 tax collection agent no later than ninety days prior to the  
10 effective date of cancellation.

11 (i) All registered transient accommodations broker tax  
12 collection agents shall:

13 (1) Prior to placing an advertisement, including an online  
14 advertisement, on the availability of a property for  
15 lease or rent on behalf of an operator or plan  
16 manager, notify the operator or plan manager that the  
17 subject property is required to be in compliance with  
18 applicable land use laws prior to retaining the  
19 services of the transient accommodations broker; and  
20 (2) Require the operator or plan manager to attest that  
21 the subject property is in compliance with applicable





1           land use laws by using the following language: "By  
2           accepting the Terms of Service, I agree and attest  
3           that I have reviewed all applicable laws and  
4           regulations and that my listing is in compliance."

5           (j) Nothing contained in this section shall limit the  
6           authority of the department under section 231-7 to conduct  
7           audits, investigations, and hearings, and to issue subpoenas.  
8           This shall include the authority to obtain transaction-level  
9           data for specific transactions from a transient accommodations  
10          broker tax collection agent.

11          (k) In addition to all other reporting requirements under  
12          title 14, each transient accommodations broker tax collection  
13          agent shall report annually to the director on an aggregate  
14          basis:

15          (1) The total number of operators and plan managers by  
16          county on whose behalf the transient accommodations  
17          broker tax collection agent collected and remitted  
18          taxes imposed by this chapter; and

19          (2) The total amount of taxes imposed, collected, and  
20          remitted under this chapter by the county.

21          (1) For the purposes of this section:



1       "Operator" has the same meaning as in section 237D-1.  
2       "Plan manager" has the same meaning as in section 237D-1.  
3       "Transient accommodations broker" has the same meaning as  
4 in section 237D-1."

5       SECTION 3. Chapter 237D, Hawaii Revised Statutes, is  
6 amended by adding two new section to be appropriately designated  
7 and to read as follows:

8       "§237D-       Transient accommodations broker as tax  
9 collection agent. (a) The director shall require a transient  
10 accommodations broker to register as a tax collection agent on  
11 behalf of all of its operators and plan managers by entering  
12 into a tax collection agreement with the director or by  
13 submitting a transient accommodations broker tax collection  
14 agent registration statement to the director.

15       The director may deny an application for registration as a  
16 transient accommodations broker tax collection agent under this  
17 section for any cause authorized by law, including any violation  
18 of this chapter or rules adopted pursuant thereto, violation of  
19 any prior tax collection agreement, or failure to meet minimum  
20 criteria that may be set forth by the department in rules  
21 adopted pursuant to chapter 91.



1       Execution of a tax collection agreement shall not be a  
2 requirement for registration as a transient accommodations  
3 broker tax collection agent.

4       The director shall issue a certificate of registration or  
5 letter of denial within thirty days after a transient  
6 accommodations broker submits to the director a completed and  
7 signed transient accommodations broker tax collection agent  
8 registration statement, in a form prescribed by the department.  
9 The registration shall be valid only for the transient  
10 accommodations broker tax collection agent in whose name it is  
11 issued, and for the website or platform designated therein, and  
12 shall not be transferable.

13       A registered transient accommodations broker tax collection  
14 agent shall be issued separate certificates of registration  
15 under this chapter with respect to taxes payable on behalf of  
16 its operators and plan managers in its capacity as a registered  
17 transient accommodations broker tax collection agent and, if  
18 applicable, with respect to any taxes payable under this chapter  
19 for its own business activities. A registered transient  
20 accommodations broker tax collection agent shall file with the  
21 department monthly or other periodic returns as required by



1 section 237D-6, reporting information including gross rentals or  
2 gross rental proceeds, exemptions or deductions, taxable  
3 proceeds, and taxes, each separated by taxation district.

4 (b) In addition to its own responsibilities under this  
5 chapter, a registered transient accommodations broker tax  
6 collection agent shall report, collect, and pay over the taxes  
7 due under this chapter on behalf of all of its operators and  
8 plan managers from the date of registration until the  
9 registration is canceled as provided in subsection (h); provided  
10 that the registered transient accommodations broker tax  
11 collection agent's obligation to report, collect, and pay taxes  
12 on behalf of all of its operators and plan managers shall apply  
13 solely to transient accommodations in the State arranged or  
14 booked directly through the registered transient accommodations  
15 broker tax collection agent.

16 (c) The registered transient accommodations broker tax  
17 collection agent's operators and plan managers shall be deemed  
18 registered under this chapter; provided that the registration  
19 shall apply solely to the business activity conducted directly  
20 through the registered transient accommodations broker tax  
21 collection agent from the date of registration until the



1 registration is canceled as provided in subsection (h). For  
2 purposes of any other business activity, the operators and plan  
3 managers are subject to all requirements of title 14 as if this  
4 section did not exist.

5 (d) Under this section, a registered transient  
6 accommodations broker tax collection agent shall assume all  
7 obligations, rights, and responsibilities imposed by this  
8 chapter upon its operators and plan managers with respect to  
9 their business activities conducted directly through the  
10 registered transient accommodations broker tax collection agent  
11 from the date of registration until the registration is canceled  
12 as provided in subsection (h).

13 (e) A transient accommodations broker tax collection agent  
14 collects taxes imposed by this chapter on behalf of operators  
15 and plan managers, but if the agent does not report or pay the  
16 taxes due, then the agent shall be personally liable for the  
17 taxes due and penalties and interest as provided by law.

18 (f) All returns and other information provided by a  
19 registered transient accommodations broker tax collection agent,  
20 including the application for registration as a transient  
21 accommodations broker tax collection agent or any tax collection



1 agreement, shall be confidential, and disclosure thereof shall  
2 be prohibited as provided in section 237D-13; provided that:

3       (1) No disclosure of returns or information provided by  
4       the transient accommodations broker tax collection  
5       agent with respect to its operators and plan managers  
6       shall be made pursuant to section 237D-13(a)(9), (10),  
7       or (11); and

8       (2) All returns and the names and addresses provided by a  
9       registered transient accommodations broker tax  
10       collection agent shall be disclosed to a duly  
11       authorized county tax official for the limited purpose  
12       of real property tax administration.

13       (g) A registered transient accommodations broker tax  
14       collection agent shall notify all of its operators and plan  
15       managers in the State that it has been designated to collect,  
16       report, and pay over the tax imposed by this chapter on their  
17       behalf.

18       The director may require the transient accommodations  
19       broker tax collection agent, as a condition of obtaining a  
20       license, to furnish with an annual return, a list including the  
21       federal tax identification number of all operators and plan



1 managers for the taxable year to whom the transient  
2 accommodations broker tax collection agent has provided  
3 information returns required under the Internal Revenue Code,  
4 and any other information that is relevant to ensure proper  
5 payment of taxes under title 14.

6 A transient accommodations broker tax collection agent  
7 shall provide the names or addresses of any of its operators and  
8 plan managers to the director when such a request is made  
9 through a lawful and valid administrative process or upon waiver  
10 by the operator or plan manager.

11 (h) The registration provided for under this section shall  
12 be effective until canceled in writing.

13 A registered transient accommodations broker tax collection  
14 agent may cancel its registration under this section by  
15 delivering written notice of cancellation to the director and  
16 each of its operators and plan managers furnishing transient  
17 accommodations in the State no later than ninety days prior to  
18 the effective date of cancellation.

19 The director may cancel a transient accommodations broker  
20 tax collection agent's registration under this section for any  
21 cause authorized by law, including but not limited to any



1 violation of this chapter or rules adopted pursuant thereto, or  
2 for violation of any applicable tax collection agreement, by  
3 delivering written notice of cancellation to the transient  
4 accommodations broker tax collection agent no later than ninety  
5 days prior to the effective date of cancellation.

6 (i) All registered transient accommodations broker tax  
7 collection agents shall:

8 (1) Prior to placing an advertisement, including an online  
9 advertisement, on the availability of a property for  
10 lease or rent on behalf of an operator or plan  
11 manager, notify the operator or plan manager that the  
12 subject property is required to be in compliance with  
13 applicable land use laws prior to retaining the  
14 services of the transient accommodations broker; and  
15 (2) Require the operator or plan manager to attest that  
16 the subject property is in compliance with applicable  
17 land use laws by using the following language: "By  
18 accepting the Terms of Service, I agree and attest  
19 that I have reviewed all applicable laws and  
20 regulations and that my listing is in compliance."





1       (j) Nothing contained in this section shall limit the  
2 authority of the department under section 231-7 to conduct  
3 audits, investigations, and hearings, and to issue subpoenas.  
4 This shall include the authority to obtain transaction-level  
5 data for specific transactions from a transient accommodations  
6 broker tax collection agent.

7       (k) In addition to all other reporting requirements under  
8 title 14, each transient accommodations broker tax collection  
9 agent shall report annually to the director on an aggregate  
10 basis:

11       (1) The total number of operators and plan managers by  
12 county on whose behalf the transient accommodations  
13 broker tax collection agent collected and remitted  
14 taxes imposed by this chapter; and

15       (2) The total amount of taxes imposed, collected, and  
16 remitted under this chapter.

17       **§237D- Transient accommodations broker; surcharge tax;**  
18 **imposition.** (a) There is levied and shall be assessed and  
19 collected on each transient accommodation broker a surcharge tax  
20 of       per cent of the transient accommodation broker's gross  
21 proceeds that are derived from the rental or rental proceeds



1 realized by the transient accommodation broker's operators and  
2 plan managers for the furnishing of transient accommodations.

3 (b) Every transient accommodation broker shall pay to the  
4 State the surcharge tax imposed by subsection (a), as provided  
5 in this chapter.

6 (c) All surcharge tax revenues collected under this  
7 section shall be deposited into the rental housing revolving  
8 fund established under section 201H-202."

9 SECTION 4. Section 237D-4, Hawaii Revised Statutes, is  
10 amended by amending subsection (c) to read as follows:

11 "(c) Any advertisement, including an online advertisement,  
12 for any transient accommodation or resort time share vacation  
13 interest, plan, or unit shall conspicuously provide:

14 (1) The registration identification number or an  
15 electronic link to the registration identification  
16 number of [~~the~~] either:

17 (A) The operator or plan manager issued pursuant to  
18 this section; [~~and~~] or

19 (B) The transient accommodations broker tax  
20 collection agent registered under section  
21 237D- , if applicable; and



1           (2) The local contact's name, phone number, and electronic  
2           mail address, provided that this paragraph shall be  
3           considered satisfied if this information is provided  
4           to the transient or occupant prior to the furnishing  
5           of the transient accommodation or resort time share  
6           vacation unit."

7           SECTION 5. Section 237D-6.5, Hawaii Revised Statutes, is  
8           amended by amending subsection (b) to read as follows:

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

12          (1) \$1,500,000 shall be allocated to the Turtle Bay  
13          conservation easement special fund beginning July 1,  
14          2015, for the reimbursement to the state general fund  
15          of debt service on reimbursable general obligation  
16          bonds, including ongoing expenses related to the  
17          issuance of the bonds, the proceeds of which were used  
18          to acquire the conservation easement and other real  
19          property interests in Turtle Bay, Oahu, for the  
20          protection, preservation, and enhancement of natural



- 1 resources important to the State, until the bonds are  
2 fully amortized;
- 3 (2) \$26,500,000 shall be allocated to the convention  
4 center enterprise special fund established under  
5 section 201B-8;
- 6 (3) \$82,000,000 shall be allocated to the tourism special  
7 fund established under section 201B-11; provided that:
- 8 (A) Beginning on July 1, 2012, and ending on June 30,  
9 2015, \$2,000,000 shall be expended from the  
10 tourism special fund for development and  
11 implementation of initiatives to take advantage  
12 of expanded visa programs and increased travel  
13 opportunities for international visitors to  
14 Hawaii;
- 15 (B) Of the \$82,000,000 allocated:
- 16 (i) \$1,000,000 shall be allocated for the  
17 operation of a Hawaiian center and the  
18 museum of Hawaiian music and dance at the  
19 Hawaii convention center; and
- 20 (ii) 0.5 per cent of the \$82,000,000 shall be  
21 transferred to a sub-account in the tourism



1 special fund to provide funding for a safety  
2 and security budget, in accordance with the  
3 Hawaii tourism strategic plan 2005-2015; and  
4 (C) Of the revenues remaining in the tourism special  
5 fund after revenues have been deposited as  
6 provided in this paragraph and except for any sum  
7 authorized by the legislature for expenditure  
8 from revenues subject to this paragraph,  
9 beginning July 1, 2007, funds shall be deposited  
10 into the tourism emergency special fund,  
11 established in section 201B-10, in a manner  
12 sufficient to maintain a fund balance of  
13 \$5,000,000 in the tourism emergency special fund;  
14 (4) \$103,000,000 for fiscal year 2014-2015, \$103,000,000  
15 for fiscal year 2015-2016, \$103,000,000 for fiscal  
16 year 2016-2017, and \$93,000,000 for each fiscal year  
17 thereafter shall be allocated as follows: Kauai  
18 county shall receive 14.5 per cent, Hawaii county  
19 shall receive 18.6 per cent, city and county of  
20 Honolulu shall receive 44.1 per cent, and Maui county  
21 shall receive 22.8 per cent; provided that commencing



1 with fiscal year 2018-2019, a sum that represents the  
2 difference between a county public employer's annual  
3 required contribution for the separate trust fund  
4 established under section 87A-42 and the amount of the  
5 county public employer's contributions into that trust  
6 fund shall be retained by the state director of  
7 finance and deposited to the credit of the county  
8 public employer's annual required contribution into  
9 that trust fund in each fiscal year, as provided in  
10 section 87A-42, if the respective county fails to  
11 remit the total amount of the county's required annual  
12 contributions, as required under section 87A-43; [and]  
13 (5) \$3,000,000 shall be allocated to the special land and  
14 development fund established under section 171-19;  
15 provided that the allocation shall be expended in  
16 accordance with the Hawaii tourism authority strategic  
17 plan for:  
18 (A) The protection, preservation, maintenance, and  
19 enhancement of natural resources, including  
20 beaches, important to the visitor industry;



1 (B) Planning, construction, and repair of facilities;  
2 and

3 (C) Operation and maintenance costs of public lands,  
4 including beaches, connected with enhancing the  
5 visitor experience[-]; and

6 (6) \$4,000,000 shall be allocated to the counties for  
7 compliance and enforcement of county ordinances  
8 regulating transient vacation rentals as follows:

9 \$1,000,000 for fiscal year 2017-2018 to Kauai county,

10 \$1,000,000 for fiscal year 2017-2018 to Maui county,

11 \$1,000,000 for fiscal year 2017-2018 to Hawaii county,

12 and \$1,000,000 for fiscal year 2017-2018 to the city

13 and county of Honolulu.

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

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



1 SECTION 6. A transient accommodation broker shall remain  
2 subject to the conditions of Act 204, Session Laws of Hawaii,  
3 2015, unless the transient accommodation broker enters into a  
4 tax collection agreement with the director of taxation as  
5 provided for in Sections 1 and 2 of this Act.

6 SECTION 7. By January 1, 2018, the director of taxation  
7 shall make available to transient accommodations brokers a form  
8 of application for registration as a transient accommodations  
9 broker tax collection agent under the new section of chapter  
10 237, Hawaii Revised Statutes, added by section 2 of this Act,  
11 and under the new section of chapter 237D, Hawaii Revised  
12 Statutes, added by section 3 of this Act.

13 SECTION 8. If any provision of this Act, or the  
14 application thereof to any person or circumstance, is held  
15 invalid, the invalidity does not affect other provisions or  
16 applications of the Act that can be given effect without the  
17 invalid provision or application, and to this end the provisions  
18 of this Act are severable.

19 SECTION 9. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.





1 SECTION 10. This Act shall take effect on July 1, 2117,  
2 and shall apply to taxable years beginning after December 31,  
3 2017, and:

4 (1) Shall be repealed on December 31, 2022;

5 (2) Shall not apply to taxable years beginning after  
6 December 31, 2022; and

7 (3) Section 237D-4, Hawaii Revised Statutes, shall be  
8 reenacted in the form in which it read on the day  
9 prior to the effective date of this Act.



**Report Title:**

Taxation; Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax; Transient Accommodations Tax

**Description:**

Allows transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services. Ensures that the subject property is in compliance with applicable land use laws. Allocates \$1,000,000 of TAT revenues to each county for FY 2017-2018 to comply and enforce county ordinances regulating transient vacation rentals. Creates a surcharge tax on transient accommodation brokers. Sunsets on 12/31/2022.  
(HB1471 HD2)

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

