



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 9, 2019

GOV. MSG. NO. 1383

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB1292 SD2 HD3, without my approval and with the statement of objections relating to the measure.

SB1292 SD2 HD3

RELATING TO TRANSIENT
ACCOMMODATIONS.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 9, 2019

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1292

Honorable Members
Thirtieth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 1292, entitled "A Bill for an Act Relating to Transient Accommodations."

The purpose of this bill is to require hosting platforms that collect fees for booking services to register as tax collection agents and to collect general excise and transient accommodation taxes for transient accommodation bookings from operators and plan managers.

This bill is objectionable because the State's taxation of transient accommodations through hosting platforms should complement the counties' regulation of transient accommodations. While requiring the hosting platforms to collect and pay the taxes on illegal transient accommodation uses would not legalize these operations, there is concern that it could be viewed as legitimizing these operations. To ensure effective regulation, state statutes and county ordinances must be coordinated. Both the federal Internal Revenue Service and the State Department of Tax (DOTAX) are obligated to collect taxes on business activity, whether legal or illegal, as affirmed by the U.S. Constitution (16th Amendment) and a hundred years of court decisions. However, the passage of Bill 89 (2018) by the Honolulu City Council - which Mayor Kirk Caldwell recently signed into law and is an example of a county's enactment of specific enforcement provisions governing transient accommodations and hosting platforms - highlights the concern that a state law not impede or adversely affect county efforts to regulate land use. This bill raises significant issues, including for DOTAX, that were not fully contemplated by the Legislature or DOTAX when the bill was debated and then passed.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 1292
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Importantly, the State is exercising its enforcement powers to ensure tax compliance by transient accommodations operators and managers. For example, on June 28, 2019, the State filed an application to issue a subpoena to Airbnb. The State looks forward to working with companies such as Airbnb to ensure tax compliance.

For the foregoing reasons, I am returning Senate Bill No. 1292 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping "D" and "I".

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

1 PART I

2 SECTION 1. The legislature finds that, under certain
3 circumstances, allowing a private person to act as a tax
4 collection agent is likely to ease the burden of collecting
5 taxes. The legislature further finds that in the transient
6 accommodations industry there are entities that are well-placed
7 to act as tax collection agents and ease the burden of
8 collecting taxes.

9 The legislature further finds that requiring a hosting
10 platform to collect and remit taxes on behalf of any transient
11 accommodations operators or plan managers operating through the
12 hosting platform will increase compliance with the transient
13 accommodations and general excise taxes.

14 The legislature also finds that the penalties for doing
15 business in violation of chapter 237D, Hawaii Revised Statutes,
16 should be converted to monetary civil fines rather than criminal
17 fines.



1 The purpose of this Act is to:

2 (1) Amend the definition of "transient accommodations" to
3 include other forms of transient accommodations and
4 other terms that the counties may have defined;

5 (2) Make any person who fails to register prior to
6 engaging or continuing in the business of furnishing
7 transient accommodations, which includes posting any
8 advertisement for furnishing a transient
9 accommodation, subject to a citation process and
10 monetary fines, rather than a misdemeanor;

11 (3) Make any person who enters into an agreement to
12 furnish transient accommodations without registering
13 subject to a citation process and monetary fines; and

14 (4) Require a hosting platform that collects fees for
15 booking services to register as a tax collection agent
16 on behalf of its operators and plan managers for
17 purposes of general excise taxes and transient
18 accommodations taxes.

19 This Act is not intended to preempt or otherwise limit the
20 authority of counties to adopt, monitor, and enforce local land
21 use regulations, and this Act is not intended to transfer the

1 authority to monitor and enforce such regulations away from the
2 counties.

3 PART II

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

6 1. By adding two new definitions to be appropriately
7 inserted and to read:

8 "Booking service" means any reservation or payment service
9 provided by a person or entity that facilitates a transient
10 accommodation transaction between an operator and a prospective
11 transient or occupant, and for which the person or entity
12 collects or receives, directly or indirectly, through an agent
13 or intermediary, a fee in connection with the reservation or
14 payment services provided for the transient accommodation
15 transaction.

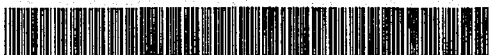
16 "Hosting platform" means a person or entity that
17 participates in the transient accommodations business by
18 providing, and collecting or receiving a fee for, booking
19 services through which an operator may offer a transient
20 accommodation. Hosting platforms usually, though not
21 necessarily, provide booking services through an online platform



1 that allows an operator to advertise the transient
2 accommodations through a website provided by the hosting
3 platform and the hosting platform conducts a transaction by
4 which potential renters arrange, use, or pay, whether the renter
5 pays rent directly to the operator or to the hosting platform."

6 2. By amending the definition of "transient
7 accommodations" to read:

8 "Transient accommodations" means the furnishing of a room,
9 apartment, suite, single family dwelling, or the like to a
10 transient for less than one hundred eighty consecutive days for
11 each letting in a hotel, apartment hotel, motel, condominium or
12 unit as defined in chapter 514B, cooperative apartment, dwelling
13 unit, or rooming house that provides living quarters, sleeping,
14 or housekeeping accommodations, or other place in which lodgings
15 are regularly furnished to transients. "Transient
16 accommodations" includes "transient accommodations units",
17 "transient vacation rentals", "transient vacation units",
18 "transient vacation use", or any similar term that may be
19 defined by county ordinance to mean a room, apartment, house,
20 condominium, beach house, hotel room, suite, or similar living
21 accommodation rented to a transient person for less than one



1 hundred eighty consecutive days in exchange for payment in cash,
2 goods, or services."

3 PART III

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

6 "§237D-4 Certificate of registration. (a) Each operator
7 or plan manager as a condition precedent to engaging or
8 continuing in the business of furnishing transient
9 accommodations or in business as a resort time share vacation
10 plan shall register with the director the name and address of
11 each place of business within the State subject to this chapter.
12 The operator or plan manager shall make a one-time payment as
13 follows:

- 14 (1) \$5 for each registration for transient accommodations
15 consisting of one to five units;
16 (2) \$15 for each registration for transient accommodations
17 consisting of six or more units; and
18 (3) \$15 for each resort time share vacation plan within
19 the State;

20 upon receipt of which the director shall issue a certificate of
21 registration in such form as the director determines, attesting



1 that the registration has been made. The registration shall not
2 be transferable and shall be valid only for the operator or plan
3 manager in whose name it is issued and for the transaction of
4 business at the place designated therein. Acquisition of
5 additional transient accommodation units after payment of the
6 one-time fee shall not result in additional fees.

7 (b) The registration, or in lieu thereof a notice stating
8 where the registration may be inspected and examined, shall at
9 all times be conspicuously displayed at the place for which it
10 is issued. The name, phone number, and electronic mail address
11 of the local contact shall at all times be conspicuously
12 displayed in the same place as the registration or the same
13 place as the notice stating where the registration may be
14 inspected and examined. Failure to meet the requirements of
15 this subsection shall be unlawful. The department may issue
16 citations to any person who fails to conspicuously display the
17 registration or notice, or the local contact's name, phone
18 number, or electronic mail address as required by this
19 subsection. A citation issued pursuant to this subsection for
20 each transient accommodation or resort time share vacation



1 interest, plan, or unit in violation of this subsection shall
2 include a monetary fine of not less than:

- 3 (1) \$500 per day, for a first violation for which a
4 citation is issued;
- 5 (2) \$1,000 per day, for a second violation for which a
6 citation is issued; and
- 7 (3) \$5,000 per day, for a third and any subsequent
8 violation for which a citation is issued.

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

- 12 (1) The registration identification number or an
13 electronic link to the registration identification
14 number of the operator or plan manager issued pursuant
15 to this section; and
- 16 (2) The local contact's name, phone number, and electronic
17 mail address, provided that this paragraph shall be
18 considered satisfied if this information is provided
19 to the transient or occupant prior to the furnishing
20 of the transient accommodation or resort time share
21 vacation unit.



1 (d) Failure to meet the requirements of subsection (c)
2 shall be unlawful. The department may issue citations to any
3 person, including operators, plan managers, and transient
4 accommodations brokers, who violates subsection (c). A citation
5 issued pursuant to this subsection for each transient
6 accommodation or resort time share vacation interest, plan, or
7 unit in violation of subsection (c) shall include a monetary
8 fine of not less than:

- 9 (1) \$500 per day, for a first violation for which a
10 citation is issued;
11 (2) \$1,000 per day, for a second violation for which a
12 citation is issued; and
13 (3) \$5,000 per day, for a third and any subsequent
14 violation for which a citation is issued.

15 (e) The registration provided for by this section shall be
16 effective until canceled in writing. Any application for the
17 reissuance of a previously canceled registration identification
18 number shall be regarded as a new registration application and
19 shall be subject to the payment of the one-time registration
20 fee. The director may revoke or cancel any license issued under
21 this chapter for cause as provided by rule under chapter 91.



1 (f) If the license fee is paid, the department shall not
2 refuse to issue a registration or revoke or cancel a
3 registration for the exercise of a privilege protected by the
4 First Amendment of the Constitution of the United States, or for
5 the carrying on of interstate or foreign commerce, or for any
6 privilege the exercise of which, under the Constitution and laws
7 of the United States, cannot be restrained on account of
8 nonpayment of taxes, nor shall section 237D-14 be invoked to
9 restrain the exercise of such a privilege, or the carrying on of
10 such commerce.

11 ~~[(g) Any person who may lawfully be required by the State,~~
12 ~~and who is required by this chapter, to register as a condition~~
13 ~~precedent to engaging or continuing in the business of~~
14 ~~furnishing transient accommodations or as a plan manager subject~~
15 ~~to taxation under this chapter, who engages or continues in the~~
16 ~~business without registering in conformity with this chapter,~~
17 ~~shall be guilty of a misdemeanor. Any director, president,~~
18 ~~secretary, or treasurer of a corporation who permits, aids, or~~
19 ~~abets such corporation to engage or continue in business without~~
20 ~~registering in conformity with this chapter, shall likewise be~~
21 ~~guilty of a misdemeanor. The penalty for the misdemeanors shall~~



1 ~~be the same as that prescribed by section 231-35 for~~
2 ~~individuals, corporations, or officers of corporations, as the~~
3 ~~case may be, for violation of that section.~~

4 ~~(h)]~~ (g) Any monetary fine assessed under this section
5 shall be due and payable thirty days after issuance of the
6 citation, subject to appeal rights provided under this
7 subsection. Citations may be appealed to the director of
8 taxation or the director's designee.

9 (h) Any person who is required by this section to register
10 as a condition precedent to engaging or continuing in the
11 business of furnishing transient accommodations or as a plan
12 manager subject to taxation under this chapter, who engages or
13 continues in the business without registering in conformity with
14 this section, shall be subject to the citation process and
15 monetary fines under subsection (d).

16 (i) For purposes of this section, "engaging or continuing
17 in the business of furnishing transient accommodations" includes
18 posting any advertisement for the furnishing of a transient
19 accommodation."

20 SECTION 4. Section 237D-4.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§237D-4.5 Certificate of registration for transient
2 accommodations broker, travel agency, and tour packager. (a)
3 Each transient accommodations broker, travel agency, or tour
4 packager, as a condition precedent to entering into an
5 arrangement to furnish transient accommodations at
6 noncommissioned negotiated contract rates, shall register with
7 the director. The transient accommodations broker, travel
8 agency, or tour packager shall make a one-time payment of \$15
9 for each registration, upon receipt of which the director shall
10 issue a certificate of registration in a form as the director
11 determines, attesting that the registration has been made. The
12 registration shall not be transferable and shall be valid only
13 for the transient accommodations broker, travel agency, or tour
14 packager in whose name it is issued.

15 The registration shall be effective until canceled in
16 writing. Any application for the reissuance of a previously
17 canceled registration identification number shall be regarded as
18 a new application for registration and shall be subject to the
19 payment of the one-time registration fee. The director may
20 revoke or cancel any registration issued under this section for
21 cause as provided by rule under chapter 91.



1 over the taxes due under this chapter on behalf of all of its
2 operators and plan managers to or for whom booking services are
3 provided; provided that the tax collection agent's obligation to
4 report, collect, and pay taxes on behalf of all of its operators
5 and plan managers shall apply solely to transient accommodations
6 in the State for which booking services were provided by the tax
7 collection agent. For purposes of any other business activity,
8 the operators and plan managers are subject to all requirements
9 of title 14 as if this section did not exist.

10 (c) If a tax collection agent fails to pay the tax as
11 required under subsection (b), the tax collection agent shall be
12 liable to pay to the State any unpaid portion of the amount of
13 tax that was required to be paid under subsection (b).

14 (d) All returns and other information provided by a tax
15 collection agent shall be confidential, and disclosure thereof
16 shall be prohibited as provided in section 237-34. Nothing in
17 this subsection shall prevent public disclosure of information
18 about tax collection agents as provided in section 92F-12(a)(13)
19 or of aggregated information not identifiable to a specific tax
20 collection agent.



1 (e) A tax collection agent shall file periodic returns in
2 accordance with section 237-30 and annual returns in accordance
3 with section 237-33. Each annual return required under section
4 237-33 shall be accompanied by a cover sheet, in a form
5 prescribed by the department, that includes the following
6 information for each operator and plan manager on whose behalf
7 the tax collection agent is required to report, collect, and pay
8 over taxes due under this chapter:

9 (1) Name;

10 (2) Transaction address where the transient accommodations
11 are located;

12 (3) Transient accommodations tax identification number;

13 (4) General excise tax identification number; and

14 (5) Proportioned amounts of taxes paid for each transient
15 accommodations tax and general excise tax
16 identification number.

17 (f) Before collecting any fee for booking services, a tax
18 collection agent shall notify each of its operators or plan
19 managers that the reporting and remittance of Hawaii income tax
20 is the responsibility of each operator and plan manager.



1 (g) Nothing in this section shall be construed to preempt
2 or prohibit the authority of any county or political subdivision
3 of the State, to adopt, monitor, and enforce local land use
4 ordinances, rules, or regulations, nor to transfer the authority
5 to monitor and enforce these ordinances, rules, or regulations
6 away from the counties.

7 (h) For the purposes of this section:

8 "Booking service" has the same meaning as in section 237D-

9 1.

10 "Director" means the director of taxation.

11 "Hosting platform" has the same meaning as in section 237D-

12 1.

13 "Operator" has the same meaning as in section 237D-1.

14 "Plan manager" has the same meaning as in section 237D-1.

15 "Transient accommodations" has the same meaning as in

16 section 237D-1.

17 (i) The director may adopt rules pursuant to chapter 91

18 necessary to effectuate the purposes of this section.

19 (j) The department may require any form or document

20 required under this section to be filed electronically."



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

4 "§237D- Hosting platform as tax collection agent;
5 operator and plan manager. (a) A hosting platform that
6 collects fees for booking services shall register as a tax
7 collection agent on behalf of all of its operators and plan
8 managers.

9 A tax collection agent shall be issued a separate
10 certificate of registration under this chapter with respect to
11 taxes due on behalf of its operators and plan managers in its
12 capacity as a tax collection agent and, if applicable, with
13 respect to any taxes payable under this chapter for its own
14 business activities.

15 (b) In addition to its own responsibilities under this
16 chapter, a tax collection agent shall report, collect, and pay
17 over the taxes due under this chapter on behalf of all of its
18 operators and plan managers or for whom booking services are
19 provided; provided that the tax collection agent's obligation to
20 report, collect, and pay taxes on behalf of all of its operators
21 and plan managers shall apply solely to transient accommodations



1 in the State for which booking services were provided by the tax
2 collection agent. For purposes of any other business activity,
3 the operators and plan managers are subject to all requirements
4 of title 14 as if this section did not exist.

5 (c) If a tax collection agent fails to pay the tax as
6 required under subsection (b), the tax collection agent shall be
7 liable to pay to the State any unpaid portion of the amount of
8 tax that was required to be paid under subsection (b).

9 (d) All returns and other information provided by a tax
10 collection agent shall be confidential, and disclosure thereof
11 shall be prohibited as provided in section 237D-13. Nothing in
12 this subsection shall prevent public disclosure of information
13 about tax collection agents as provided in section 92F-12(a)(13)
14 or of aggregated information not identifiable to a specific tax
15 collection agent.

16 (e) A tax collection agent shall file periodic returns in
17 accordance with section 237D-6 and annual returns in accordance
18 with section 237D-7. Each annual return required under section
19 237D-7 shall be accompanied by a cover sheet, in a form
20 prescribed by the department, that includes the following
21 information for each operator and plan manager on whose behalf



1 the tax collection agent is required to report, collect, and pay
2 over taxes due under this chapter:

3 (1) Name;

4 (2) Address where the transient accommodations are
5 located;

6 (3) Transient accommodations tax identification number;

7 (4) General excise tax identification number; and

8 (5) Proportioned amounts of taxes paid for each transient
9 accommodations tax and general excise tax
10 identification number.

11 (f) Before collecting any fee for booking services, a tax
12 collection agent shall notify each of its operators or plan
13 managers that the reporting and remittance of Hawaii income tax
14 is the responsibility of each operator and plan manager.


15 (g) Nothing in this section shall be construed to preempt
16 or prohibit the authority of any county or political subdivision
17 of the State, to adopt, monitor, and enforce local land use
18 ordinances, rules, or regulations, nor to transfer the authority
19 to monitor and enforce these ordinances, rules, or regulations
20 away from the counties.



THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.


for President of the Senate



Clerk of the Senate


THE HOUSE OF REPRESENTATIVES OF THE
STATE OF HAWAII

Date: April 9, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives