

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committees on Energy, Economic Development, and Tourism
and on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: February 13, 2019, 2:45 p.m.
State Capitol, Conference Room 414

Re: Testimony on S.B. No. 1292
Relating to Transient Accommodations

Thank you for the opportunity to submit testimony on this bill, which would allow a transient accommodations broker to register as a tax collection agent for its operators and plan managers and regulate the manner in which it does so. The Office of Information Practices (OIP) takes no position on the substance of this bill, but has **concerns about two identical and overbroad confidentiality sections.**

Proposed sections 237-__(f) (bill page 20 lines 9-14) and 237D-__(f) (bill page 30 lines 16-21) make confidential not just tax returns, but all information provided by a registered tax collection agent, including information in the agent's application for registration (although information can be disclosed to a county mayor or planning director). While protection of individual tax returns is appropriate, based on these broad provisions it appears the public won't be entitled to see even a list of registered tax collection agents, much less information such as the aggregate number of clients (presumably vacation rentals) represented by and amount of tax revenue collected by such tax collection agents. The provisions also

conflict with the Uniform Information Practices Act (UIPA), chapter 92F, HRS, which specifically makes public (in section 92F-12(a)(13)) “rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license.”

OIP recommends that these Committees limit the confidentiality provision to tax return information and clarify that the remaining information may still be subject to the UIPA’s exceptions to disclosure, as follows:

(f) Except as provided in subsection (g), all returns provided by a registered tax collection agent shall be confidential, and disclosure thereof shall be prohibited as provided in section 237-34. Nothing in this section shall be read to limit application of the exceptions to disclosure set out in section 92F-13 to other information provided by a registered tax collection agent.

This would mean that the tax return information would be entirely confidential, and other information provided by a registered tax collection agent could be withheld so long as it fell under one of the UIPA’s exceptions to disclosure (such as the frustration exception’s protection of confidential business information).

Alternatively, if these Committees prefer to have a confidentiality provision applicable to all information provided by a tax collection agent, OIP recommends that these Committees also clarify that information about registered agents shall be public as provided in subsection 92F-12(a)(13) and nothing shall prevent public disclosure of aggregated information not identifiable to a specific agent. The following language would accomplish that:

(f) Except as otherwise provided in this subsection and subsection (g), all returns and other information provided by a registered tax collection agent, including the application for registration as a tax collection agent or any tax collection agreement, shall be confidential, and disclosure thereof shall be prohibited as provided in section 237-34. Nothing in this subsection shall prevent public disclosure of information about registered agents as provided in subsection 92F-12(a)(13) or of aggregated information not identifiable to a specific tax collection agent.

Thank you for the opportunity to testify.



SB1292

RELATING TO TRANSIENT ACCOMMODATIONS

Senate Committee on Energy, Economic Development, and Tourism
Senate Committee on Commerce, Consumer Protection, and Health

February 13, 2019

2:45 p.m.

Room 414

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1292, which seeks to improve enforcement of land use regulations relating to transient vacation rentals, while facilitating the collection of tax revenue from transient vacation rentals that comply with the law. Given the impact of unlawful transient vacation rentals on housing opportunities for Native Hawaiians and other Hawai'i residents, OHA appreciates and supports the strong and much-needed enforcement mechanisms that would be provided by this measure.

As home prices, rental prices, and homelessness continue to increase, and as O'ahu anticipates additional population growth and an associated demand for more housing over the next decade,¹ land-use planning that ensures housing affordability and availability is more critical now than ever before. As the legislature recognizes, Hawai'i is in the midst of an affordable housing crisis: recent research indicates a need for 65,000 more housing units by 2025, with half of this demand for units at or below 60% of the Area Median Income (AMI);² only 11 percent of State's housing demand is for housing units at or above 140% AMI, or for units that do not meet the State's current definition of "affordable housing."³ **With 48% of households in the State already unable to afford basic necessities including housing, food, transportation, health care, and child care,⁴ the lack of affordable housing and rising housing costs require bold and aggressive policies and land use enforcement that meaningfully prioritize the housing needs of local residents.**

Native Hawaiians are particularly disadvantaged by land uses that contribute to our local residential housing challenges, including increased rental housing costs and rental housing shortages in particular. Notably, Native Hawaiians are less likely to own a home and, therefore, disproportionately rely on the rental housing market.⁵ Native Hawaiian households are also much more likely to be "doubled up," with multi-generational or unrelated individuals living together in single households,⁶ and Native Hawaiian households are more than three times more likely have a 'hidden homeless' family member than all state households.⁷

Unfortunately, the unaddressed proliferation of illegal vacation rentals may exacerbate the rise in rental housing costs beyond what Honolulu residents and Native Hawaiians are able to afford, and has directly removed much-needed housing units from

the residential rental market. The 2016 Hawai‘i Housing Planning Study estimates that there are 28,397 non-commercial vacation rentals, located in nearly all communities in Hawai‘i.⁸ Not surprisingly, the proliferation of such units, which generate nearly 3.5 times more income than the average long term residential rental,⁹ has correlated with substantially increased housing costs throughout the islands; Honolulu in particular had the highest rates of increase in average monthly rent and average daily rent over the past several years.¹⁰ In addition to raising the costs of available long term rental units, the proliferation of illegal vacation rentals also represents a direct loss of housing units from the long term rental market.¹¹

Clearly, allowing the continued illegal use of housing units for vacation rentals will only exacerbate our housing crisis. Without more meaningful regulatory and enforcement mechanisms, there is nothing to stop the negative impacts of illegal vacation rentals on housing opportunities for Native Hawaiians and other local residents. In contrast, each and every illegal vacation rental unit that is returned to long-term residential use is one more unit that can help meet our existing housing demand.¹² **Accordingly, OHA has advocated for regulatory and enforcement approaches that may systemically curb and reverse the impact that illegal vacation rentals continue to have on residential housing opportunities in Hawai‘i.**

Accordingly, OHA appreciates and strongly supports the robust enforcement framework provided for under this measure. This includes the mandatory compliance monitoring and reporting action required of transient vacation rental brokers who wish to act as tax collection agents on behalf of rental operators; the requirement that brokers remove listings for illegal vacation rentals; and clear penalties for noncompliance on both brokers and operators that will deter further unlawful land uses. **Such provisions will appropriately hold those most responsible for our transient vacation rental problem directly accountable for their actions, and subject them to the strict penalties that reflect the magnitude of our growing housing crisis.**

As a final note, research shows that vacation rental activity in the State generally is not likely to provide meaningful and long-term economic benefits to Hawai‘i or its residents, including Native Hawaiians. Data has shown that **70% of properties listed as vacation rentals in Hawai‘i are owned by out-of-state property owners** who do **not** reside in the islands.¹³ Native Hawaiians in particular are less likely to benefit directly from a transient vacation rental operation; with Native Hawaiian homeownership rates lower than the state average, they are less likely to own second or additional homes that could be rented as vacation units.¹⁴ As previously mentioned, Native Hawaiians also often live in overcrowded households, without the extra rooms needed to operate an owner-occupied vacation rental. As such, while some Hawai‘i residents may be able to earn extra income from the use of a property as a vacation rental, vacation rental operations primarily benefit nonresident property owners and real estate speculators – who may also seek to buy out any vacation rentals that owned by local residents now and in the future.

In addition, other jurisdictions have found that any economic benefits gained from permitted short-term vacation rental operations are far outweighed by the larger social and economic costs of removing long term rentals from the housing market. For example, an economic analysis by the City of San Francisco found a negative economic impact of \$300,000 for each housing unit used as a vacation rental, exceeding any economic benefits from visitor spending, hotel tax, and associated revenues.¹⁵ Most recently, the Economic Policy Institute has found that, for “internet based service firms” offering transient vacation rental hosting services, “[t]he economic costs [to renters and local jurisdictions] likely outweigh the benefits,” “the potential benefit of increased tourism supporting city economies is much smaller than commonly advertised,” “[p]roperty owner . . . beneficiaries [from hosting services] are disproportionately white and high-wealth households,” and “[c]ity residents likely suffers when [hosting platforms] circumvent[] zoning laws that ban lodging businesses from residential neighborhoods.”¹⁶

Again, the short-term benefits of vacation rental units to some property owners, including non-resident property owners and corporate vacation rental operators, are likely to be substantially outweighed by the fiscal impacts on Hawai‘i and its residents from increased housing costs, increased real estate speculation, and the need for more social services and housing subsidies. **Accordingly, OHA strongly believes that regulatory and enforcement mechanisms that decrease the number of illegal vacation rental units operating in Hawai‘i will best benefit Native Hawaiians and all Hawai‘i residents.**

Therefore, OHA urges the Committees to **PASS** SB1292. Mahalo nui for the opportunity to testify on this measure.

¹See SMS, HAWAI‘I HOUSING PLANNING STUDY, at 34 (2016), available at https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf.

² See *id.*

³ See *id.* at 34.

⁴ ALOHA UNITED WAY, ALICE: A STUDY OF FINANCIAL HARDSHIP IN HAWAI‘I (2017)

⁵ See OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN HOMEOWNERSHIP HO‘OKAHUA WAIWAI FACT SHEET VOL.2016, NO. 1, page 3, available at

<https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf>. This figure includes 8,329 DHHL residential lease “owner-occupied” property units. DHHL ANNUAL REPORT 2014, at 47, available at

<http://dhhl.hawaii.gov/wpcontent/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the NativeHawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

⁶ 24.8% of Native Hawaiian households, compared to 9.6% of state households include more than two generations or unrelated individuals. SMS, *supra* note 1, at 70.

⁷ 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. *Id.*

⁸ There are an estimated 45,075 total vacation rental units measured by the study. The study estimates that at least 37% of these rentals are ‘commercial’ rentals, or resort condominium and condominium hotel properties which are legally permitted commercial operations. As such, the study estimates that 28,397 units are non-commercial, i.e. unlawful, transient vacation rentals. SMS, *supra* note 1, at 58.

⁹ SMS, *supra* note 1, at 55.

¹⁰ Honolulu's average monthly rent growth rate was 26.1%, and the six-year growth rate of average daily rental rate was 47%. SMS, THE IMPACT OF VACATION RENTAL UNITS IN HAWAII, 2016, at 8, available at <http://www.hawaiitourismauthority.org/default/assets/File/Housing%20and%20Tourism%20113016.pdf>

¹¹ The Hawai'i Tourism Authority's 2016 study found that vacation rentals increased by 34% per year between 2005 and 2015. Further investigation found that between 2011 and 2014, units held for seasonal use and not available for long term rent increased by 12%. See *id.* at 3.

¹² See generally SMS, *supra* note 1.

¹³ Notably, the Hawai'i Tourism Authority report found that 45,075 total properties are available for short term vacation rentals, with between 21,295 and 23,002 as non-commercial vacation rental units advertised in 2016. 70% of these properties are offered by out-of-state property owners. SMS, *supra* note 10, at 5-6.

¹⁴ For non-DHHL properties, the Native Hawaiian homeownership rate is 41.2%, 15.5 percentage points below the statewide rate. See *supra* note 5.

¹⁵ See CITY OF SAN FRANCISCO, OFFICE OF THE CONTROLLER, AMENDING THE REGULATION OF SHORT-TERM RESIDENTIAL RENTALS: ECONOMIC IMPACT REPORT, May 2015, available at http://sfcontroller.org/sites/default/files/FileCenter/Documents/6458150295_economic_impact_final.pdf?documentid=6457.

¹⁶ Josh Bivens, The economic costs and benefits of Airbnb: No reason for local policymakers to let Airbnb bypass tax or regulatory obligations (2019), available at <https://www.epi.org/files/pdf/157766.pdf>.



Hawai'i Convention Center
1801 Kalākāua Avenue, Honolulu, Hawai'i 96815
kelepona tel 808 973 2255
kelepa'i fax 808 973 2253
kahua pa'a web hawaiiourismauthority.org

David Y. Ige
Governor

Chris Tatum
President and Chief Executive Officer

Statement of
CHRIS TATUM

Hawai'i Tourism Authority
before the
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

AND

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Wednesday, February 13, 2019
2:45 PM
State Capitol, Conference Room #414

In consideration of
SENATE BILL NO 1292
RELATING TO TRANSIENT ACCOMMODATIONS.

Chair Wakai, Chair Baker, Vice Chair Taniguchi, Vice Chair Chang and members of the Committee on Energy, Economic Development, and Tourism and members of the Committee on Commerce, Consumer Protection, and Health, the Hawai'i Tourism Authority (HTA) **supports SB 1292**, which will assist in the collection of Transient Accommodations Tax (TAT) and will provide a mechanism to address non-compliant transient accommodations throughout the state.

The Hawai'i Tourism Authority supports efforts at both the state and county level to address the proliferation of illegal, non-compliant, and potentially unsafe transient vacation rentals throughout our community. At its most recent board meeting, the HTA reaffirmed its position towards illegal vacation rentals. The HTA support the elimination of illegal vacation rentals in order to ensure that Hawai'i remains a highly desirable place for residents by developing and enforcing laws related to illegal vacation rentals in an effort to improve the quality of life for our residents.

Thank you for the opportunity to offer testimony in **support** of this measure.

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Maria E. Zielinski

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 11, 2019

Handwritten signature of Kelly King in black ink.

TO: The Honorable Glenn Wakai, Chair
Senate Committee on Energy, Economic Development, and Tourism
The Honorable Rosalyn Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Kelly T. King
Council Chair

SUBJECT: **HEARING OF FEBRUARY 13, 2019; TESTIMONY IN SUPPORT OF
SB 1292, RELATING TO TRANSIENT ACCOMMODATIONS**

Thank you for the opportunity to testify in **support** of this important measure. This measure would make it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient vacation rentals that violate county zoning ordinances; and would allow a transient accommodations broker to register as a tax collection agent for its operators and plan managers.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Unpermitted transient vacation rentals remain a problem for both the counties and the State. It is estimated that thousands of unpermitted units are operating throughout the State, with over \$100 million in general excise tax and transient accommodations tax going uncollected.
2. Allowing a transient accommodations broker to act as a tax collection agent on behalf of providers of transient accommodations that utilize the services of the broker may facilitate the collection of transient accommodations taxes and general excise taxes.
3. This measure will facilitate compliance with State tax laws and County zoning ordinances.

For the foregoing reasons, I **support** this measure.



HAWAI'I LODGING & TOURISM
A S S O C I A T I O N

Testimony of

Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only

compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.



February 13, 2019

Senate Committee on Energy, Economic Development, and Tourism
The Honorable Glenn Wakai, Chair
The Honorable Brian T. Taniguchi, Vice Chair

Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

RE: SB 1292, Relating to Transient Accommodations.

Dear Chairman Wakai, Chairwoman Baker and distinguished members of the Senate Committees on Energy, Economic Development, and Tourism and on Commerce, Consumer Protection, and Health:

On behalf of Expedia Group – the global leading travel technology platform that empowers travel and tourism throughout Hawai‘i – I’d like to thank you for the opportunity to share our story and provide insight into how policies like SB 1292 could impact the state’s robust travel and tourism ecosystem.

Collectively, Expedia Group brands cover virtually every aspect of researching, planning, and booking travel, from choosing the best airplane seat, to reading personal travel reviews of hotels, to planning what to do in a destination once you arrive. The Expedia Group portfolio serves both leisure and business travelers with disparate needs and budgets—and includes trusted brands like Orbitz, Expedia, Travelocity, Egencia, Trivago, HomeAway, VRBO, and others.

Over the course of two decades, Expedia Group has put the power and thrill of experiencing all Hawaii has to offer right at the fingertips of global travelers, first through their desktop computers, then phones and eventually even voice powered devices. With more than 750 million monthly visits¹ to some of our most well-known online travel sites, Expedia Group brings a high volume and diverse customer mix to potentially experience the beauty and authenticity of Hawai‘i. The rise of online travel agencies has also fostered a revolution for hotel, airline and other local travel providers that have come to rely upon Expedia Group’s highly diversified travel platform. Through those supply partnerships, we’ve helped large and small hotels, airlines, tourism authorities and businesses reach a new and growing world of travelers.

Over the past few years, Expedia Group has invested billions in technology and innovation to cater to traveler and partner demands and help drive tourism to the state and all of the amazing places to see around the world.

One of the new trends in tourism is travelers’ increased reliance on alternative accommodations, or vacation rentals.

Expedia Group—and our vacation rental brands HomeAway and VRBO—takes immense pride in our long-standing commitment to local travel providers, vacation rental homeowners, the small business communities they serve, and the millions of families that have used our vacation rental sites to experience Hawai‘i in a unique and special way. We believe travelers, communities and governments benefit from a fair mix of all type of accommodations choices—from boutique hotels and vacation rentals to B&Bs and brand hotels.

¹ Monthly visits based on data for Brand Expedia, Hotels.com, Orbitz, Travelocity, Wotif, HomeAway, trivago and Hotwire combined during 2018

While we appreciate the Legislature’s efforts to adopt reasonable regulation of transient accommodations brokers and hosting platforms, we have significant concerns regarding SB1292. We explain those concerns in more detail below, but first it is important to recognize the benefits that Hawaii’s vacation rental industry provides.

- Last year, over 10% of Expedia Group visitors chose to stay in vacation rentals.
- According to the HTA, in 2016 (when only about 7.9% of visitors occupied vacation rental), these visitors spent nearly \$1.2 billion on lodging. In addition, it is estimated that they spent over \$1.9 billion on food, entertainment, and souvenirs. And, HTA estimated that in 2019 visitors would spend about \$1.6 billion on lodging and nearly \$2.6 billion on other local goods and services. <https://www.hawaiiourismauthority.org/media/2006/hawaii-home-and-vacation-rental-market-impact-and-outlook-december-2016.pdf> (at 27). In all likelihood, these numbers will be even larger because the industry has grown faster than expected. Taking over \$4 billion out of Hawaii’s economy would be devastating.
- The growth of this part of the hospitality industry reflects two important facts: First, many travelers are looking for family experiences in homes and communities, not traditional lodging. And, second, the availability of those accommodations has become the most important criterion for these vacationers. In other words, they rank the type of accommodations they can use ahead of the place they visit.
- A large number of families who prefer to stay in vacation rentals cannot afford to, and will not, stay in traditional resort accommodations. They want to rent a home that has multiple bedrooms, a kitchen, a swimming pool, and a yard for their kids. For that growing segment of the tourist population, a hotel is not a suitable substitute for a vacation rental.
- This would mean over \$430 million not spent in Hawaii on lodging and other local goods and services, causing a loss of over \$37 million in TAT and GET. It would also result in lost jobs and potential loss of airlift into Hawaii.
- And even if vacation rental visitors were to switch to traditional resort lodging, there would not be enough hotel rooms to accommodate them. Traditional hotels have been operating at an annual capacity of 85% for the past six years, and it doesn’t appear that this will slow down. This is widely considered to be maximum capacity for a hotel. As the HTA has confirmed, vacation rentals are “growing the pie,” not taking market share from hotels. <https://www.hawaiiourismauthority.org/media/2006/hawaii-home-and-vacation-rental-market-impact-and-outlook-december-2016.pdf> (at 2)

Expedia Group sees the importance of a reasonable regulatory regime for all types of accommodations—vacation rentals included. We’d like to help in the Legislature’s efforts to effectively regulate short-term vacation rentals, Expedia Group recommends the following provisions be considered in a wholistic and balanced way:

1. Platforms to help promote a balance between healthy communities and a robust tourism economy by assisting with the enforcement of responsible limits on short-term rentals.
2. Platforms offer tools to increase compliance and enforcement, such as:
 - a. mandatory display of license number;
 - b. take down within 10 business days upon notice from city/state/county that a license number is invalid;

- c. monthly reports of listing URLs and license numbers;
 - d. quarterly reports of aggregated listing and night data;
 - e. educate operators by providing a link to applicable laws; and
 - f. collection and remittance of taxes.
3. Statewide legislation with the above-referenced requirements would create consistency by preempting local regulation of platforms.

Expedia Group is committed to working with the State of Hawai'i to maintain a healthy vacation rental industry while not creating an overly burdensome regulatory environment for the broader ecosystem of travel. To that end, SB 1292 has a well-intended goal, but is flawed. Our specific concerns on SB1292 are as follows:

- The bill would impose criminal and monetary penalties on transient accommodations brokers (and their agents) if they engage in business with owners of transient accommodations (“operators”) who are not in compliance with state and county ordinances. This shifts the government’s obligation to enforce its laws to the brokers, requiring them to continually monitor operators’ compliance with extensive land use, tax, and licensing laws. Several sections contain provisions that violate, and are preempted by, federal law.
- The bill does not provide a process by which a tax collection agent may appeal the tax director’s denial of an application.
- The bill would require a registered tax collection agent to disclose information to the planning director or mayor of the applicable county for non-tax reasons, which violates the intent and purpose of the taxpayer confidentiality provisions in the Hawai‘i tax code and would negate protections currently granted Hawai‘i taxpayers. Absent a valid subpoena or court order, these requirements also violate the Fourth Amendment and the federal Stored Communications Act.
- Expedia Group does not encourage or support avoidance of tax laws. Therefore, it generally supports the sections that permit transient accommodation brokers to act as tax collection agents on behalf of all of its operators and plan managers, with exception to the concerns identified above. However, we do not support the disclosure of returns, nor furnishing of information to the counties without proper legal process. We strongly oppose the provision which applies personal liability to any officer, member, manager, or other persons responsible for the filing or returns or the payment of taxes.

The vacation rental industry plays a vital role in Hawaii’s broader tourism-driven economy. We recognize and support the State’s efforts to collect all taxes owed and would like to work with the state and local governments to modernize the regulations of this important economic sector.

Thank you for the opportunity to provide comments on SB1292 and please reach out with any additional questions.

Mahalo,

Amanda Pedigo
Vice President, Government and Corporate Affairs
Expedia Group
APedigo@ExpediaGroup.com



Tuesday February 12th, 2019

Senate Committee on Energy, Economic Development, and Tourism
Senator Glenn Wakai, Chair; Senator Brian T. Taniguchi, Vice Chair

Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair; Senator Stanley Chang, Vice Chair

Wednesday February 13th, 2019, 2:45 P.M.
Conference Room 414

TESTIMONY IN OPPOSITION TO SB 1292

Dear Chairs, Vice-Chairs, and Members of the Joint Committee:

On behalf of Airbnb, I wanted to take the opportunity to share our concerns regarding S.B. 1292. Airbnb is committed to helping the state solve the long-standing problem of efficiently and accurately collecting taxes from the short-term rental industry in Hawaii. Airbnb collects and remits taxes on behalf of hosts in more than 400 jurisdictions globally, generating more than \$1 billion in hotel and tourist taxes to date, helping cities, states, and our host community around the globe. Our experience in tax collection and remittance can greatly benefit Hawaii by streamlining compliance for the state and removing burdens from hard-working Hawaii residents who share their homes. We are committed to being a good partner to the state and support the legislature's effort to allow short-term rental platforms to collect and remit taxes on behalf of their users.

Unfortunately, while S.B. 1292 allows platforms to collect and remit taxes on behalf of hosts, the measure only allows them to do so under onerous and unacceptable conditions and which may conflict with federal law. Because of this, Airbnb can not agree to voluntarily collect and remit taxes under this bill as currently drafted, and we oppose this bill. We have summarized our concerns below:

- The bill requires platforms, as a condition of collecting and remitting taxes, to turn over personally identifiable information for people using the platform. This is deeply problematic for a number of reasons:
 - First, this disclosure may conflict with two federal laws - the Communications Decency Act (CDA) and the Stored Communications Act

(SCA) in a number of ways. The SCA governs “access to stored communications and records.”¹ In order to comply with the SCA, entities like Airbnb that provide users the ability to “send or receive wire or electronic communications” and that store such communications cannot disclose user data without the appropriate process.² The SCA requires that governmental entities use an administrative subpoena to obtain basic user information (such as name, address, telephone number, and so forth), and get a court order to obtain any information more detailed than that (such as detailed rental activity).³ Testimony from Airbnb’s legal counsel, David Louie, provides a detailed analysis of the bill’s legal flaws.

- Second, even if this provision did not conflict with federal law, it is wholly unnecessary to ensure accurate tax collection. Indeed, in the dozens of states where Airbnb collects transient occupancy taxes pursuant to voluntary collection agreements (VCAs), Airbnb provides, upon audit, anonymized, transaction-level detail for each booking made through the platform. Anonymized data is sufficient for both reporting and audit purposes because occupancy taxes are transaction taxes -- i.e., user personally identifiable information neither triggers tax nor is it necessary in order to collect the tax.
- Third, it is unlikely that a platform would agree to collect and remit taxes under these conditions. Hosts would likely migrate to another rental platform that did not disclose their personal information. As a result, the very intent of the bill -- to collect taxes from the STR community -- would be undermined.
- This proposal would use state-level tax collection to enforce outdated local land use laws while counties are engaged in the development of comprehensive short-term rental policies. When applied on Oahu, the bill would apply extraordinarily onerous enforcement provisions to the existing law regulating TVUs. This law was adopted in 1989 and does not take into account any of the current market realities, the changing nature of the global tourism market, the creation and establishment of the internet, and the growth of the alternative accommodations market since the regulations and permitting for short-term rentals were last updated nearly 30 years ago. In Honolulu, Airbnb and short-term rental operators have engaged in meaningful and rigorous discussion with City and County officials including the Mayor, City Council, and the Department of Permitting and Planning in order to seek a balanced short-term

¹ *United States v. Steiger*, 318 F.3d 1039, 1047 (11th Cir. 2003).

² 18 U.S.C. §§ 2510(15), 2711(1)–(2).

³ See *id.* §§ 2702(a)(3), 2703(c); *United States v. Davis*, 785 F.3d 498, 505–06 (11th Cir. 2015) (en banc).

rental policy on Oahu. A number of bills have already progressed through the first reading at City Council and are before the Committee on Planning. This bill will only lead to further confusion in an already complicated marketplace and instead creates an additional layer of unnecessary regulation.

- Further, the purpose of any tax bill is to help ensure the assessment, collection and payment of taxes, not to facilitate the Department of Taxation's enforcement of county land use laws. Tax payment does not impact a user's county land use liability. Taxpayer information is confidential under state law for important policy and privacy reasons, and should not be used to enforce county land use laws.
- This bill does not contemplate a fair process for regulating the industry but simply seeks to impose undetermined fines for "engaging in business", on an operator or plan manager who is "not in compliance with all state laws and county ordinances." Thus, an internet hosting platform may be punished with civil penalties if a person or entity with whom it does business is not in compliance with each and every applicable state tax law, traffic law, zoning ordinance, or land use law. Even if this is limited only to land use laws, S.B 1292 thereby seeks to make an internet hosting platform financially responsible for the content (or lack of content) of any online advertisement, and seeks to financially penalize and for the actions or inactions of other people and entities using the internet platform, not for anything that the internet platform has done. These proposed civil penalties against internet platforms are unfair and unwarranted. The bill requires operators and/or property owners to provide the Transient Accommodations Broker, including platforms, "with verification of compliance with state land use laws or county land use ordinances" when no such verification process exists at the state or local level. It asks the operators to generate evidence for which there is no uniform way to demonstrate compliance, and it asks the platforms to be responsible for verifying documents that do not currently exist and do not have a uniform standard.
- Additionally, the bill allows the Department of Taxation to impose harsh penalties on operators of transient accommodations, including but not limited to criminal misdemeanor charges. As an example, on Oahu, if a local resident lives full time in their home outside of a resort area, but occasionally rents out a room in their house to generate extra income, that local resident would potentially be subject to misdemeanor charges with little clarity on the process of appeal. Such a vague and open-ended penalty will only further complicate a system that is struggling to keep up with market realities
- While there has been much discussion among legislators about allowing local residents to share their home legally, this bill does nothing to protect those activities while at the same time imposing criminal penalties.

- There has been no discussion of the devastating impact this bill will have on the Hawaii economy, which will be significant, hurting local residents, small businesses, and the entire Hawaii tourism industry. Hundreds of millions, if not billions, of dollars in tourist revenue could be at risk if this bill were adopted as currently proposed.
 - Alternative accommodations support the state's biggest industry and generate millions in annual tax revenue.
 - A recent study conducted by the local economic consultants Kloninger & Sims found that just on Oahu, alternative accommodations support more than \$2B in economic impact and 12,000 jobs.

In conclusion, because the conditions for voluntarily collecting are so onerous and violate federal law, no platforms will be able to participate and thus this bill will generate zero new revenue for the state while severely negatively impacting the local economy, hurting local residents and businesses. We will continue to work with local leaders to develop common sense regulations on short-term rentals, and remain willing to work with the state to develop a path to allow us to collect and remit taxes on behalf our hosts.

Regards,



Matt Middlebrook
Head of Public Policy, Hawaii

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, TRANSIENT ACCOMMODATIONS, Transient Accommodations Brokers as Tax Collection Agents

BILL NUMBER: SB 1292

INTRODUCED BY: WAKAI, BAKER, S. CHANG, RIVIERE, Ihara, Shimabukuro, Taniguchi

EXECUTIVE SUMMARY: Allows a transient accommodations broker to serve as a collection agent for general excise and transient accommodations taxes. This type of arrangement would probably enhance collection of taxes because of the difficulty of policing individual owners. However, the number of caveats, conditions, and restrictions that are placed on the broker signing up for this program is so large that it is unlikely that any broker in its right mind would sign up. If no broker is motivated to sign up, this legislation will accomplish nothing.

SYNOPSIS:

Part I is the preamble.

Part II: Definitions

Adds the following definitions to section 237D-1, HRS:

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

"Hosting platform" means a person or entity that participates in the transient accommodations business by providing, and collecting or receiving a fee for, booking services through which an operator may offer a transient accommodation. Hosting platforms usually, though not necessarily, provide booking services through an online platform that allows an operator to advertise the transient accommodations through a website provided by the hosting platform and the hosting platform conducts a transaction by which potential renters arrange, use, pay, whether the renter pays rent directly to the operator or to the hosting platform.

Adds to the definition of "transient accommodations" that the term includes "transient accommodations units", "transient vacation rentals", "transient vacation units", transient vacation use", or any similar term that may be defined by county ordinance to mean a room, apartment, house, condominium, beach house, hotel room, suite, or similar living accommodation rented to a transient person for less than one hundred eighty consecutive days in exchange for payment in cash, goods, or services.

Part III: Hosting Platform Liability

Adds a new chapter to the HRS.

Section 2 of the new chapter states that it shall be unlawful for a person acting as, or on behalf of, a transient accommodations broker to engage in business with an operator or plan manager, including any person or entity employed, contracted, or otherwise engaged by the operator or plan manager for property management or as an activity provider, who is not in compliance with all state laws and county ordinances, including any laws and ordinances regarding land use, taxes, and professional licenses.

Also states that it shall be unlawful for a person acting as, or on behalf of, a transient accommodations broker, to act on behalf of an operator or plan manager, to employ, contract, or otherwise engage in business with any person or entity to manage any property of the operator or plan manager or to act as an activity provider for transients served by the operator or plan manager if the person or entity is not in compliance with all state laws and county ordinances, including laws and ordinances regarding land use, taxes, and professional licenses.

Section 3 of the new chapter states that it shall be unlawful for a person acting as, or on behalf of, a hosting platform to provide, and collect a fee for, booking services in connection with transient accommodations located in the State if those transient accommodations are not lawfully certified, registered, or permitted as transient accommodations under applicable county ordinance at the time the transient accommodations are rented.

Section 4 of the new chapter provides for civil penalties for noncompliance of a minimum of \$ _____ per day of violation.

Section 5 of the new chapter tasks the appropriate county officer or agency with enforcement.

Part IV: Hosting Platform Transparency and Data Sharing

Amends section 237D-4, HRS, so that any advertisement for a transient accommodation may include, instead of the operator's or plan manager's TAT registration number, the tax collection agent's TAT number.

Also requires each operator and plan manager to provide an anonymous monthly report of listings in Hawaii, aggregated by zip code, to the department of taxation by the fifth day of each month with the previous month's data. Provides recordkeeping requirements, and penalties for noncompliance like those that now are in section 237D-4(d).

Part V: Transient Accommodations Brokers as Tax Collection Agents

Adds a new section each to HRS chapter 237 and chapter 237D allowing the director of taxation to permit a transient accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers. A registrant must secure the consent of its operators and plan managers to the disclosure to county governments prescribed. However, the tax collection agreement shall be subject to any requirements under state or county law, and does not permit the broker, operator, or plan manager to opt out of any requirements or obligations under state or

county law. Defines “operator,” “plan manager,” and “transient accommodations broker” the same as in the TAT law.

The department is required to accept or deny an application for registration within thirty days. Upon acceptance as a tax collection agent, the broker shall report, and collect, and pay over the tax due on behalf of all its operators and plan managers as it relates to activity booked through the broker. Registration does not relieve the broker from any of its own tax obligations, and the operators and plan managers are not protected as to any business activity other than that booked through the broker. Furthermore, owners and plan managers are subject to all requirements of state and law (including county zoning law) as if the agreement did not exist.

A registered broker shall be issued separate licenses with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. The broker is to file periodic returns reporting income and exemptions as collection agent separately from its own business activity. With respect to taxes collected, the broker is jointly and severally liable with the operator or plan manager for the taxes. If the broker is an entity, responsible officials of the entity are made personally liable for the tax collected but unpaid, together with applicable penalties and interest.

A broker may cancel its registration by delivering a written cancellation notice to the department and its customers; the cancellation will be effective no earlier than 90 days after delivery of the notice. The department may also cancel a registration for any cause, including violations of the tax laws or a breach of the registration agreement.

Requires a broker, before conducting business with an operator or plan manager with respect to a property for lease or rent, to: (1) notify the operator or plan manager that the subject property must be in compliance with applicable state and county land use laws; (2) require the operator or plan manager to provide the broker with the operator or plan manager's transient accommodations number and local contact information required under section 237D-4, and to include this information in the advertisement, in compliance with section 237D-4; (3) require the operator or plan manager to provide the broker with verification of compliance with state land use laws and county land use ordinances in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency; and (4) require the operator or plan manager to provide a statement to the transient accommodations broker confirming compliance with all land use laws and ordinances. If a broker is officially notified that a property being advertised is out of compliance, the broker is required to remove the advertisement.

Provides that returns filed on behalf of an operator may be disclosed to a mayor or county planning director (in addition to county tax officials) to ensure compliance with local land use and zoning laws.

EFFECTIVE DATE: July 1, 2019.

STAFF COMMENTS: These comments are principally addressed to Part V.

Act 143, SLH 1998, amended HRS section 237-9 to allow multi-level marketing companies to act as agents to collect and pay over GET on behalf of their independent entrepreneurs. At the time, it was considered beneficial for the marketing companies to collect and pay over tax as opposed to having the Department of Taxation chase down a myriad of independent owners with varying degrees of tax compliance among them.

This bill presents an opportunity for the same logic and policy considerations to apply to transient vacation rental (TVR) activity operating through transient accommodation brokers such as AirBnB, Flipkey, Homeaway, and VRBO, except that the stakes may be a little higher because TAT as well as GET is being collected. This bill would appear to be necessary or desirable to enhance the Department's collection ability given the limited resources available for all of state government including the Department.

TVR activity is a business and the dollars earned in that business are subject to Hawaii state taxes. Specifically, General Excise Tax (GET) and Transient Accommodations Tax (TAT) both apply, so those hosts that are in this business need to register appropriately and pay these taxes. But alas, not everyone does. So, the bill proposes to allow the broker to register with the Department of Taxation and to remit the GET and TAT to the State on behalf of the hosts. Once registered, any time a host earns money on the broker's platform, the broker will pay the taxes and will pay over the balance to the host. The concept is like withholding, with which those of us who receive a paycheck are quite familiar: we work for an employer, the employer pays us our wages, but the employer deducts some taxes and pays them to the Department of Taxation and IRS.

A similar measure, HB 1850 (2016), passed two years ago but was vetoed by Governor Ige. The principal objection concerns county-level restrictions on property use. Some TVR activity violates county zoning laws. Some counties, as well as neighboring residents, see withholding as described in this bill as enabling hosts to hide illegal activities from county law enforcement. Some people have gone further. They blame TVR hosts for wrecking the sanctity of neighborhoods with an unending stream of tourists or for yanking housing units off the market in the name of greed, resulting in stratospheric housing prices that are yet another crippling blow to hardworking families struggling to make ends meet. Then, they turn to the brokers and demand that the brokers stop encouraging and facilitating such illegal, anti-societal, and morally depraved activity.

But do we really want a withholding agent to be our brother's keeper? Is it right to ask our employers to call up our banks and credit card companies to see if we are current on our mortgage and paying our bills on time? If we aren't timely or break the law, should we blame our employers for facilitating illegal or immoral activity by paying us our wages (after the tax authorities have, of course, gotten their share) instead of first making sure that those monies are applied to payment of our debts?

At some point, we need to recognize that TVR hosts, like most employees, are adults. They have chosen to go into business, and they are responsible for running their business and all that it

entails. They, as the property owners, are answerable to the counties for the use or misuse of those properties. Certainly, the brokers need to be aware of and compliant with laws that pertain to their business if they are going to be doing business here. But it seems a bit much to ask the brokers to be policemen for the counties when the counties, for whatever reason, can't or won't enforce their own zoning laws.

Ultimate responsibility as to both State tax and county zoning laws rests with the owners of the accommodations, not the broker. Owners may be in varying degrees of compliance with the zoning laws just as they are in varying degrees of compliance with the tax laws. The broker is not in an efficient position to police the former, but effectively can do something about the latter because money from the transient guests flows through the broker's system.

It needs to be kept in mind that the bill is attempting to set up a system for collection of tax that is VOLUNTARY. Brokers will need to WANT to sign up for it for the system to have any effect whatsoever, and at least one broker already told state lawmakers, in no uncertain terms, that if a bill substantially similar to this one passes, they ain't playin'. With all of the caveats and conditions and requirements and personal liability, who would want to sign up? This is not God laying down the Ten Commandments at Mt. Sinai. We need to make a deal in order for something like this to work.

Digested 2/7/2019



Prince Resorts Hawaii

February 8, 2019

Testimony of KISAN JO, PRESIDENT, PRINCE RESORTS HAWAII

Senate Committee on Energy, Economic Development, and Tourism Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of Prince Resorts Hawaii, Inc., which owns and operates three luxury hotel properties in the State of Hawaii, with over **1,000 rooms and 1,400 employees statewide**, *The Prince Waikiki* in Oahu; *the Mauna Kea Beach Hotel*; and *The Westin Hapuna Beach Resort* on Hawaii Island. The collection also includes the *Hawaii Prince Golf Club*, *Hapuna Golf Course*, *Mauna Kea Golf Course*, *Mauna Kea Resort Services* and *South Kohala Water Company*.

Prince Resorts Hawaii strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.



Kisan Jo
President
Prince Resorts Hawaii



February 8, 2019

Senator Glenn Wakai, Chair
Senate Committee on Energy, Economic Development and Tourism
Senator Rosalyn Baker, Chair
Senate Committee on Commerce, Consumer Protection and Health
Hawaii State Legislature

Testimony in Support of Bill 1292 related to Transient Accommodations

Dear Senator Wakai, Senator Baker and Members of the Committees on Energy, Economic Development and Tourism, and Commerce, Consumer Protection and Health,

The Kohala Coast Resort Association strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional lodgings.

According to the Hawaii Tourism Authority's most recent Visitor Plant Inventory, there are an estimated 13,396 rooms rented as TVR units on Hawaii Island, compared to 6,110 hotel rooms. All of our members have been required to pay the hotel/resort property tax rate (\$11.55 per \$1000 valuation) to the County of Hawaii, as well 10.25% in TAT and 4.25% in GET to the State of Hawaii. Unfortunately, those property taxes, TAT and GET collections have not been fairly and equitably enforced with the owners of TVRs.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent just a fraction of the total TVR units in the islands according to HTA's study.

Hawaii County recently enacted Bill 108, which will regulate some aspects of TVRs on our island. We look forward to seeing that bill implemented later this year. We encourage you to also provide for the enforcement, transparency and equitability in the accommodations sector, by supporting SB1292.

KCRA is a collection of master-planned resorts and hotels situated north of the airport which represents more than 3,500 hotel and timeshare accommodations and an equal number of resort residential units. This is approximately 35 percent of the accommodations available on the Island of Hawai'i. KCRA member properties annually pay more than \$20 million in TAT and \$20 million in GET.

Sincerely,

A handwritten signature in black ink that reads "Stephanie P. Donoho". The signature is written in a cursive style.

Stephanie Donoho
Administrative Director

Testimony of

Rob Robinson, Vice President
OLS Hotels & Resorts

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of OLS Hotels & Resorts. Our Honolulu office currently operates four hotels in the Hawaiian Islands with plans for expansion.

We strongly support this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua‘i, Maui, and Hawai‘i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

Testimony of

Steve Yannarell
General Manager

Waikoloa Beach Marriott Resort and Ocean Club

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Waikoloa Beach Marriott Resort and Spa, a mixed use facility with 300 hotel rooms and 112 Marriott Vacation Club suites located along the beautiful Kohala Coast. We employ over 300 associates from across Hawaii Island and are a member of the Hawaii Lodging and Tourism Association the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua‘i, Maui, and Hawai‘i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.



The Senate
The Thirtieth Legislature
Regular Session of 2019

To: Senate Committee on Energy, Economic Development and Tourism
Senator Committee on Commerce, Consumer Protection and Health

Date: February 13, 2019

Place: Conference Room 414
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: Senate Bill 1292, Relating to Transient Accommodations

Chairs Wakai and Baker and Members of the Committees:

Rental By Owners Awareness Association (RBOAA) fully supports compliance with State taxation laws and County zoning regulations.

We offer these **comments** regarding SB 1292.

Confidential Tax Information to County Planning Department

We have concern that this Bill requires the tax collection Agent provide confidential tax information of operators to the county planning director or any official designated by the mayor. All persons employed in the State Department of Taxation are subject to felony charges for disclosing confidential tax information. **This Bill requires that personal tax information be disclosed to a non-taxing authority.**

Dual Liability For Tax Transmission to Department of Taxation

RBOAA also has concern with the requirement that operators will be held jointly and severely liable for taxes that a registered tax collection agent fails to report or pay. When the State enters into an agreement with an agent to collect taxes it is an agreement of what will be performed, i.e. collect taxes from operators and pay to the state. **The liability for the performance by the agent should be placed only on that agent, not on an operator who has no knowledge or control of what the agent does once they withhold the tax from the operator.**

Counties Process Cannot Comply with Bill Requirements

This Bill makes it unlawful for broker and platforms to engage in business with an operator who is not "lawfully certified, registered, or permitted under applicable ordinance."

This provision is in conflict with the regulations of the counties. Each county has a designated tourism zone in which short term vacation rentals are legal by *zoning*. The operators of these units are not issued a separate designation by the counties such as a certificate, registration or permit. Most of the counties require these individual certificates, registrations or permits only for short term rentals *outside of the tourism zones*. When an operator is outside of the tourism zone they then obtain a "non conforming use permit." Each of the four counties has such a process.

There currently is not a way for an operator to provide to a broker/platform the proof of compliance when they rent legally within the tourism zones.

Noting the above concerns, RBOAA is generally supportive of SB 1292. We appreciate the opportunity to provide feedback."

Sincerely,

Alicia Humiston
President,
Rentals by Owner Awareness Association



Sheraton
KAUAI RESORT

Testimony of Gerald Bahouth, General Manager
SHERATON KAUAI RESORT

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

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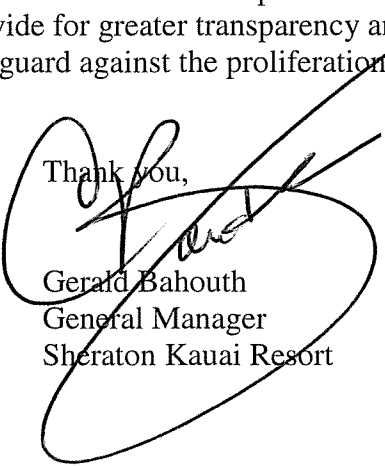
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This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you,



Gerald Bahouth
General Manager
Sheraton Kauai Resort

Testimony of

Robin Graf, VP Operations
Castle Resorts & Hotels

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

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The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

A handwritten signature in black ink, appearing to read "Rick K. Kelly". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Testimony of

Simeon Miranda

Board Member Hawai'i Lodging & Tourism Association

Senate Committees on:

Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Thank you for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association with over 700 members, managing hotels with over 51,000 rooms and over 40,000 employees in Hawaii. HLTA strongly supports Bill 1292 and any sound legislation to establish a fair playing field to ensure enforcement, accountability transparency among online transient vacation rentals.

My name is Simeon Miranda, General Manager of Embassy Suites by Hilton Waikiki Beach Walk. Embassy Suites Waikiki is also part of Outrigger Hospitality Group. First and foremost, I was born in the Philippines and raised on Oahu. As a local, I attended Damien High school and went to the mainland for college. I returned to Oahu to be a hotel executive. Having been raised in Kalihi there was no such thing as Airbnb, VRBO's, or transient vacation rentals. I just remember Motels, Hotels and now luxury Resorts, time shares and vacation rentals.

Oahu is behind other islands and many mainland cities in acquiring millions of dollars in taxes that could benefit our Oahu Island immediately! There are approximately 23,000 alternative accommodations in Hawaii that compete with other resorts, time shares, vacation rentals and hotels like mine. The big difference is we pay 10.25% in TAT and 4 to 4.5% in GE tax and TVRs do not. We cannot strictly rely on the Hospitality industry. We need to stop this!

As an hotelier, business man and local resident, I cannot believe this has been going on for a few years and what a lost revenue opportunity! The Hawaii Attorney General revealed this month, that we can generate more than \$41 million in new revenues for the state the last two years if we had allowed to collect and remit from 16,000 operators.

As a community, we have failed to successfully address the impact of expanding TVR's on availability of rental properties. According to a Hawaii study, 9 out of 10 units are being rented as entire homes, as opposed to single rooms. The report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVR's are only compounding problems as shortage of affordable housing, higher real estate prices, purchasing of housing units by non-residents and increasing already high rents. In my condo alone, I see these TVR's and know the owners are non-residents avoiding tax registration, not abiding by zoning laws and skirting TAT and GE taxes.

This issue is not about my hotel, nor the hospitality industry versus TVR. It is about me, a local, a business man and how it's affecting my community, our community. We need to stop the illegal transient vacation rentals in our neighborhoods, pass a bill that will benefit our communities to benefit the quality of life for residents of Hawai'i.

Mahalo.

Testimony of Wade Gesteuyala

Hampton Inn & Suites Oahu/Kapolei

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive

regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

A handwritten signature in black ink, appearing to read 'Wade Gesteuyala', with a horizontal line extending to the right from the end of the signature.

Wade Gesteuyala



Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

SB 1292

Relating To Transient Accommodations

COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

Wednesday, February 13, 2019, 2:45 pm

Conference Room 414

Dear Chairs Wakai and Baker; Vice Chairs Taniguchi and Chang; and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 195 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA strongly supports SB 1292, which adds definitions to the TAT law. Amends the definition of "transient accommodations" to include additional forms of transient accommodations. Part III: Makes it unlawful for transient accommodations brokers to engage in business with operators or plan managers or property managers or activity providers that are not in compliance with all state laws and county ordinances. Makes it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient vacation rentals that are not lawfully certified, registered, or permitted under applicable county ordinance. Part IV: Requires operators and plan managers to provide a monthly report of transient accommodations listings in Hawaii by zip code to the department of taxation and maintain records to be made available upon lawful request. Part V: Allows a transient accommodations broker to register as a tax collection agent for its operators and plan managers. Requires an operator or plan manager to remove a transient accommodation advertisement upon notice that the property is not in compliance with state law or county ordinance.

MHLA is in strong support of this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings. There are more than 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, with many them likely avoiding the 10.25 percent transient accommodations and general excise taxes.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. By removing housing from the rental market, TVRs are only compounding such problems as a

shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

Thank you for the opportunity to testify.

Testimony of

Barbara A. Campbell
Outrigger Hospitality Group

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua‘i, Maui, and Hawai‘i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

SB-1292

Submitted on: 2/12/2019 1:20:25 PM

Testimony for EET on 2/13/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Countryman	Testifying for Marriott's Maui Ocean Club	Support	No

Comments:

Testimony of

Bill Countryman

Marriott's Maui Ocean Club

Senate Committees on:

Energy, Economic Development, and Tourism

Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the The Maui Hotel & Lodging Association (MHLA), the legislative arm of Maui County's visitor industry. Our membership includes 195 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms.

The MHLA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

Maui County has enacted ordinances regulating TVRs, and recently increased fines for operating illegally.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.



Testimony of

Michael Jokovich
Area Vice President
Hyatt Resorts Hawaii

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hyatt Resorts Hawaii (HRH). My resorts in Hawaii include Andaz Maui at Wailea Resort, Hyatt Regency Maui, Grand Hyatt Kauai, Hyatt Regency Waikiki Beach, and Hyatt Centric Waikiki Beach. Collectively, Hyatt Resorts Hawaii employs over 2,000 residents and represents over 3,100 rooms.

On behalf of HRH, I ask for your support of SB 1292, which establishes a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

This is not an issue about the hospitality industry versus the TVRs as it is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents. While the Legislature and administration are approving funding to expand our inventory of affordable housing, we have been unable to address the impact of multiplying-TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. This report also suggests roughly half the hosts are non-residents. With the removal of available housing from the rental market, TVRs are only adding to the problems including shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This bill will level the playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, safeguard against the proliferation of illegal rentals in our communities, and promote the availability of affordable housing. I respectfully request that you consider passing SB 1292.

Mahalo for the opportunity to testify,

A handwritten signature in black ink, appearing to read "Michael Jokovich", with a long horizontal line extending to the right.

Michael Jokovich
Area Vice President Hawaii

SB-1292

Submitted on: 2/7/2019 6:30:06 PM

Testimony for EET on 2/13/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joshua Kay	Individual	Support	No

Comments:

I support this legislation. People are operating these vacation rentals in areas where they don't belong. The legal ones need to pay the same property taxes as hotels. My personal view is that these illegally operating vacation rental owners are greedy individuals who are cheating the state out of tourism revenues and who are inconsiderate of the neighbors in the areas in which they're operating.



February 12, 2019

Re: Testimony of Doug Sears
General Manager, Hyatt Regency Waikiki Beach Resort & Spa

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 1292, RELATING TO TRANSIENT ACCOMMODATIONS.

BEFORE THE:

SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Wednesday, February 13, 2019 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 414

TESTIFIER(S): Clare E. Connors, Attorney General, or
Mary Bahng Yokota, Deputy Attorney General

Chairs Wakai and Baker and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to:

- (1) Amend the definition of "transient accommodations" to include similar terms used by the counties;
- (2) Make it unlawful for transient accommodations brokers to engage in business with operators, plan managers, property managers, or activity providers who are not in compliance with all state laws and county ordinances;
- (3) Make it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient accommodations that are not lawfully certified, registered, or permitted under applicable county ordinance;
- (4) Require operators and plan managers to provide periodic reports of transient accommodations listings to the Department of Taxation;
- (5) Require hosting platforms to maintain information and make them available to enforcement officials upon lawful request;
- (6) Permit a transient accommodations broker to register as a tax collection agent for its operators and plan managers for general excise tax and transient accommodations tax purposes; and

- (7) Require an operator or plan manager to remove an advertisement for transient accommodations upon notice that the property is not in compliance with state law or county ordinance.

We recommend that the last phrase in the second paragraph of section 1 of the bill be deleted because the phrase could be interpreted as legislative intent to hold hosting platforms, such as Airbnb, liable as the publisher or speaker of information provided by the operators and plan managers in their online advertisements. Based on such an interpretation, the bill may be subject to challenge under the federal Communications Decency Act (CDA), which provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider” and that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” 47 U.S.C. § 230(c)(1) and (e)(3). Therefore, the second paragraph of section 1 of the bill would read as follows:

The legislature also finds that hosting platforms, such as Airbnb, should be subject to fines if the hosting platform collects a booking service fee for posting online a transient accommodations unit rental that is not registered with its respective county in Hawaii ~~and the transient accommodations broker does not post the transient accommodations’ registration identification number in the rental listing.~~

Page 1, line 15, through page 2, line 4.

It appears that the term “transient” may have been inadvertently omitted on page 29, line 14:

For purposes of any other business activity, the operators and plan managers shall be subject to all requirements of title 14 and all applicable ordinances and rules regulating transient accommodations, regardless of the terms used by the county to refer to transient accommodations, as if this section did not exist. [Emphasis added.]

We respectfully ask that the Committees amend the bill as recommended.



STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813
<http://tax.hawaii.gov/>
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

LATE

To: The Honorable Glenn Wakai, Chair
and Members of the Senate Committee on Energy, Economic Development, and
Tourism

The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce, Consumer Protection, and
Health

Date: Wednesday, February 13, 2019
Time: 2:45 P.M.
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 1292, Relating to Transient Accommodations

The Department of Taxation (Department) supports the intent of Parts II, IV, and V of S.B. 1292 and offers the following comments regarding the tax provisions for the Committee's consideration.

The following is a summary of key tax provisions of Part IV of S.B. 1292, which is effective upon approval:

Information and Reporting Requirements

- Advertisements for all transient accommodations and time share vacation interest, plan, or unit must provide either the operator or plan manager's transient accommodations tax (TAT) number or the transient accommodations broker tax collection agent's TAT number.
- Operators and plan managers must provide monthly, anonymous reports of their listings in Hawaii, aggregated by zip code. Failure to provide the reports results in civil fines.
- Hosting platforms must maintain identifying information on all transient accommodations for three years from the last rental date. The information must include the names of the owners and operators, the address of the transient accommodation, the dates it was rented, and any other information that may be required by rules adopted by the Department.

The Department notes that the requirement that either the operator's or plan manager's TAT number or the transient accommodations broker's TAT number, be displayed in an

advertisement is not enforceable due to federal preemption under the Communications Decency Act, 47 U.S.C. §230 (CDA).

The Department notes that the allowance for reports from the operators and plan managers to be anonymous is unusual. For transient accommodations for which a tax collection agreement with a transient accommodations broker is in place, the anonymous report would allow the Department to cross-check this anonymous report against the report from the tax collection agent/broker. However, this requirement would apply to all transient accommodations, even those not rented through a transient accommodations broker that is a tax collection agent. In these cases, the anonymous information would be of little value. The Department suggests making the anonymous report due for transient accommodations rented through a transient accommodations broker that is also a tax collection agent.

The Department supports the intent of the remaining provisions in Part IV of the bill. The requirements will bolster enforcement of the TAT, especially enforcement against a transient accommodations broker tax collection agent.

The following is a summary of key tax provisions of Part V of S.B. 1292, which is effective upon approval:

Duties as Tax Collection Agent

- A transient accommodations broker who voluntarily registers as a tax collection agent will be required to report, collect, and pay general excise tax (GET) and transient accommodations tax (TAT) on behalf of all of its operators and plan managers for transient accommodations booked directly through the registered agent.
- The registered agent's operators and plan managers will be required to be licensed under chapters 237 and 237D, Hawaii Revised Statutes (HRS).

Reporting Requirements

- The registered agent must provide the following information in a cover sheet with every tax return filed with the Department: the name, address, and license identification number of each operator; the address of each transient accommodation; the number of nights that each transient accommodation was rented; the amount of tax being remitted for each transient accommodation; and the amount of income reportable on federal form 1099 for each transient accommodation.
- The registered agent must disclose the information in the cover sheet to the planning director or any county official.

Compliance with Land Use Laws

- When conducting business with an operator or plan manager, the registered agent shall: (1) notify the operator that the property is required to be in compliance with applicable land use laws; (2) require the operator to provide the transient accommodations number and local contact and include said information in the advertisement; (3) require the operator to provide verification of compliance with state and county land use laws; (4) require the operator to attest that the property is in compliance with applicable land use laws; and (5) require the operator to provide any other information required by rulemaking.

The Department supports the intent of Part V of S.B. 1292. The Department requests that both Parts IV and V be amended to apply beginning January 1, 2020 to allow the Department sufficient time to make the necessary form and computer system changes.

Finally, the Department strongly suggests adding the following new Section to this measure. This proposed Section would give the Department the authority to impose civil fines on “hosting platforms” that are providing “booking services” and collecting fees for transient accommodations operators who are not properly licensed under chapter 237D, HRS. This proposed Section also gives the Department the authority to request operators’ TAT registration numbers from the “hosting platforms.” “Hotel” type transient accommodations are excluded from the proposed Section as there is no difficulty in identifying these types of operators. This proposed Section is distinguishable from the Tax Reporting measure (S.B. 1268) proposed by the Department because it would apply to the “hosting platforms” that collect advertising fees. The Tax Reporting measure would only apply if the person is collecting long-term or short-term rent on behalf of another taxpayer.

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

"§237D- Booking services. (a) It shall be unlawful for a hosting platform to provide booking services and collect a fee for such booking services provided in connection with transient accommodations located in the State if the operator of the transient accommodations is not registered with the department as required under section 237D-4. This section shall not apply to booking services provided in connection with a transient accommodation that is a hotel.

(b) A hosting platform that violates this section shall be subject to a penalty of \$1,000 per booking service transaction from which fees were collected in violation of subsection (a). The following transactions shall be deemed to be separate booking services transaction:

(1) Each reservation for the letting of a transient

accommodation;

- (2) Each pay-per-listing agreement between a hosting platform and an operator;
- (3) A single calendar month of a subscription-based listing agreement between a hosting platform and an operator;
- (4) Each instance of an operator registering with a hosting platform; and
- (5) Other transactions set forth by administrative rule.

(c) As used in this section:

"Booking service" means any advertising, reservation or payment service provided by a person or entity that facilitates the furnishing of transient accommodations between an operator and a prospective renter, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with such advertising, reservation or payment service provided.

"Hotel" means an establishment consisting of any building, structure, or portion thereof containing more than nine rooming units that, as part of its routine operations, both furnishes transient accommodations and provides one or more additional customary lodging services other than the living accommodations and the use of furniture, fixtures, and appliances, such as room attendant, room service, bell service, laundering service,

concierge service, or daily housekeeping service.

"Hosting platform" means a person or entity that participates in the transient vacation rental business by providing, and collecting or receiving a fee for, booking services through which an operator may offer transient accommodations.

"Service business" shall have the same meaning as in section 237-7.

(d) The department may require a hosting platform to provide the names and registration identification numbers for all operators for whom the hosting platform provided booking services and for all operators whose property or transient accommodations the hosting platform provided booking services for.

The department shall not impose penalties under this section if the hosting platform obtains the registration identification number issued under section 237D-4 of the operators described in this subsection, in the format in which such numbers are issued by the department.

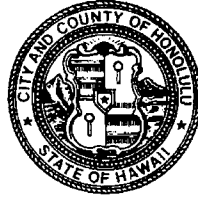
(e) Any monetary penalty assessed under this section shall be due and payable thirty days after the hosting platform is notified of the imposition of the penalty. Penalties assessed under this section may be appealed to the director of taxation or the director's designee.

Thank you for the opportunity to provide comments.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluluodpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 13, 2019

The Honorable Glenn Wakai, Chair
and Members of the Committee on Energy,
Economic Development, and Tourism
The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on Commerce,
Consumer Protection, and Health
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

LATE

Dear Chairs Wakai and Baker, and Committee Members:

**Subject: Senate Bill No. 1292
Relating to Transient Accommodations**

The Department of Planning and Permitting (DPP) is pleased to **support, with recommended amendments**, Senate Bill No. 1292 to the extent that it reflects a concerted State and county approach to taxing and regulating transient accommodations. It introduces significant new tools to help the counties better administer and enforce appropriate regulations on short-term vacation rentals, particularly in our residential neighborhoods.

The department takes no position on the establishment of hosting platforms as tax collection agents. However, we do support:

- The requirement that registered tax collection agents must share information with the county planning directors and mayors, including the location of the vacation rental property, the name of the operator, and the number of nights the property was rented
- The requirements that operators provide evidence that each property complies with applicable State and county land use laws, as confirmed by the appropriate agency
- The requirement that any advertisement must be removed if it does not adhere to the requirements of this Bill
- Clear provisions that allow the Department of Taxation and counties to impose penalties for lack of compliance with Bill provisions
- The requirement that advertisements must include the registration number for the advertised property

We do humbly request two amendments, regarding booking information and applicability to hotels. First, various sections of the Bill reference the number of nights rented. For county enforcement, it is important to note how many nights were rented per booking. It is possible that

The Honorable Glenn Wakai, Chair
and Members of the Committee on Economic
Development, Tourism and Technology
The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on Commerce,
Consumer Protection, and Health
Hawaii State Senate
Senate Bill No. 1292
February 13, 2019
Page 2

for a total of 120 booked nights that there was just one booking, or many. Under City regulations, a booking of more than 30 nights is not a violation. Thus, while aggregated booking information by zip code will be good information for statistical purposes, it does not help for county enforcement.

Second, the Bill proposes that hotels would also be required to obtain a registration number as transit accommodations and their advertisements comply with the proposed provisions. We suggest that this may be unnecessary, as hotels already must file TAT returns, and, by definition, offer short-term overnight accommodations. Under the City's current zoning and proposed regulations, short-term rentals are treated separately from hotel use.

In short, we respectfully ask that this Bill move forward with the requested amendments.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Sokugawa". The signature is fluid and cursive, written over the typed name.

Kathy Sokugawa
Acting Director



OFFICE OF THE MAYOR
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHILIG, MANAGING DIRECTOR

LATE

Testimony of Michael Dahilig
Managing Director, County of Kaua'i

Before the
Senate Committee on Energy, Economic Development, and Tourism
Senate Committee on Commerce, Consumer Protection, and Health

February 13, 2019; 2:45 pm
Conference Room 414

In consideration of
Senate Bill 1292 Relating to Transient Accommodations

Honorable Chairs Wakai, Baker, and Members of the Committees:

The County of Kaua'i **supports the intent but has comments** on SB1292 which amends the definition of “transient accommodations” and adds definitions to the TAT law; insures vacation rental transient activities are in compliance with all state laws and county ordinances; requires operators and managers to report monthly to the department of taxation; allows a transient accommodations broker to register as a tax collection agent for its operators and plan managers; and requires an operator or plan manager to remove a transient accommodation advertisement when the property is not in compliance with state law or county ordinance.

As we have had chronic difficulty enforcing zoning regulations promulgated under state law, we would ask the following language be added to HRS 46-4 to allow us to have greater access to more enhanced penalties for violators and our court system:

“Counties may define by ordinance whether transient vacation rental usage is resort in nature. Further, counties may also by ordinance seek judicial review of civil notices of zoning violation concerning illegal transient vacation rental activities without prior administrative hearing by the planning agency.”

Thank you for the opportunity to comment on this subject.





DEPARTMENT OF PLANNING
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

KA'ĀINA S. HULL
DIRECTOR

JODI A. HIGUCHI SAYEGUSA
DEPUTY DIRECTOR

Testimony of Ka'āina Hull
Planning Director, County of Kaua'i

LATE

Before the
Senate Committee on Energy, Economic Development, and Tourism and
Senate Committee on Commerce, Consumer Protection, and Health

February 13, 2019; 2:45 pm
Conference Room 414

In consideration of
Senate Bill 1292
Relating to Transient Accommodations

Honorable Chairs Wakai and Baker, and Members of the Committees:

The County of Kaua'i, Department of Planning supports SB1292. In particular, the Department supports Part III where hosting platforms engaging in business with vacation rental operators that are not in compliance with state and county laws are deemed unlawful. The Department submits its comments and respectfully requests that language be added to the bill to clarify and further support the intent to have the counties enforce the prohibitions of Part III.

Currently, Kaua'i has approximately 4,500 unique listings for vacation rentals advertised across numerous third party hosting sites. Although a large number of these listings are located within Kaua'i's Visitor Destination Areas where transient accommodations are outright permitted, we anticipate approximately 800 to 1,200 of these units to be located outside of our Visitor Destination Areas where those uses are prohibited. Reasons for prohibiting transient accommodations outside of the Visitor Destination Areas are two-fold:

1. To address the proliferation of resort uses within our residential neighborhoods; and
2. To address Kaua'i's housing inventory crisis. Although a recent study demonstrated that approximately 1 in every 20 homes in the State is a



vacation rental, 1 in every 7 homes is a vacation rental on the island of Kaua'i.

To this end, our Zoning Enforcement Division has primarily focused its resources on monitoring and shutting down illegal vacation rental operators. While our enforcement team has been successful in shutting down several hundred vacation rentals over the past few years, our efforts have been stymied by the overwhelming wave of illegal vacation rentals that advertise on third party hosting platforms.

As such, we respectfully request that the language in Part III be added to Hawai'i Revised Statutes (HRS) Chapter 46 to clarify that the counties are empowered to enact and enforce its prohibitions. In addition, we respectfully request that additional language be added to Section 5 of Part III to allow the counties to enact ordinances to further support Part III's intent as follows:

§ -5 Enforcement.

The appropriate county officer or agency may enforce this [chapter] section within each county.

Each county shall have the power to enact and enforce ordinances to carry out the purposes of this section.

Respectfully submitted,



Ka'aina Hull

Director of Planning, County of Kaua'i

Testimony of

Michael Czarcinski
General Manager
Moana Surfrider, A Westin Resort & Spa

LATE

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua‘i, Maui, and Hawai‘i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

A handwritten signature in black ink, appearing to read 'Czarcinski', with a long horizontal flourish extending to the right.

Michael Czarcinski
General Manager
Moana Surfrider, A Westin Resort & Spa
2365 Kalakaua Avenue
Honolulu Hawaii 96815 USA

Testimony of
Mike Shaff
Outrigger Hospitality Group
Hawaii Lodging and Tourism Association Board Member

LATE

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Outrigger Hospitality Group, and the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

My name is Mike Shaff, Vice President of Hotel Operations –Waikiki and Guam. I strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua‘i, Maui, and Hawai‘i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Mahlo nui loa.

LATE

Testimony of

Jeff Wagoner
Outrigger Enterprises Group

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you,

A handwritten signature in black ink, appearing to read "Jeff Wagoner", written in a cursive style.

Jeff Wagoner
President & CEO



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON ENERGY,
ECONOMIC DEVELOPMENT & TOURISM AND
THE COMMITTEE ON COMMERCE, CONSUMER PROTECTION & HEALTH
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 414
WEDNESDAY, FEBRUARY 13, 2019 AT 2:45 P.M.**

To The Honorable Glenn Wakai, Chair;
The Honorable Brian T. Taniguchi, Vice Chair; and
Members of Committee on Energy, Economic Development & Tourism;

To The Honorable Rosalyn H. Baker, Chair;
The Honorable Stanley Chang, Vice Chair; and
Members of Committee on Commerce, Consumer Protection & Health;

TESTIMONY IN SUPPORT OF SB 1292 RELATING TO TRANSIENT ACCOMMODATIONS

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our support of SB 1292.

We support a level playing field and a fair and equitable marketplace. All accommodations should be required to pay the transient accommodations tax and general excise tax. Therefore, we support this bill to amend the definition of “transient accommodations” to include transient vacation rentals and other forms of transient accommodations. We also appreciate the additional requirements for hosting platforms to ensure transient accommodations are compliant and appropriate taxation is collected in our state.

We appreciate the opportunity to testify on this matter and ask that this bill be passed.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui’s unique community characteristics.

Testimony of

Scott Ingwers, Regional Vice President
Trump International Hotel Waikiki



Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony.

The management of Trump Waikiki strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive

regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

Testimony of
Angela Nolan
Marriott Ko Olina Beach Club



Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees. As a long time hotelier in Hawai'i, I know how vital this industry is to the livelihood of so many residents.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely circumnavigating proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands. These numbers are truly staggering.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua‘i, Maui, and Hawai‘i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you for listening and for the opportunity to testify.



LATE

Testimony of

GLENN VERGARA
WAIKIKI RESORT HOTEL

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

On behalf of the Waikiki Resort Hotel, a 275 room hotel with 121 employees, I respectfully submit this written testimony IN SUPPORT OF SB 1292 Relating to Transient Accommodations.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts. The majority of them are not adhering to the State's tax registrations and county zoning laws, and are not collecting and paid the 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

Airbnb have testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

We as a community have not addressed the impact of the growing number of TVRs on the availability of rental property. Studies have shown that nine out of ten units are being rented as entire homes, as opposed to single rooms; with roughly half the hosts are non-residents. TVRs are having a negative impact on Hawaii's affordable housing market, increasing already high real estate prices, further increasing purchases of housing units by non-residents, and greatly increasing rents for our residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislations.

Thank you for your consideration.

LATE

SB-1292

Submitted on: 2/12/2019 6:58:29 PM

Testimony for EET on 2/13/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jason Ito	Testifying for Kyo-ya Management Co., Ltd.	Support	No

Comments:

Kyo-ya Mgt Co., Ltd. strongly supports this measure as it desires to establish a fair environment to ensure transparency, enforcement, and accountability amongst online transient vacation rentals as well as traditional lodging properties.

This bill will help the City and County of Honolulu in collecting the taxes owed from on-line platforms and their operators, and to assure against the further increases of illegal rental properties in our communities.

Thank you for your consideration of our testimony.



KOBAYASHI SUGITA & GODA, LLP
Attorneys at Law

Bert T. Kobayashi, Jr.*
Alan M. Goda*

John R. Aube*
Charles W. Gall*
Neal T. Gota
Clifford K. Higa*
Robert K. Ichikawa*
Christopher T. Kobayashi*
Jan M. L. Y. Kutsuna*
David M. Louie*
Nicholas R. Monlux
Jonathan S. Moore
Bruce A. Nakamura*

Kenneth M. Nakasone*
Gregory M. Sato*
Jesse W. Schlei*
Craig K. Shikuma*
Lex R. Smith*
Joseph A. Stewart*
Anthony F. Suetsugu
David B. Tongg*
Maria Y. Wang

*A Law Corporation

Of Counsel:
Kenneth Y. Sugita*
Wendell H. Fuji*
Jonathan A. Kobayashi
Burt T. Lau*
John F. Lezak*
Larry L. Myers*

Jesse D. Franklin-Murdock
Charles D. Hunter
Chelsea C. Maja
Aaron R. Mun
Gabriele V. Provenza
Nicholas P. Smith
Brian D. Tongg
Caycie K. G. Wong

February 13, 2019

LATE

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT AND TOURISM
Senator Glenn Wakai, Chair, Senator Brian T. Taniguchi, Vice Chair

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH
Senator Rosalyn H. Baker, Chair, Senator Stanley Chang, Vice Chair

HEARING DATE: Wednesday, February 13, 2019
TIME: 2:45 p.m.
PLACE: Conference Room 414

Re: **TESTIMONY ON BEHALF OF AIRBNB OPPOSING
SENATE BILL NO. 1292**

Dear Senators:

We write on behalf of our client, Airbnb, in opposition to Senate Bill No. 1292 (“SB 1292”). Although we support SB 1292’s intent to permit hosting platforms to act as tax collection agents, which would further tax collection purposes, these purposes cannot overcome the fact that SB 1292 impermissibly violates federal law and runs afoul of other constitutional protections.

SB 1292 contains problematic language that would render it invalid, unworkable, and unenforceable. The current language of SB 1292 violates two federal laws: (1) the federal Communications Decency Act, 47 U.S.C. § 230 (“Section 230”) and (2) the Stored Communications Act, 18 U.S.C. Chapter 121 §§ 2701-2712 (the “SCA”). Section 230 and the SCA are two laws which provide vital protections that ensure a free and open internet. SB 1292 is therefore preempted by these federal laws, and would thus be unenforceable if passed.

Section 230 of the Communications Decency Act

Although a municipality may regulate in various areas, it must do so in a manner that does not conflict with federal law. Section 230 is considered the cornerstone of the legal framework that has allowed the internet to thrive, and it “protects websites from liability for material posted on the website by someone else.” *Doe v. Internet Brands, Inc.*, No 12-56638, 2016 WL 3067995, at *3 (9th Cir. May 31, 2016). It does so through two key provisions. First, “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Second, “[n]o liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* at § 230(e)(3). As the United States District Court for the District of Hawaii observed, “so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection procession.” *Sulla v. Horowitz*, No. CIV. 12-00449 SOM, 2012 WL 4758163, at *2 (D. Haw. Oct. 4, 2012) (quoting *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003)).

Accordingly, courts across the country have regularly found that Section 230 preempts state laws that attempt to hold websites liable for third-party content. *See e.g., Blackpage.com, LLC v. McKenna*, 881 F.Supp.2d 1262, 1273 (W.D. Wash. 2012). Section 230 also protects websites from being forced to screen or otherwise verify third-party content. *See, e.g., Doe v. Friendfinder Network, Inc.*, 540 F.Supp.2d 288, 295 (D.N.H. 2008) (“§ 230 bars the plaintiff’s claims that the defendants acted wrongfully by ... failing to verify that the profile corresponded to the submitter’s true identity.”); *Doe v. MySpace, Inc.*, 474 F.Supp.2d 843, 850 (W.D. Tex. 2007) (finding that Section 230 barred claims that MySpace was liable for policies relating to age verification); *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1180 (9th Cir. 2008) (“webhosts are immune from liability for ... efforts to verify the truth of” third-party statements posted on the website); *Prickett v. InfoUSA, Inc.*, 561 F.Supp.2d 646, 651 (E.D. Tex. 2006) (“The Plaintiffs are presumably alleging that ... the Defendant is liable for failing to verify the accuracy of the content. Any such claim by the Plaintiffs necessarily treats the Defendant as ‘publisher’ of the content and is therefore barred by § 230.”); *Mazur v. eBay Inc.*, No. CIV 07-3967 MHP, 2008 WL 618998, at *9 (N.D. Cal. Mar. 4, 2008).

The Stored Communications Act

In 1986, Congress enacted the SCA, 18 U.S.C. Chapter 121 §§ 2701-2712, to give persons using internet platforms statutory protection, similar to the Fourth Amendment of the U.S. Constitution, against access by the government to stored electronic private information held by those internet platforms, without due process such as a search warrant. Orin S. Kerr, *A User’s Guide to the Stored Communications Act, and a Legislator’s Guide to Amending It*, 72 GEO. WASH. L. REV. 1208, 1209-13 (2004). The SCA limits the government’s ability to compel internet platforms to disclose information in their possession about their users, and limits the internet platform’s ability to voluntarily disclose information about their users to the government, absent a subpoena, warrant, or court order. The SCA contains both criminal and civil penalties for

violations. Numerous courts have held that the SCA applies to internet platforms and websites. See e.g., *Brown Jordan Int'l Inc. v. Carmicle*, 846 F.3d 1167 (11th Cir. 2017); *Crispin v. Christian Audiger, Inc.*, 717 F.Supp.2d (C.D. Cal. 2010); *Campbell v. Facebook, Inc.*, 315 F.R.D. 250 (N.D. Cal. 2016).

In a recent example, a federal judge restricted the city of Portland from enforcing some of its lodgings tax regulations against HomeAway, a vacation rental website. *Homeaway.com, Inc. v. City of Portland*, Civ. No. 3:17-cv-00091-PK, (D. OR. Mar. 27, 2011). That case involved regulations by the city of Portland which required HomeAway to provide information to the city – including customer names, listings, and rental addresses, and potentially lengths and prices of stays arranged through its website – without a subpoena or other legal process. U.S. District Judge Michael W. Mosman ruled that significant portions of the regulations would violate the SCA. See http://www.oregonlive.com/portland/index.ssf/2017/03/post_588.html.

SB 1292 impermissibly violates Section 230.

SB 1292 violates Section 230 in several ways. It seeks to make hosting platforms responsible for the content and veracity of information provided by its users. It also improperly seeks to make hosting platforms liable for collecting a fee for “booking services” where the users do not comply with local land use laws, again penalizing hosting platforms for the content of listings provided by users. Finally, it requires that the hosting platforms agree in writing to not collect any fee if it receives a written notice from a state or county governmental authority that the subject property is not in compliance with local land use laws, regardless of whether a judicial determination of noncompliance has been made.

A. Numerous Provisions in SB 1292 Improperly Make Hosting Platforms Responsible for Content and the Veracity of Information Provided by Users.

At the core of Section 230’s protections is the idea that hosting platforms cannot be held responsible for the content provided by their users and cannot be required to verify such information. SB 1292 has numerous provisions that violate these federal protections by seeking to penalize hosting platforms for the content provided by users and for not verifying the accuracy of that content. First, the Proposed Chapter on “Transient Accommodations” of SB 1292 contains problematic language as § __-2 provides:

“(a) It shall be unlawful for a person acting as, or on behalf of, a transient accommodations broker to engage in business with an operator or plan manager, including any person or entity employed, contracted, or otherwise engaged by the operator or plan manager for property management or as an activity provider, who is not in compliance with all state laws and county ordinance, including any laws and ordinances regarding land use, taxes, and professional licenses.

(b) It shall be unlawful for a person acting as, or on behalf of, a transient accommodations broker, to act on behalf of an operator or plan manager, to employ, contract, or otherwise engage in business with any person or entity to manage any property of the operator or plan manager or to act as an activity provider for transients served by the operator or plan manager if the person or entity is not in compliance with all state laws and county ordinances, including laws and ordinances regarding land use, taxes, and professional licenses.”

This provision would make it unlawful for hosting platforms to simply “engage in business” with any of its users who provide content that “is not in compliance with all state laws and county ordinances.” In other words, SB 1292 would hold hosting platforms liable for content provided by their users if such content did not comply with state law, and would hold hosting platforms liable if they did not verify that such content complies with county ordinances. As such, SB 1292 would clearly violate Section 230. Federal case law clearly prohibits holding hosting platforms responsible for verifying the content and information provided by its users. *See Roommates.com, LLC*, 521 F.3d at 1180 (“webhosts are immune from liability for ... efforts to verify the truth of” third-party statements posted on the website). Thus, it would be improper for § __-2 to be used against hosting platforms in the event that a user provided incorrect information to a hosting platform.

Second, §§ 237 __-i and 237D __-i of SB 1292 attempt to hold hosting platforms liable for content provided by its users, as each provision states that:

“When conducting business with an operator or plan manager with respect to a property for lease or rent, *a transient accommodations broker:*

...

(2) Shall require the operator or plan manager to provide the transient accommodations broker with the operator or plan manager’s transient accommodations registration identification number and local contract information and shall notify the operator or plan manager that this information is required in advertisements for transient accommodations or resort time share vacation interests, plans, or units under section 237D-4;

(3) Shall require the operator or plan manager to provide the transient accommodations broker with verification of compliance

with state land use laws¹ and county land use ordinances in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency;

...; and

(5) Shall require the operator or plan manager to provide any other information as may be required by rulemaking. (Emphasis added.)

The intent of these provisions is clear. The State wants to create a system whereby the hosting platforms are required to ensure that their users are complying with state and county laws. However, because Section 230 prohibits internet platforms from being held liable for requiring specific content or verification of the information voluntarily provided by their users, these provisions are void and invalid. These provisions create liability in the event that: (1) the hosting platform did not satisfy the requirements under this section by verifying certain information, or (2) the user provided wrong, or faulty, or incorrect information to the hosting platform. Under either set of circumstances, Section 230 clearly prohibits the government from seeking to hold hosting platforms liable due to the acts and statements of its users. Furthermore, the requirements in these provisions seek to put the hosting platforms in the role of being police, judge, and jury for compliance with local land use law. That is not the role of hosting platforms, and Section 230 prohibits the State from imposing that role upon them.

Third, SB 1292 makes hosting platforms responsible for the content included in advertisements prepared by users. Proposed §§ 237D-4(c) and (d) states:

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

(1) The registration identification number or an electronic link to the registration identification number of either:

(A) The operator or plan manager issued pursuant to this section; or

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

(2) The local contact’s name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to

¹ § 237 __-i uses slightly different language and provides “... verification of compliance with state and county land use laws in the form”.

the furnishing of the transient accommodation or resort time share vacation unit.

...

(d) *Failure to meet the requirements of subsection (c) shall be unlawful.* The department may issue citations to any person, including operators, plan managers, *and transient accommodations brokers, who violates subsection (c)* shall include a monetary fine.” (Emphasis added.)

The language in these provisions makes hosting platforms require users to include certain content in all advertisements or otherwise face a penalty under SB 1292. In addition to making hosting platforms responsible for the content of the required information in advertisements, this provision also requires hosting platforms to ensure that the information provided by their users is correct. *See Fair Hous. Council of San Fernando Valley*, 521 F.3d at 1180 (“webhosts are immune from liability for ... efforts to verify the truth of” third-party statements posted on the website). In short, because §§ 237D-4(c) and (d) hold hosting platforms accountable for the content and veracity of information provided by their users, these provisions clearly violate Section 230.

B. SB 1292 Impermissibly Penalizes Hosting Platforms for User Violations by Prohibiting Hosting Platforms From Collecting Fees for “Booking Services”.

SB 1292 tries to draft around the prohibitions of Section 230 by purportedly regulating fees for “Booking Services”. However, this is just another way of trying to make hosting platforms responsible for content created by their users, which clearly violates Section 230.

SB 1292 seeks to avoid the application of Section 230 by making a distinction between “booking² services” and advertisements. *See* § 237D-4(c) and § ___-3. This is a distinction without a difference.³ Courts have noted that state and local legislatures – which are equally subject to Section 230 preemption – may not “creative[ly]” draft ordinances to “work around” Section 230 and accomplish prohibited ends in a law that would preempted if enacted directly. *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016) (noting that “[p]ermitting the evasion of Section 230 would undermine the “congressional recognition that the Internet ... ‘ha[s] flourished ... with a minimum of government regulation.”” (quoting 47 U.S.C. § 230(a)(4))). Further, two recent

² In Part II, SB 1292 defines “booking service” as “any reservation or payment service provided by a person or entity that facilitates a transient accommodation transaction between an operator and a prospective transient or occupant, and for which the person or entity collects or receives, directly or indirectly, through an agent or intermediary, a fee in connection with the reservation or payment services provided for the transient accommodation transaction.”

³ “[C]ourts repeatedly have rejected attempts to recharacterize claims ... to avoid § 230’s prohibition on treat[ing] [the defendant] as a ‘publisher’ of information.” *Goddard v. Google, Inc.*, 2008 WL 5245490, at *4 (N.D. Cal. Dec. 17, 2008).

Supreme Court decisions have held that states may not “evade pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute’s intended operation and effect.” *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 636 (2013); *see National Meat Ass’n v. Harris*, 565 U.S. 452, 464 (2012). Advertisements and “booking services” are inextricably linked and cannot be separated in an attempt to avoid the application of Section 230. As such, SB 1292 seeks to punish internet platforms in violation of Section 230. The United States Supreme Court precedent cited above makes it clear that this impermissible objective cannot be saved through creative drafting.

Even assuming that “advertisements” and “booking services” are separate concepts (which they are not), the relevant provision of SB 1292 violates Section 230. To that end, § ___-3, SB 1292 provides:

“Booking services. *It shall be unlawful for a person acting as, or on behalf of, a hosting platform to provide, and collect a fee for, booking services in connection with transient accommodations located in the State if those transient accommodations are not lawfully certified, registered, or permitted as transient accommodations under applicable county ordinance at the time of the transient accommodations are rented.*”

This provision improperly requires hosting platforms to review and verify information provided by their users, something that Section 230 prohibits. In other words, SB 1292 makes internet platforms responsible for the obligations, and the violation of any obligations, of the people and entities using the internet platform. SB 1292 penalizes hosting platforms for the status of their users’ homes or units and requires a hosting platform to determine such status before collecting any fees for services provided to such users. *See Fair Hous. Council of San Fernando Valley*, 521 F.3d at 1180 (“webhosts are immune from liability for ... efforts to verify the truth of” third-party statements posted on the website). SB1292 thus penalizes hosting platforms for the actions of their users and requires them to verify that the information provided by its users is accurate. This conflicts with and violates Section 230.

C. SB 1292’s Requirement that Transient Accommodation Brokers Agree in Writing to Refuse Collection of Fees Based on User Violations Runs Afoul of Section 230.

SB 1292 permits hosting platforms to operate as “a tax collection agent” provided the platforms “agree[] in writing” to a number of requirements. In part, §§ 237-__(a) and 237D-__(a) provides:

“(a) The director may permit a transient accommodations broker to register as a tax collection agent ... provided that the transient accommodations broker *agrees in writing*:

...

(3) That continuing to collect fees for booking services in connection with a transient accommodation, seven days after receiving written notice from a state or county governmental authority that the subject property is not in compliance with state law or county ordinance, is a violation of the tax collection agreement.” (Emphasis added.)

Accordingly, this provision penalizes hosting platforms for the violations of its users by banning the platform’s ability to collect a fee for services provided *purely because of the status of the user*. Such a provision punishes hosting platforms for the alleged violations, acts and/or omissions of its users. As such, SB 1292 requires that hosting platforms “agree in writing” to break federal law if they want to become a tax collection agent. Hawaii law has long held that such contracts are void. *See Goo Yee v. Rosenberg*, 21 Haw. 513, 517 (1913) (stating “that contracts ... which contemplate the performance of that which is either *malum in se*, or prohibited by some positive statute, are void”).

Under Section 230, an internet platform cannot be held liable as a publisher or speaker of particular content submitted by its users and is not responsible or liable for such content. Further, websites are protected from being forced to verify third-party content placed on their platforms. As SB 1292 seeks to make hosting platforms responsible for the information of its users and punishes platforms for the users’ violates, SB 1292 violates Section 230.

SB 1292 impermissibly violates the SCA.

SB 1292 violates the SCA by requiring that hosting platforms make a number of disclosures to the state and/or counties. For example, § 237D-4(j) requires hosting platforms to:

“maintain identifying information on all transient accommodations while used as transient accommodations and for at least three years from the last rental date. *The identifying information for all transient accommodations shall be made available to enforcement officials upon lawful request* and shall include:

- (1) The name of the owner;
- (2) The name of the operator;
- (3) The address of the transient accommodation;
- (4) The dates on which the transient accommodation was leased, let, or rented as a transient accommodation; and

(5) Any other information as may be required by rules adopted by the department of taxation.”

As such, SB 1292 would require hosting platforms like Airbnb to compile and produce reports “upon lawful request” containing confidential information of its users. Unless this requirement includes a subpoena or other form of due process, SB 1292 requires an internet platform to disclose the platform’s users’ private information in violation of the SCA. In short, without due process, the SCA prohibits hosting platforms from disclosing some of the information required under SB 1292.

Additionally, §§ 237-__ (a) and 237D-__ (a) requires hosting platforms to produce information “to the counties” without the proper protections of due process included and violates the SCA. Specifically, §§ 237-__ (a) and 237D-__ (a) provides:

“(a) The director may permit a transient accommodations broker to register as a tax collection agent ... provided that the transient accommodations broker agrees in writing:

...

To furnish information to the counties as required in subsection (g).”

Accordingly, this provision requires hosting platforms, without any form of due process, to provide the counties with information of its users. These required disclosures outlined in §§ 237-__ (g) and 237D-__ (g) include the number of nights each unit was rented and the applicable rate. *See Goo Yee*, 21 Haw. at 517 (stating “that contracts ... which contemplate the performance of that which is either *malum in se*, or prohibited by some positive statute, are void”). In other words, this provision requires hosting platforms to turn over private information of its users in violation of the SCA.

On top of the SCA violations, these provisions also violate the protections to privacy afforded by the Fourth Amendment of the U.S. Constitution and Article I, Section 7 of the Hawaii Constitution by requiring hosting platforms to turn over personal information of their users to the government without due process. Article I, section 7 of the Hawaii Constitution “expressly guarantees the right to privacy [and] protects people from unreasonable government intrusions into their legitimate expectations of privacy.” *State v. Navas*, 81 Haw. 113, 122, 913 P.2d 39, 48 (1996) (noting that Article I, section 7 of the Hawaii Constitution “provides Hawaii’s citizens greater protection against unreasonable searches and seizure than the United States Constitution”). Further, the Fourth Amendment⁴ of the U.S. Constitution protects “[t]he right of

⁴ Because Article I, Section 7 of the Hawaii State Constitution largely tracks the language of the Fourth Amendment, and because Article I, Section 7 affords even greater protections than the Fourth Amendment, discussions of the Fourth Amendment is also applicable to Article I, Section 7 of the Hawaii State Constitution. *See*

the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]”

The right to privacy in both state and federal law protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” The U.S. Supreme Court has held that “searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge are *per se* unreasonable ... subject only to a few specifically established and well-delineated exceptions.” *City of Los Angeles, Calif. v. Patel*, 135 S.Ct. 2443, 2452 (2015). Here, §§ 237D-4(j), § 237-__(a), and 237D-__(a) all require hosting platforms such as Airbnb to provide private information of their users to the state and/or counties of Hawaii without due process. Thus, these provisions of SB 1292 violate the constitutional right to privacy and are unenforceable.

Other Procedural Problems with SB 1292.

A. SB 1292’s Imposition of Criminal Status on Employees of Hosting Platforms Simply Due to Their Status As Employees Is Unreasonable and Against Established Hawaii Law.

Additionally, SB 1292 contemplates imposing criminal penalties on individuals based solely on their corporate status within a hosting platform for the conduct of other third parties. § 237D-4(g) provides, in part:

“Any director, president, secretary, or treasure of a corporation who permits, aids, abets such corporation to engage or continue in business without registering in conformity with this chapter, shall be ... guilty of a misdemeanor.”

In other words, employees of hosting platforms may be held criminally responsible even if they personally did not commit any criminal act. Such a provision runs contrary to Hawaii law. *See e.g., Cahill v. Hawaiian Paradise Park Corp.*, 56 Haw. 522, 526, 543 P.2d 1356, 1360 (1975) (noting that the “law is firmly established that officers, directors, or shareholders of a corporation are not personally liable for tortious conduct of the corporation or its agents, unless there can be found some active or passive participation in such wrongful conduct by such persons”); *see also Mroz v. Hoaloha Na Eha, Inc.*, 410 F. Supp. 2d 919, 936–37 (D. Haw. 2005) (same); *E. Star, Inc., S.A. v. Union Bldg. Materials Corp.*, 6 Haw. App. 125, 134, 712 P.2d 1148, 1155 (1985) (same). In *Cahill*, plaintiffs attempted to hold the president of a radio station liable for radio broadcasts that allegedly defamed plaintiffs. The Court noted that there was no evidence that the president was involved in the broadcasts otherwise than as could be implied from his status as a shareholder and president of the station and accordingly upheld the dismissal

State v. Curtis, 139 Hawaii 486, 497, 394 P.3d 716, 727 (2017) (“We have often recognized broader protections ‘[i]n the area of searches and seizures under article I, section 7’ than our federal counterparts”).

February 13, 2019
Page 11

of those claims as improper. Thus, subjecting individuals to liability based solely on their employment status (*i.e.*, merely because they work at a hosting platform) is improper and contrary to established Hawaii case law.

Conclusion

For the foregoing reasons, the problematic language of SB 1292 renders it invalid, or at the least, completely unworkable for hosting platforms. We therefore urge that SB 1292 be held. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David M. Louie', with a long horizontal flourish extending to the right.

DAVID M. LOUIE

for

KOBAYASHI, SUGITA & GODA, LLP

Testimony of

Denise Wardlow/General Manager
The Westin Princeville Ocean Resort Villas



Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony. I strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kaua'i, Maui, and Hawai'i have all enacted ordinances regulating some aspect of TVRs, leaving only the City and County of Honolulu as without any comprehensive regulations or enforcement. Any action by the Legislature should prompt the City Council to act on pending legislation now before that body.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

Testimony of

Kelvin Bloom
Aqua-Aston Hospitality, LLC



Before the Committee on Energy, Economic Development and Tourism and
the Committee on Commerce, Consumer Protection and Health

Wednesday, February 13, 2019, 2:45pm
State Capital, Conference Room 414

In Consideration of
Senate Bill 1292
Relating to Transient Accommodations

Dear Chairs Wakai and Baker and Committee Members:

I am Kelvin Bloom, Manager of Aqua-Aston Hospitality, LLC, which manages many hotels and resorts in the State of Hawaii. Aqua-Aston is in support of Senate Bill 1292 which is intended to regulate on-line transient vacation rentals such as Airbnb.

There are an estimated 23,000 alternative accommodations in Hawaii competing with hotels, resorts, timeshares, and B&Bs, except the majority of them are most likely avoiding proper tax registrations and county zoning laws. Additionally, most of these transient vacation rentals are suspected of skirting our 10.25% Transient Accommodations Tax and the 4 – 4.5% General Excise Tax.

The TVR market is clearly taking away homes from our local residents, especially working-class individuals and families. Moreover, they are creating road and parking congestion in neighborhoods, and in many cases raising public safety concerns for local residents. The impact on our quality of life is becoming increasingly untenable.

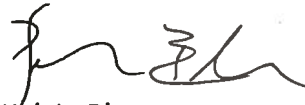
Tourism is the state's largest revenue producer and the largest single source of private capital for our economy. Unfortunately, many homeowners, a number of them off-shore, are engaging in operating illegal vacation rentals without the proper permits or licenses, and without paying taxes on the revenue earned from transient rentals. These illegal vacation rentals steal business away from the operators of hotels, condominium hotels and legal vacation rentals who operate in compliance with the laws as it is oftentimes easier to ignore the law than comply. Senate Bill 1292 will assist in leveling the playing field for all transient

{00365128.1}

accommodation providers and add an estimated \$140 – 173 million annually in TAT over the next several years.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelvin Bloom', written in a cursive style.

Kelvin Bloom
Manager



WAIKĪKĪ IMPROVEMENT ASSOCIATION

Statement of **Rick Egged, President, Waikiki Improvement Association**

Before the Senate Committees on:

**Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health**

Wednesday, February 13, 2019

in consideration of

LATE

RE: Support of SB 1292 Relating to Transit Accommodations

Aloha Chairs Wakai, Baker and members of the committees. I am Rick Egged testifying on behalf of the Waikīkī Improvement Association. WIA is a nonprofit organization representing 177 leading businesses and stakeholders in Waikīkī.

The Waikīkī Improvement Association strongly supports SB 1292 which provides for regulation and taxation of short-term rentals (STRs) and online STR platforms.

Any Bill, if enacted, should incorporate registration, reporting and enforcement provisions, including: 1. Mandatory listing of STR registration numbers prior to posting a listing on a platform; and 2. Disclosure of rentals and sufficient information to the State/Counties to verify registration; and 3. Cancellation of future stays and delisting of properties upon receipt of notice from the relevant County of invalid registration. The aforementioned provisions have already been agreed to by Airbnb and Expedia/HomeAway with the City and County of San Francisco, California.

A study commissioned by the Hawaii Tourism Authority three years ago estimated that unreported TAT from unlicensed vacation rentals totaled \$100 million statewide. The total of unlicensed short-term vacation rentals is estimated to be between 15,000 and 30,000 statewide. Even the most conservative estimate means that over 20% of available vacation units in the state are unlicensed.

Obviously, this is a huge issue for the visitor industry and the community that needs to be addressed as soon as possible.

Thank you for this opportunity to provide these comments on this important legislation.

SB-1292

Submitted on: 2/12/2019 4:29:42 PM

Testimony for EET on 2/13/2019 2:45:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Autumn Ness	Individual	Support	No

Comments:

SB-1292

Submitted on: 2/13/2019 10:12:16 AM

Testimony for EET on 2/13/2019 2:45:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss	Individual	Support	No

Comments:

Vacation rentals must be strictly regulated. They are a significant cause of our housing crisis, and reduce visitor revenue.



**‘A L O H I L A N I
R E S O R T**

WAIKĪKĪ BEACH

Testimony of

Matthew Grauso
General Manager

‘Alohilani Resort Waikiki Beach

LATE

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of ‘Alohilani Resort Waikiki Beach, one of the larger hotels in Waikiki, a 839-room property with over 400 employees, and serving over 550,000 guests each year.

‘Alohilani Resort strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai‘i Appleseed Center for Law and Economic Justice’s TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.



'A LOH I L A N I R E S O R T

WAIKĪKĪ BEACH

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

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Thank you.

Matthew Grauso
General Manager



H I G H G A T E

LATE

Testimony of

Cheryl Williams
Vice President of Sales and Marketing – Hawaii
Highgate Hawaii

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

Chair Wakai, Chair Baker, and members of the Committees:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA strongly supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

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Cheryl Williams



Testimony of

Kurt Kishaba
General Manager
Pearl Hotel Waikiki

LATE

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Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

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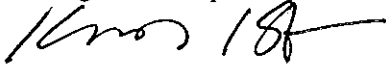
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A handwritten signature in black ink, appearing to be 'Kimo 18', written in a cursive style.

Thank you.



Testimony of

Stephen Hinck
General Manager
Hilton Garden Inn Waikiki Beach



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Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

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LATE

Testimony of

Jim Paulon
General Manager
Courtyard by Marriott Waikiki Beach

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

Senate Bill 1292: Relating to Transient Accommodations

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Thank you.



**WAIKIKI
BEACH HOTEL**

Testimony of

Mark DeMello
General Manager
Aston Waikiki Beach Hotel

LATE

Senate Committees on:
Energy, Economic Development, and Tourism
Commerce, Consumer Protection, and Health

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SB-1292

Submitted on: 2/13/2019 2:54:09 PM

Testimony for EET on 2/13/2019 2:45:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Ishihara	Individual	Oppose	No

Comments:

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Testimony of

Brandon Kaya
Ambassador Hotel Waikiki



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