
A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

PART I

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

15 The legislature further finds that, to increase
16 transparency and ensure the veracity of the taxes being
17 collected, transient accommodations brokers acting as tax



1 collection agents must provide pertinent information to the
2 department of taxation regarding the operators and plan managers
3 on whose behalf they collect taxes.

4 The purpose of this part is to allow a transient
5 accommodations broker to register to act as a tax collection
6 agent with respect to transient accommodations taxes and general
7 excise taxes for its operators and plan managers in a manner
8 that recognizes the dynamic changes that are occurring in the
9 transient accommodations business.

10 This part is not intended to:

- 11 (1) Preempt or otherwise limit the authority of the
12 counties to adopt, monitor, and enforce local land use
13 regulations;
- 14 (2) Transfer the authority to monitor and enforce the
15 regulations away from the counties; or
- 16 (3) Violate any federal laws.

17 This part is not intended to create, and does not create,
18 any rights or benefits, whether substantive or procedural, or
19 enforceable at law or in equity, against the State of Hawaii or
20 its agencies, departments, entities, employees, or any other
21 person.



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

4 "§237- Transient accommodations broker as tax collection
5 agent; transient accommodations broker; operator and plan
6 manager. (a) The director may permit a transient
7 accommodations broker to register as a tax collection agent on
8 behalf of all of its operators and plan managers by entering
9 into a tax collection agreement with the director or by
10 submitting a tax collection agent registration statement to the
11 director; provided that the transient accommodations broker
12 agrees in writing:

13 (1) To obtain written consent from all of its operators
14 and plan managers for the disclosure of periodic
15 returns and information required under subsection (g);

16 (2) To furnish information to the counties as required in
17 subsection (g); and

18 (3) That continuing to collect fees for booking services
19 in connection with a transient accommodation, seven
20 days after receiving written notice from a state or
21 county governmental authority that the subject



1 property is not in compliance with state law or county
2 ordinance, is a violation of the tax collection
3 agreement.

4 Any tax collection agreement entered into pursuant to this
5 section shall be subject to and in accordance with all
6 applicable provisions of state law and county ordinances and
7 shall not permit a tax collection agent, nor any operator or
8 plan manager conducting business through the tax collection
9 agent, to opt out of any requirements or obligations under state
10 law or county ordinance.

11 The director shall deny an application for registration as
12 a tax collection agent under this section for violations of this
13 subsection and may deny an application for any other cause
14 authorized by law, including any violation of this chapter or
15 rules adopted pursuant thereto, violation of any prior tax
16 collection agreement, or failure to meet minimum criteria that
17 may be set forth by the department in rules adopted pursuant to
18 chapter 91.

19 The director shall issue a certificate of registration or
20 letter of denial within thirty days after a transient
21 accommodations broker submits to the director a completed and

1 signed tax collection agent registration statement, in a form
2 prescribed by the department.

3 The registration shall be valid only for the tax collection
4 agent in whose name it is issued, and for the website or
5 platform designated therein, and shall not be transferable.

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

16 (c) The registered tax collection agent's operators and
17 plan managers shall obtain licensure under this chapter and
18 remain subject to the requirements of title 14; provided that
19 the registered tax collection agent shall report, collect, and
20 pay the taxes under this chapter on behalf of the operators and
21 plan managers for business activity conducted directly through



1 the agent, as set forth in this section, from the date of
2 registration until the registration is canceled as provided in
3 subsection (h). For purposes of any other business activity,
4 the operators and plan managers shall be subject to all
5 requirements of title 14 and all county ordinances and rules
6 regulating transient accommodations, regardless of the terms
7 used by the counties to refer to transient accommodations,
8 within their jurisdictions as if this section did not exist.

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

15 (d) If the registered tax collection agent fails to report
16 or pay the taxes under this chapter on behalf of the operators
17 and plan managers, as set forth in this section, the registered
18 tax collection agent and the operator or plan manager shall be
19 jointly and severally liable for the taxes due under this
20 chapter, including penalties and interest as provided by law,
21 with respect to their business activities conducted directly



1 through the registered tax collection agent from the date of
2 registration until the registration is canceled as provided in
3 subsection (h).

4 (e) A tax collection agent shall be personally liable for
5 the taxes imposed by this chapter that are due and collected on
6 behalf of operators and plan managers, if taxes are collected,
7 but not reported or paid, together with penalties and interest
8 as provided by law. If the tax collection agent is an entity,
9 the personal liability under this subsection shall apply to any
10 officer, member, manager, or other person who has control or
11 supervision over amounts collected to pay the taxes or who is
12 charged with the responsibility for the filing of returns or the
13 payment of taxes.

14 (f) Except as provided in subsection (g), all returns and
15 other information provided by a registered tax collection agent,
16 including the application for registration as a tax collection
17 agent or any tax collection agreement, shall be confidential,
18 and disclosure thereof shall be prohibited as provided in
19 section 237-34.

20 (g) A registered tax collection agent shall file periodic
21 returns in accordance with section 237-30 and annual returns in



1 accordance with section 237-33. Each periodic return required
2 under section 237-30 shall be accompanied by an electronic cover
3 sheet, in a form prescribed by the department that includes the
4 following information:

5 (1) For each operator and plan manager on whose behalf the
6 tax collection agent is required to report, collect,
7 and pay over taxes due under this chapter, the
8 operator's or plan manager's name, address, and
9 general excise tax license number; and

10 (2) For each transient accommodation rented through the
11 registered tax collection agent or the website or
12 platform designated in the certificate of registration
13 issued pursuant to chapter 237D, for which taxes are
14 being remitted pursuant to this chapter:

15 (A) The address of the transient accommodation;

16 (B) The number of nights that each transient
17 accommodation was rented and the rate or price at
18 which each transient accommodation was rented;
19 and

20 (C) The amount of tax being remitted pursuant to this
21 chapter and the amount of any federal form 1099



1 income that was derived from each transient
2 accommodation.

3 Upon request by the planning director or mayor of the
4 applicable county, a registered tax collection agent shall
5 disclose any of the information contained in the returns or
6 cover sheets required by this subsection to the planning
7 director or any county official designated by the mayor to
8 receive the information. Notwithstanding any law to the
9 contrary, including section 237-34, the planning director and
10 county official designated to receive the information pursuant
11 to this subsection may examine and copy the returns and cover
12 sheets, and require the tax collection agent to disclose any
13 other information that may be required pursuant to rules adopted
14 by the county, to ensure compliance with this section, state tax
15 laws and county tax ordinances, and any applicable land use laws
16 and ordinances.

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

19 A registered tax collection agent may cancel its
20 registration under this section by delivering written notice of
21 cancellation to the director and each of its operators and plan



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

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

11 (i) When conducting business with an operator or plan
12 manager with respect to a property for lease or rent, a
13 transient accommodations broker:

14 (1) Shall notify the operator or plan manager that the
15 subject property is required to be in compliance with
16 applicable state and county land use laws and
17 ordinances prior to retaining the services of the
18 transient accommodations broker;

19 (2) Shall require the operator or plan manager to provide
20 the transient accommodations broker with the
21 operator's or plan manager's transient accommodations



1 registration identification number and local contact
2 information and shall notify the operator or plan
3 manager that this information is required in
4 advertisements for transient accommodations or resort
5 time share vacation interests, plans, or units under
6 section 237D-4;

7 (3) Shall require the operator or plan manager to provide
8 the transient accommodations broker with verification
9 of compliance with state and county land use laws in
10 the form of a written certification, verification, or
11 permit, as applicable, issued by the appropriate
12 county agency;

13 (4) Shall require the operator or plan manager to provide
14 a statement to the transient accommodations broker
15 confirming compliance with all applicable land use
16 laws and ordinances; and

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

20 An operator or plan manager shall remove any advertisement
21 published through the transient accommodations broker, including



1 an online advertisement, for a transient accommodation located
2 in the State for which the operator or plan manager fails to
3 comply with paragraph (2), (3), (4), or (5) or for which the
4 operator or plan manager has received written notice from a
5 state or county governmental authority that the property is not
6 in compliance with state law or county ordinance, as applicable.
7 The state or county governmental authority shall provide a copy
8 of the written notice to the transient accommodations broker.

9 (j) Nothing in this section shall be construed to preempt
10 or prohibit the authority of a unit of local government in the
11 State, including counties and any other political subdivisions
12 of the State, to adopt, monitor, and enforce local land use
13 ordinances, rules, or regulations, nor to transfer the authority
14 to monitor and enforce these ordinances, rules, or regulations
15 away from the counties.

16 (k) For the purposes of this section:

17 "Booking service" has the same meaning as in section
18 237D-1.

19 "Director" means the director of taxation.

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

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



1 "Transient accommodations" has the same meaning as in
2 section 237D-1.

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

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

8 "§237D- Transient accommodations broker as tax
9 collection agent; transient accommodations broker; operator and
10 plan manager. (a) The director may permit a transient
11 accommodations broker to register as a tax collection agent on
12 behalf of all of its operators and plan managers by entering
13 into a tax collection agreement with the director or by
14 submitting a tax collection agent registration statement to the
15 director; provided that the transient accommodations broker
16 agrees in writing:

- 17 (1) To obtain written consent from all of its operators
18 and plan managers for the disclosure of periodic
19 returns and information required under subsection (g);
20 (2) To furnish information to the counties as required in
21 subsection (g); and



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

8 Any tax collection agreement entered into pursuant to this
9 section shall be subject to and in accordance with all
10 applicable provisions of state law and county ordinances and
11 shall not permit a tax collection agent, nor any operator or
12 plan manager conducting business through the tax collection
13 agent, to opt out of any requirements or obligations under state
14 law or county ordinance.

15 The director shall deny an application for registration as
16 a tax collection agent under this section for violations of this
17 subsection and may deny an application for any other cause
18 authorized by law, including any violation of this chapter or
19 rules adopted pursuant thereto, violation of any prior tax
20 collection agreement, or failure to meet minimum criteria that



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

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

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

17 (b) In addition to its own responsibilities under this
18 chapter, a registered tax collection agent shall report,
19 collect, and pay over the taxes due under this chapter on behalf
20 of all of its operators and plan managers from the date of
21 registration until the registration is canceled as provided in



1 subsection (h); provided that the registered tax collection
2 agent's obligation to report, collect, and pay taxes on behalf
3 of all of its operators and plan managers shall apply solely to
4 transient accommodations in the State arranged or booked
5 directly through the registered tax collection agent.

6 (c) The registered tax collection agent's operators and
7 plan managers shall obtain registration under this chapter and
8 remain subject to the requirements of title 14; provided that
9 the registered tax collection agent shall report, collect, and
10 pay the taxes under this chapter on behalf of the operators and
11 plan managers for business activity conducted directly through
12 the registered tax collection agent, as set forth in this
13 section, from the date of registration until the registration is
14 canceled as provided in subsection (h). For purposes of any
15 other business activity, the operators and plan managers shall
16 be subject to all requirements of title 14 and all applicable
17 ordinances and rules regulating transient accommodations,
18 regardless of the terms used by the counties to refer to
19 transient accommodations, within their jurisdictions as if this
20 section did not exist.



1 (d) If the registered tax collection agent fails to report
2 or pay the taxes under this chapter on behalf of the operators
3 and plan managers, as set forth in this section, the registered
4 tax collection agent and the operator or plan manager shall be
5 jointly and severally liable for the taxes due under this
6 chapter, including penalties and interest as provided by law,
7 with respect to their business activities conducted directly
8 through the registered tax collection agent from the date of
9 registration until the registration is canceled as provided in
10 subsection (h).

11 (e) A tax collection agent shall be personally liable for
12 the taxes imposed by this chapter that are due and collected on
13 behalf of operators and plan managers, if taxes are collected,
14 but not reported or paid, together with penalties and interest
15 as provided by law. If the tax collection agent is an entity,
16 the personal liability under this subsection shall apply to any
17 officer, member, manager, or other person who has control or
18 supervision over amounts collected to pay the taxes or who is
19 charged with the responsibility for the filing of returns or the
20 payment of taxes.



1 (f) Except as provided in subsection (g), all returns and
2 other information provided by a registered tax collection agent,
3 including the application for registration as a tax collection
4 agent or any tax collection agreement, shall be confidential,
5 and disclosure thereof shall be prohibited as provided in
6 section 237D-13.

7 (g) A registered tax collection agent shall file periodic
8 returns in accordance with section 237D-6 and annual returns in
9 accordance with section 237D-7. Each periodic return required
10 under section 237D-6 shall be accompanied by an electronic cover
11 sheet, in a form prescribed by the department that includes the
12 following information:

13 (1) For each operator and plan manager on whose behalf the
14 tax collection agent is required to report, collect,
15 and pay over taxes due under this chapter, the
16 operator's or plan manager's name, address, and
17 transient accommodations registration identification
18 number; and

19 (2) For each transient accommodation rented through the
20 registered tax collection agent or the website or
21 platform designated in the certificate of registration



1 issued pursuant to subsection (a), for which taxes are
2 being remitted pursuant to this chapter:
3 (A) The address of the transient accommodation;
4 (B) The number of nights that each transient
5 accommodation was rented and the rate or price at
6 which each transient accommodation was rented;
7 and
8 (C) The amount of tax being remitted pursuant to this
9 chapter and the amount of any federal form 1099
10 income that was derived from each transient
11 accommodation.

12 Upon request by the planning director or mayor of the
13 applicable county, a registered tax collection agent shall
14 disclose any of the information contained in the returns or
15 cover sheets required by this subsection to the planning
16 director or any county official designated by the mayor to
17 receive the information. Notwithstanding any law to the
18 contrary, including section 237D-13, the planning director and
19 county official designated to receive the information pursuant
20 to this subsection may examine and copy the returns and cover
21 sheets, and require the tax collection agent to disclose any



1 other information that may be required pursuant to rules adopted
2 by the county, to ensure compliance with this section, state and
3 county tax laws and ordinances, and any applicable land use laws
4 and ordinances.

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

7 A registered tax collection agent may cancel its
8 registration under this section by delivering written notice of
9 cancellation to the director and each of its operators and plan
10 managers furnishing transient accommodations in the State no
11 later than ninety days prior to the effective date of
12 cancellation.

13 The director may cancel a tax collection agent's
14 registration under this section for any cause, including any
15 violation of this chapter or rules adopted pursuant thereto, or
16 for violation of any applicable tax collection agreement, by
17 delivering written notice of cancellation to the tax collection
18 agent no later than ninety days prior to the effective date of
19 cancellation.



1 (i) When conducting business with an operator or plan
2 manager with respect to a property for lease or rent, a
3 transient accommodations broker:

4 (1) Shall notify the operator or plan manager that the
5 subject property is required to be in compliance with
6 applicable state land use laws and county land use
7 ordinances prior to retaining the services of the
8 transient accommodations broker;

9 (2) Shall require the operator or plan manager to provide
10 the transient accommodations broker with the
11 operator's or plan manager's transient accommodations
12 registration identification number and local contact
13 information and shall notify the operator or plan
14 manager that this information is required in
15 advertisements for transient accommodations or resort
16 time share vacation interests, plans, or units under
17 section 237D-4;

18 (3) Shall require the operator or plan manager to provide
19 the transient accommodations broker with verification
20 of compliance with state land use laws and county land
21 use ordinances in the form of a written certification,



1 verification, or permit, as applicable, issued by the
2 appropriate county agency;

3 (4) Shall require the operator or plan manager to provide
4 a statement to the transient accommodations broker
5 confirming compliance with all land use laws and
6 ordinances; and

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

10 An operator or plan manager shall remove any advertisement
11 published through the transient accommodations broker, including
12 an online advertisement, for a transient accommodation located
13 in the State for which the operator or plan manager fails to
14 comply with paragraph (2), (3), (4), or (5) or for which the
15 operator or plan manager has received written notice from a
16 state or local governmental authority that the property is not
17 in compliance with state law or county ordinance, as applicable.
18 The state or county governmental authority shall provide a copy
19 of the written notice to the transient accommodations broker.

20 (j) Nothing in this section shall be construed to preempt
21 or prohibit the authority of a unit of local government in the



1 State, including counties and any other political subdivisions
2 of the State, to adopt, monitor, and enforce local land use
3 ordinances, rules, or regulations, nor to transfer the authority
4 to monitor and enforce these ordinances, rules, or regulations
5 away from the counties."

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

8 1. By adding a new definition to be appropriately inserted
9 and to read:

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

18 2. By amending the definition of "transient
19 accommodations" to read:

20 "Transient accommodations" means the furnishing of a room,
21 apartment, suite, single family dwelling, or the like to a



1 transient for less than one hundred eighty consecutive days for
2 each letting in a hotel, apartment hotel, motel, condominium or
3 unit as defined in chapter 514B, cooperative apartment, dwelling
4 unit, or rooming house that provides living quarters, sleeping,
5 or housekeeping accommodations, or other place in which lodgings
6 are regularly furnished to transients. "Transient
7 accommodations" includes "transient vacation rental", "transient
8 vacation unit", "transient vacation use", "bed and breakfast
9 home", "short-term vacation rental", "short-term use of an
10 owner's primary residence", and other similar terms as may be
11 defined by county ordinance."

12 SECTION 5. The director of taxation shall make available
13 to transient accommodations brokers a form of application for
14 registration as a tax collection agent under the new section of
15 chapter 237, Hawaii Revised Statutes, added by section 2 of this
16 Act, and under the new section of chapter 237D, Hawaii Revised
17 Statutes, added by section 3 of this Act.

18 PART II

19 SECTION 6. **Definitions.** As used in this part:

20 "Accounts receivable" means an amount of transient
21 accommodations tax, general excise tax, penalty, or interest



1 that has been recorded as due and entered in the account records
2 or any ledger maintained in the department or that a taxpayer
3 should reasonably expect to become due.

4 "Department" means the department of taxation.

5 "Director" means the director of taxation.

6 "Final, due, and owing" means an assessment that has become
7 final and is owed to the State, due to either the expiration of
8 a taxpayer's appeal rights or the rendition of the final order
9 by the director or by any court of this State. Assessments that
10 have been appealed shall be final, due, and owing fifteen days
11 after the last unappealed or unappealable order sustaining the
12 assessment or any part thereof has become final. Assessments
13 that have not been appealed shall be final, due, and owing
14 thirty days after service of notice of assessment.

15 "General excise tax" means the tax imposed under chapter
16 237, Hawaii Revised Statutes, including revenues collected
17 pursuant to sections 46-16.8 and 237-8.6, Hawaii Revised
18 Statutes.

19 "Taxpayer" means any individual, partnership, joint
20 venture, association, corporation, receiver, trustee, guardian,
21 executor, administrator, fiduciary, or any other entity of any



1 kind subject to both the general excise tax and the transient
2 accommodations tax, or any person required to collect and remit
3 to the State the general excise tax and transient accommodations
4 tax.

5 "Transient accommodations tax" means the tax imposed under
6 chapter 237D, Hawaii Revised Statutes.

7 SECTION 7. **Tax amnesty program; applicable time period.**

8 (a) The director shall develop and administer a one-time tax
9 amnesty program as provided in this part. The director, upon
10 the voluntary return and remission of transient accommodations
11 or general excise taxes and interest owed by any taxpayer, shall
12 waive all penalties that are assessed or subject to being
13 assessed for outstanding liabilities for taxable periods ending
14 or transactions occurring on or before December 31, 2018.

15 The director shall:

16 (1) Provide any forms and instructions necessary for the
17 filing of amnesty applications and returns; and

18 (2) Take all actions necessary to implement this part.

19 (b) Notwithstanding any other law to the contrary, the
20 director shall accept applications for the tax amnesty program
21 from October 31, 2019, to January 1, 2020, and the program shall



1 be completed by June 30, 2020, and shall apply to all eligible
2 taxpayers owing taxes, penalties, or interest administered by
3 the director under chapters 237 and 237D, Hawaii Revised
4 Statutes.

5 (c) The director may allow the waiver of a portion of the
6 interest due; provided that the portion waived shall not exceed
7 fifty per cent of the interest due.

8 SECTION 8. **Application; eligibility requirements.** (a)

9 This part shall apply to any taxpayer who files an application
10 for amnesty within the time prescribed by the director and who:

11 (1) Files all returns as may be required by the director
12 for all years or tax reporting periods as stated on
13 the application:

14 (A) For which returns have not previously been filed;
15 and

16 (B) For which returns were filed but the tax
17 liability was underreported; and

18 (2) Pays in full the taxes due, including interest
19 thereon, for the years and tax reporting periods
20 stated on the application, at the time the application



1 is made or amnesty tax returns are filed within the
2 designated amnesty program period.

3 In addition to the requirements set forth in paragraphs (1) and
4 (2), the director may impose, by rule, the further condition
5 that any eligible taxpayer pay in full, within the amnesty
6 period, all taxes previously assessed by the director, including
7 interest thereon, that are final, due, and owing at the time the
8 application or amnesty tax returns are filed.

9 (b) An eligible taxpayer may participate in the amnesty
10 program to the extent of the uncontested portion of any assessed
11 liability. However, participation in the program shall be
12 conditioned upon the taxpayer's agreement that the right to
13 protest or initiate an administrative or judicial proceeding or
14 to claim any refund of moneys paid under the program is barred
15 with respect to the amounts paid with the application or amnesty
16 return.

17 (c) The director shall allow installment payment
18 agreements in cases of severe hardship in lieu of the complete
19 payment required under subsection (a). In those cases, fifty
20 per cent of the amount due shall be paid with the application or
21 amnesty return, with the balance to be paid in monthly



1 installments determined by the taxpayer and the director.
2 Failure of the taxpayer to make timely payments shall void the
3 terms of the amnesty. All agreements and payments shall not
4 include interest due and accruing during the installment
5 agreement.

6 SECTION 9. **Amnesty provisions.** (a) Amnesty shall be
7 granted for any taxpayer who meets the requirements of section 8
8 of this Act in accordance with the following:

9 (1) For taxes that are owed as a result of the
10 nonreporting or underreporting of transient
11 accommodations or general excise tax liabilities or
12 the nonpayment of any accounts receivable owed by an
13 eligible taxpayer, the State shall waive criminal
14 prosecution and all civil penalties that may be
15 assessed under title 14, Hawaii Revised Statutes, for
16 the taxable years or periods for which the tax amnesty
17 is requested; and

18 (2) With the exception of instances in which the taxpayer
19 and director enter into an installment payment
20 agreement authorized under section 8(c) of this Act,
21 the failure to pay all taxes as shown on the



1 taxpayer's amnesty tax return shall invalidate any
2 amnesty granted pursuant to this part.

3 (b) This chapter shall not apply to any taxpayer who:

4 (1) Is on notice, written or otherwise, that the taxpayer
5 is the subject of any criminal investigation or
6 criminal prosecution for nonpayment, delinquency,
7 evasion, or fraud in relation to any federal taxes,
8 the state general excise tax, or the state transient
9 accommodations tax;

10 (2) Has any prior conviction for a tax-related offense; or

11 (3) Is under an audit:

12 (A) In relation to the general excise tax or the
13 transient accommodations tax; or

14 (B) For any tax for the period for which the taxpayer
15 seeks amnesty.

16 (c) No refund or credit shall be granted for any interest
17 or penalty paid prior to the time the taxpayer requests amnesty
18 pursuant to section 7 of this Act.

19 (d) Unless the director, in the director's discretion,
20 redetermines the amount of transient accommodations or general
21 excise taxes and interest due, no refund or credit shall be



1 granted for any transient accommodations or general excise taxes
2 or interest paid under the amnesty program.

3 SECTION 10. **Public awareness.** The director shall
4 publicize the tax amnesty program in order to maximize the
5 public awareness of, and participation in, the program. For the
6 purpose of publicizing the tax amnesty program, the director may
7 contract with any advertising agency within or outside this
8 State.

9 SECTION 11. **Separate accounting; disposition of revenues.**
10 For purposes of accounting for the revenues received pursuant to
11 this part, the director shall maintain a separate accounting and
12 reporting of funds collected under the amnesty program. All
13 funds collected shall be remitted to the general fund; provided
14 that all revenues collected under the amnesty program pursuant
15 to sections 46-16.8 and 237-8.6, Hawaii Revised Statutes, shall
16 be disposed of pursuant to section 248-2.6, Hawaii Revised
17 Statutes.

18 **PART III**

19 SECTION 12. Section 46-1.5, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§46-1.5 General powers and limitation of the counties.

2 Subject to general law, each county shall have the following
3 powers and shall be subject to the following liabilities and
4 limitations:

- 5 (1) Each county shall have the power to frame and adopt a
6 charter for its own self-government that shall
7 establish the county executive, administrative, and
8 legislative structure and organization, including but
9 not limited to the method of appointment or election
10 of officials, their duties, responsibilities, and
11 compensation, and the terms of their office;
- 12 (2) Each county shall have the power to provide for and
13 regulate the marking and lighting of all buildings and
14 other structures that may be obstructions or hazards
15 to aerial navigation, so far as may be necessary or
16 proper for the protection and safeguarding of life,
17 health, and property;
- 18 (3) Each county shall have the power to enforce all claims
19 on behalf of the county and approve all lawful claims
20 against the county, but shall be prohibited from
21 entering into, granting, or making in any manner any



1 contract, authorization, allowance payment, or
2 liability contrary to the provisions of any county
3 charter or general law;

4 (4) Each county shall have the power to make contracts and
5 to do all things necessary and proper to carry into
6 execution all powers vested in the county or any
7 county officer;

8 (5) Each county shall have the power to:

9 (A) Maintain channels, whether natural or artificial,
10 including their exits to the ocean, in suitable
11 condition to carry off storm waters;

12 (B) Remove from the channels, and from the shores and
13 beaches, any debris that is likely to create an
14 unsanitary condition or become a public nuisance;
15 provided that, to the extent any of the foregoing
16 work is a private responsibility, the
17 responsibility may be enforced by the county in
18 lieu of the work being done at public expense;

19 (C) Construct, acquire by gift, purchase, or by the
20 exercise of eminent domain, reconstruct, improve,
21 better, extend, and maintain projects or



- 1 undertakings for the control of and protection
2 against floods and flood waters, including the
3 power to drain and rehabilitate lands already
4 flooded;
- 5 (D) Enact zoning ordinances providing that lands
6 deemed subject to reasonable, periodic, or
7 occasional flooding shall not be used for
8 residence or other purposes in a manner as to
9 endanger the health or safety of the occupants
10 thereof, as required by the Federal Flood
11 Insurance Act of 1956 (chapter 1025, Public Law
12 1016); and
- 13 (E) Establish and charge user fees to create and
14 maintain any stormwater management system or
15 infrastructure;
- 16 (6) Each county shall have the power to exercise the power
17 of condemnation by eminent domain when it is in the
18 public interest to do so;
- 19 (7) Each county shall have the power to exercise
20 regulatory powers over business activity as are
21 assigned to them by chapter 445 or other general law;



- 1 (8) Each county shall have the power to fix the fees and
2 charges for all official services not otherwise
3 provided for;
- 4 (9) Each county shall have the power to provide by
5 ordinance assessments for the improvement or
6 maintenance of districts within the county;
- 7 (10) Except as otherwise provided, no county shall have the
8 power to give or loan credit to, or in aid of, any
9 person or corporation, directly or indirectly, except
10 for a public purpose;
- 11 (11) Where not within the jurisdiction of the public
12 utilities commission, each county shall have the power
13 to regulate by ordinance the operation of motor
14 vehicle common carriers transporting passengers within
15 the county and adopt and amend rules the county deems
16 necessary for the public convenience and necessity;
- 17 (12) Each county shall have the power to enact and enforce
18 ordinances necessary to prevent or summarily remove
19 public nuisances and to compel the clearing or removal
20 of any public nuisance, refuse, and uncultivated
21 undergrowth from streets, sidewalks, public places,



1 and unoccupied lots. In connection with these powers,
2 each county may impose and enforce liens upon the
3 property for the cost to the county of removing and
4 completing the necessary work where the property
5 owners fail, after reasonable notice, to comply with
6 the ordinances. The authority provided by this
7 paragraph shall not be self-executing, but shall
8 become fully effective within a county only upon the
9 enactment or adoption by the county of appropriate and
10 particular laws, ordinances, or rules defining "public
11 nuisances" with respect to each county's respective
12 circumstances. The counties shall provide the
13 property owner with the opportunity to contest the
14 summary action and to recover the owner's property;

15 (13) Each county shall have the power to enact ordinances
16 deemed necessary to protect health, life, and
17 property, and to preserve the order and security of
18 the county and its inhabitants on any subject or
19 matter not inconsistent with, or tending to defeat,
20 the intent of any state statute where the statute does
21 not disclose an express or implied intent that the



1 statute shall be exclusive or uniform throughout the
2 State;

3 (14) Each county shall have the power to:

4 (A) Make and enforce within the limits of the county
5 all necessary ordinances covering all:

6 (i) Local police matters;

7 (ii) Matters of sanitation;

8 (iii) Matters of inspection of buildings;

9 (iv) Matters of condemnation of unsafe
10 structures, plumbing, sewers, dairies, milk,
11 fish, and morgues; and

12 (v) Matters of the collection and disposition of
13 rubbish and garbage;

14 (B) Provide exemptions for homeless facilities and
15 any other program for the homeless authorized by
16 part XVII of chapter 346, for all matters under
17 this paragraph;

18 (C) Appoint county physicians and sanitary and other
19 inspectors as necessary to carry into effect
20 ordinances made under this paragraph, who shall
21 have the same power as given by law to agents of



1 the department of health, subject only to
2 limitations placed on them by the terms and
3 conditions of their appointments; and
4 (D) Fix a penalty for the violation of any ordinance,
5 which penalty may be a misdemeanor, petty
6 misdemeanor, or violation as defined by general
7 law; provided that any violation of a county
8 ordinance related to transient accommodations, as
9 defined in section 237D-1, shall result in, at
10 minimum, a civil penalty of not less than \$25,000
11 to be levied by the county planning director;
12 (15) Each county shall have the power to provide public
13 pounds; to regulate the impounding of stray animals
14 and fowl, and their disposition; and to provide for
15 the appointment, powers, duties, and fees of animal
16 control officers;
17 (16) Each county shall have the power to purchase and
18 otherwise acquire, lease, and hold real and personal
19 property within the defined boundaries of the county
20 and to dispose of the real and personal property as



- 1 the interests of the inhabitants of the county may
2 require, except that:
- 3 (A) Any property held for school purposes may not be
4 disposed of without the consent of the
5 superintendent of education;
- 6 (B) No property bordering the ocean shall be sold or
7 otherwise disposed of; and
- 8 (C) All proceeds from the sale of park lands shall be
9 expended only for the acquisition of property for
10 park or recreational purposes;
- 11 (17) Each county shall have the power to provide by charter
12 for the prosecution of all offenses and to prosecute
13 for offenses against the laws of the State under the
14 authority of the attorney general of the State;
- 15 (18) Each county shall have the power to make
16 appropriations in amounts deemed appropriate from any
17 moneys in the treasury, for the purpose of:
- 18 (A) Community promotion and public celebrations;
19 (B) The entertainment of distinguished persons as may
20 from time to time visit the county;



1 (C) The entertainment of other distinguished persons,
2 as well as, public officials when deemed to be in
3 the best interest of the community; and

4 (D) The rendering of civic tribute to individuals
5 who, by virtue of their accomplishments and
6 community service, merit civic commendations,
7 recognition, or remembrance;

8 (19) Each county shall have the power to:

9 (A) Construct, purchase, take on lease, lease,
10 sublease, or in any other manner acquire, manage,
11 maintain, or dispose of buildings for county
12 purposes, sewers, sewer systems, pumping
13 stations, waterworks, including reservoirs,
14 wells, pipelines, and other conduits for
15 distributing water to the public, lighting
16 plants, and apparatus and appliances for lighting
17 streets and public buildings, and manage,
18 regulate, and control the same;

19 (B) Regulate and control the location and quality of
20 all appliances necessary to the furnishing of



- 1 water, heat, light, power, telephone, and
2 telecommunications service to the county;
- 3 (C) Acquire, regulate, and control any and all
4 appliances for the sprinkling and cleaning of the
5 streets and the public ways, and for flushing the
6 sewers; and
- 7 (D) Open, close, construct, or maintain county
8 highways or charge toll on county highways;
9 provided that all revenues received from a toll
10 charge shall be used for the construction or
11 maintenance of county highways;
- 12 (20) Each county shall have the power to regulate the
13 renting, subletting, and rental conditions of property
14 for places of abode by ordinance;
- 15 (21) Unless otherwise provided by law, each county shall
16 have the power to establish by ordinance the order of
17 succession of county officials in the event of a
18 military or civil disaster;
- 19 (22) Each county shall have the power to sue and be sued in
20 its corporate name;
- 21 (23) Each county shall have the power to:



- 1 (A) Establish and maintain waterworks and sewer
2 works;
- 3 (B) Implement a sewer monitoring program that
4 includes the inspection of sewer laterals that
5 connect to county sewers, when those laterals are
6 located on public or private property, after
7 providing a property owner not less than ten
8 calendar days' written notice, to detect leaks
9 from laterals, infiltration, and inflow, any
10 other law to the contrary notwithstanding;
- 11 (C) Compel an owner of private property upon which is
12 located any sewer lateral that connects to a
13 county sewer to inspect that lateral for leaks,
14 infiltration, and inflow and to perform repairs
15 as necessary;
- 16 (D) Collect rates for water supplied to consumers and
17 for the use of sewers;
- 18 (E) Install water meters whenever deemed expedient;
19 provided that owners of premises having vested
20 water rights under existing laws appurtenant to
21 the premises shall not be charged for the



1 installation or use of the water meters on the
2 premises; and
3 (F) Take over from the State existing waterworks
4 systems, including water rights, pipelines, and
5 other appurtenances belonging thereto, and sewer
6 systems, and to enlarge, develop, and improve the
7 same;
8 (G) For purposes of subparagraphs (B) and (C):
9 (i) "Infiltration" means groundwater, rainwater,
10 and saltwater that enters the county sewer
11 system through cracked, broken, or defective
12 sewer laterals; and
13 (ii) "Inflow" means non-sewage entering the
14 county sewer system via inappropriate or
15 illegal connections;
16 (24) (A) Each county may impose civil fines, in addition
17 to criminal penalties, and remedies for
18 disgorgement of all profits and restitution of
19 any money, real property, or personal property
20 that was obtained through unlawful actions,
21 including but not limited to those set forth in

1 chapter _____, for any violation of county
2 ordinances or rules after reasonable notice and
3 [~~requests~~] request to correct or cease the
4 violation have been made upon the violator. Any
5 administratively imposed civil fine shall not be
6 collected until [~~after~~] either an opportunity for
7 [a]:

8 (i) A hearing under chapter 91[-]; or

9 (ii) Judicial review by the circuit court, as
10 prescribed by ordinance for specific
11 violations,

12 has been afforded. Any appeal shall be filed
13 within thirty days from the date of the final
14 written decision. These proceedings may not be
15 stayed pending disposition of any criminal
16 proceeding for a related offense. These
17 proceedings shall not be a prerequisite for any
18 civil fine or injunctive relief ordered by the
19 circuit court[+]. Where a county seeks
20 injunctive relief for violations of an ordinance
21 related to transient accommodations, as defined



1 in section 237D-1, the county need not show
2 irreparable injury;

3 (B) Each county by ordinance may provide for the
4 addition of any unpaid civil fines, ordered by
5 any court of competent jurisdiction, to any
6 taxes, fees, or charges, with the exception of
7 fees or charges for water for residential use and
8 sewer charges, collected by the county. Each
9 county by ordinance may also provide for the
10 addition of any unpaid administratively imposed
11 civil fines, which remain due after all judicial
12 review rights under section 91-14 are exhausted,
13 to any taxes, fees, or charges, with the
14 exception of water for residential use and sewer
15 charges, collected by the county. The ordinance
16 shall specify the administrative procedures for
17 the addition of the unpaid civil fines to the
18 eligible taxes, fees, or charges and may require
19 hearings or other proceedings. After addition of
20 the unpaid civil fines to the taxes, fees, or
21 charges, the unpaid civil fines shall not become



1 a part of any taxes, fees, or charges. The
2 county by ordinance may condition the issuance or
3 renewal of a license, approval, or permit for
4 which a fee or charge is assessed, except for
5 water for residential use and sewer charges, on
6 payment of the unpaid civil fines. Upon
7 recordation of a notice of unpaid civil fines in
8 the bureau of conveyances, the amount of the
9 civil fines, including any increase in the amount
10 of the fine [~~which~~] that the county may assess,
11 shall constitute a lien upon all real property or
12 rights to real property belonging to any person
13 liable for the unpaid civil fines. The lien in
14 favor of the county shall be subordinate to any
15 lien in favor of any person recorded or
16 registered prior to the recordation of the notice
17 of unpaid civil fines and senior to any lien
18 recorded or registered after the recordation of
19 the notice. The lien shall continue until the
20 unpaid civil fines are paid in full or until a
21 certificate of release or partial release of the



1 lien, prepared by the county at the owner's
2 expense, is recorded. The notice of unpaid civil
3 fines shall state the amount of the fine as of
4 the date of the notice and maximum permissible
5 daily increase of the fine. The county shall not
6 be required to include a social security number,
7 state general excise taxpayer identification
8 number, or federal employer identification number
9 on the notice. Recordation of the notice in the
10 bureau of conveyances shall be deemed, at [~~such~~]
11 that time, for all purposes and without any
12 further action, to procure a lien on land
13 registered in land court under chapter 501.
14 After the unpaid civil fines are added to the
15 taxes, fees, or charges as specified by county
16 ordinance, the unpaid civil fines shall be deemed
17 immediately due, owing, and delinquent and may be
18 collected in any lawful manner. The procedure
19 for collection of unpaid civil fines authorized
20 in this paragraph shall be in addition to any



1 other procedures for collection available to the
2 State and county by law or rules of the courts;
3 (C) Each county may impose civil fines upon any
4 person who places graffiti on any real or
5 personal property owned, managed, or maintained
6 by the county. The fine may be up to \$1,000 or
7 may be equal to the actual cost of having the
8 damaged property repaired or replaced. The
9 parent or guardian having custody of a minor who
10 places graffiti on any real or personal property
11 owned, managed, or maintained by the county shall
12 be jointly and severally liable with the minor
13 for any civil fines imposed hereunder. Any
14 [~~such~~] fine under this paragraph may be
15 administratively imposed after an opportunity for
16 a hearing under chapter 91, but [~~such~~] a
17 [~~proceeding~~] hearing shall not be a prerequisite
18 for any civil fine ordered by any court. As used
19 in this subparagraph, "graffiti" means any
20 unauthorized drawing, inscription, figure, or



1 mark of any type intentionally created by paint,
2 ink, chalk, dye, or similar substances;

3 (D) At the completion of an appeal in which the
4 county's enforcement action is affirmed and upon
5 correction of the violation if requested by the
6 violator, the case shall be reviewed by the
7 county agency that imposed the civil fines to
8 determine the appropriateness of the amount of
9 the civil fines that accrued while the appeal
10 proceedings were pending. In its review of the
11 amount of the accrued fines, the county agency
12 may consider:

13 (i) The nature and egregiousness of the
14 violation;

15 (ii) The duration of the violation;

16 (iii) The number of recurring and other similar
17 violations;

18 (iv) Any effort taken by the violator to correct
19 the violation;

20 (v) The degree of involvement in causing or
21 continuing the violation;



- 1 (vi) Reasons for any delay in the completion of
- 2 the appeal; and
- 3 (vii) Other extenuating circumstances.

4 The civil fine that is imposed by administrative
5 order after this review is completed and the
6 violation is corrected shall be subject to
7 judicial review, notwithstanding any provisions
8 for administrative review in county charters;

9 (E) After completion of a review of the amount of
10 accrued civil fine by the county agency that
11 imposed the fine, the amount of the civil fine
12 determined appropriate, including both the
13 initial civil fine and any accrued daily civil
14 fine, shall immediately become due and
15 collectible following reasonable notice to the
16 violator. If no review of the accrued civil fine
17 is requested, the amount of the civil fine, not
18 to exceed the total accrual of civil fine prior
19 to correcting the violation, shall immediately
20 become due and collectible following reasonable



1 notice to the violator, at the completion of all
2 appeal proceedings; and

3 (F) If no county agency exists to conduct appeal
4 proceedings for a particular civil fine action
5 taken by the county, then one shall be
6 established by ordinance before the county shall
7 impose the civil fine;

8 (25) Any law to the contrary notwithstanding, any county
9 mayor, by executive order, may exempt donors, provider
10 agencies, homeless facilities, and any other program
11 for the homeless under part XVII of chapter 346 from
12 real property taxes, water and sewer development fees,
13 rates collected for water supplied to consumers and
14 for use of sewers, and any other county taxes,
15 charges, or fees; provided that any county may enact
16 ordinances to regulate and grant the exemptions
17 granted by this paragraph;

18 (26) Any county may establish a captive insurance company
19 pursuant to article 19, chapter 431; and

20 (27) Each county shall have the power to enact and enforce
21 ordinances regulating towing operations."



1 SECTION 13. Section 46-4, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) This section and any ordinance, rule, or regulation
4 adopted in accordance with this section shall apply to lands not
5 contained within the forest reserve boundaries as established on
6 January 31, 1957, or as subsequently amended.

7 Zoning in all counties shall be accomplished within the
8 framework of a long-range, comprehensive general plan prepared
9 or being prepared to guide the overall future development of the
10 county. Zoning shall be one of the tools available to the
11 county to put the general plan into effect in an orderly manner.
12 Zoning in the counties of Hawaii, Maui, and Kauai means the
13 establishment of districts of [~~such~~] a number, shape, and area,
14 and the adoption of regulations for each district, to carry out
15 the purposes of this section. In establishing or regulating the
16 districts, full consideration shall be given to all available
17 data as to soil classification and physical use capabilities of
18 the land to allow and encourage the most beneficial use of the
19 land consonant with good zoning practices. The zoning power
20 granted herein shall be exercised by ordinance which may relate
21 to:



- 1 (1) The areas within which agriculture, forestry,
2 industry, trade, and business may be conducted;
- 3 (2) The areas in which residential uses may be regulated
4 or prohibited;
- 5 (3) The areas bordering natural watercourses, channels,
6 and streams, in which trades or industries, filling or
7 dumping, erection of structures, and the location of
8 buildings may be prohibited or restricted;
- 9 (4) The areas in which particular uses may be subjected to
10 special restrictions;
- 11 (5) The location of buildings and structures designed for
12 specific uses and designation of uses for which
13 buildings and structures may not be used or altered;
- 14 (6) The location, height, bulk, number of stories, and
15 size of buildings and other structures;
- 16 (7) The location of roads, schools, and recreation areas;
- 17 (8) Building setback lines and future street lines;
- 18 (9) The density and distribution of population;
- 19 (10) The percentage of a lot that may be occupied, size of
20 yards, courts, and other open spaces;
- 21 (11) Minimum and maximum lot sizes; and



1 (12) Other regulations the boards or city council find
2 necessary and proper to permit and encourage the
3 orderly development of land resources within their
4 jurisdictions.

5 The council of any county shall prescribe rules,
6 regulations, and administrative procedures and provide personnel
7 it finds necessary to enforce this section and any ordinance
8 enacted in accordance with this section. The ordinances may be
9 enforced by appropriate fines [~~and~~], penalties, and remedies for
10 disgorgement of all profits and restitution of any money, real
11 property, or personal property that was obtained through
12 unlawful actions, including but not limited to those set forth
13 in chapter _____, civil or criminal, or by court order at the
14 suit of the county or the owner or owners of real estate
15 directly affected by the ordinances. In any action brought
16 under an ordinance adopted pursuant to this section, the court
17 or zoning agency, in addition to any fine imposed upon the
18 ordinance violator, may allow costs of action, including costs
19 and fees of any nature and reasonable attorney's fees, to be
20 paid by the ordinance violator.



1 Each county may adopt ordinances prohibiting transient
2 accommodations brokers from engaging in business with an
3 operator or plan manager who is not in compliance with all state
4 laws and county ordinances, including laws and ordinances
5 regarding land use, taxes, and professional licenses.

6 Each county may adopt ordinances requiring an operator or
7 plan manager to remove an advertisement within seven days of
8 receiving a notice of noncompliance under section 237- (i) or
9 237D- (i), a violation of which shall be subject to a civil
10 fine of not less than \$25,000, to be levied by the county
11 planning director of the county where the subject property is
12 located.

13 Any civil fine or penalty provided by ordinance under this
14 section may be imposed by the district court, or by the zoning
15 agency after an opportunity for a hearing pursuant to chapter
16 91. The proceeding shall not be a prerequisite for any
17 injunctive relief ordered by the circuit court.

18 Nothing in this section shall invalidate any zoning
19 ordinance or regulation adopted by any county or other agency of
20 government pursuant to the statutes in effect prior to July 1,
21 1957.



1 The powers granted herein shall be liberally construed in
2 favor of the county exercising them, and in such a manner as to
3 promote the orderly development of each county or city and
4 county in accordance with a long-range, comprehensive general
5 plan to ensure the greatest benefit for the State as a whole.
6 This section shall not be construed to limit or repeal any
7 powers of any county to achieve these ends through zoning and
8 building regulations, except insofar as forest and water reserve
9 zones are concerned and as provided in subsections (c) and (d).

10 Neither this section nor any ordinance enacted pursuant to
11 this section shall prohibit the continued lawful use of any
12 building or premises for any trade, industrial, residential,
13 agricultural, or other purpose for which the building or
14 premises is used at the time this section or the ordinance takes
15 effect; provided that a zoning ordinance may provide for
16 elimination of nonconforming uses as the uses are discontinued,
17 or for the amortization or phasing out of nonconforming uses or
18 signs over a reasonable period of time in commercial,
19 industrial, resort, and apartment zoned areas only. A zoning
20 ordinance may provide for the amortization or phasing out of
21 conforming or nonconforming single-family transient



1 accommodations over a reasonable period of time in an area of
 2 any zoning classification. In no event shall [~~such~~] the
 3 amortization or phasing out of nonconforming uses apply to any
 4 existing building or premises used for residential (single-
 5 family or duplex) or agricultural uses[-] other than transient
 6 accommodations, as provided in this section. Nothing in this
 7 section shall affect or impair the powers and duties of the
 8 director of transportation as set forth in chapter 262.

9 As used in this subsection, the terms "transient
 10 accommodations", "transient accommodations broker", "operator",
 11 and "plan manager" have the same meanings as in section 237D-1."

12 SECTION 14. Upon the establishment by a county of a
 13 process for providing verification of compliance by an operator
 14 or plan manager, as those terms are defined in section 237D-1,
 15 Hawaii Revised Statutes, with that county's land use ordinances,
 16 the mayor of each county shall advise the governor and shall
 17 request that the State transfer, from transient accommodations
 18 tax revenues, up to \$1,000,000 to each county for implementation
 19 or enforcement of those land use ordinances.

20 **PART IV**



1 SECTION 15. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 TRANSIENT ACCOMMODATIONS

6 § -1 Definitions. As used in this chapter:

7 "Activity provider" has the same meaning as in section
8 468M-1.

9 "Booking service" has the same meaning as in section
10 237D-1.

11 "County" means the city and county of Honolulu and the
12 counties of Hawaii, Kauai, and Maui; provided that the county of
13 Maui shall include the county of Kalawao for the purposes of
14 this chapter.

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



1 through a website provided by the hosting platform and the
2 hosting platform conducts a transaction by which potential
3 renters arrange, use, pay, whether the renter pays rent directly
4 to the operator or to the hosting platform.

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

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

7 "Transient accommodations" has the same meaning as in
8 section 237D-1.

9 "Transient accommodations broker" has the same meaning as
10 in section 237D-1.

11 **§ -2 Transient accommodations brokers.** (a) It shall be
12 unlawful for a person acting as, or on behalf of, a transient
13 accommodations broker to engage in business with an operator or
14 plan manager, including any person or entity employed,
15 contracted, or otherwise engaged by the operator or plan manager
16 for property management or as an activity provider, who is not
17 in compliance with all state laws and county ordinances,
18 including any laws and ordinances regarding land use, taxes, and
19 professional licenses.

20 (b) It shall be unlawful for a person acting as, or on
21 behalf of, a transient accommodations broker, to act on behalf



1 of an operator or plan manager, to employ, contract, or
2 otherwise engage in business with any person or entity to manage
3 any property of the operator or plan manager or to act as an
4 activity provider for transients served by the operator or plan
5 manager if the person or entity is not in compliance with all
6 state laws and county ordinances, including laws and ordinances
7 regarding land use, taxes, and professional licenses.

8 (c) For the purposes of this section, "operator" has the
9 same meaning as in section 237D-1.

10 § -3 **Booking services.** It shall be unlawful for a
11 person acting as, or on behalf of, a hosting platform to
12 provide, and collect a fee for, booking services in connection
13 with transient accommodations located in the State if those
14 transient accommodations are not lawfully certified, registered,
15 or permitted as a transient accommodation under applicable
16 county ordinance at the time the transient accommodation is
17 rented.

18 § -4 **Penalties.** A violation of this chapter may result
19 in a civil penalty of not less than \$25,000.

20 § -5 **Enforcement.** The appropriate county officer or
21 agency may enforce this chapter within each county."



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PART V

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

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

SECTION 18. This Act shall take effect upon its approval.

INTRODUCED BY:

Stanley D. Ober
Tim Willinger
Kirkpatrick
Dan Carnas
John On
Hans

JAN 24 2019



Report Title:

Taxation; Transient Accommodations Tax; Amnesty; Vacation Rentals; Brokers; Tax Collection Agents; General Excise Tax; Hosting Platform; Booking Services

Description:

Allows a transient accommodations broker to register as a tax collection agent for its operators and plan managers. Requires operators and plan managers to provide a statement to the transient accommodations broker confirming compliance with all applicable land use and tax laws. Requires the operator or plan manager to provide verification of compliance with state and county land use laws. 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. Establishes a 1-time amnesty program for certain delinquent transient accommodations and general excise tax obligations. Authorizes counties to require the disgorgement of profits obtained through unlawful actions. Authorizes counties to adopt ordinances to amortize or phase out transient accommodations. Allocates up to \$1,000,000 of TAT revenues to each county, contingent upon the county establishing a process to provide verification of compliance by an operator or plan manager with county land use laws. 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 accommodations that are not lawfully certified, registered, or permitted under applicable county ordinance.

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

