

JAN 18 2019

A BILL FOR AN ACT

RELATING TO THE HAWAII TOURISM AUTHORITY.

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

1 PART I

2 SECTION 1. **Definitions.** As used in this part:

3 "Accounts receivable" means an amount of transient
4 accommodations tax, general excise tax, penalty, or interest
5 that has been recorded as due and entered in the account records
6 or any ledger maintained in the department or that a taxpayer
7 should reasonably expect to become due as a direct or indirect
8 result of any pending or completed audit or investigation that a
9 taxpayer knows is being conducted by the State.

10 "Department" means the department of taxation.

11 "Director" means the director of taxation.

12 "Final, due, and owing" means an assessment that has become
13 final and is owed to the State, due to either the expiration of
14 a taxpayer's appeal rights or the rendition of the final order
15 by the director or by any court of this State. Assessments that
16 have been appealed shall be final, due, and owing fifteen days
17 after the last unappealed or unappealable order sustaining the



1 assessment or any part thereof has become final. Assessments
2 that have not been appealed shall be final, due, and owing
3 thirty days after service of notice of assessment.

4 "General excise tax" means the tax imposed under chapter
5 237, Hawaii Revised Statutes, including revenues collected
6 pursuant to sections 46-16.8 and 237-8.6, Hawaii Revised
7 Statutes.

8 "Taxpayer" means any individual, partnership, joint
9 venture, association, corporation, receiver, trustee, guardian,
10 executor, administrator, fiduciary, or any other entity of any
11 kind subject to both the general excise tax and the transient
12 accommodations tax, or any person required to collect and remit
13 to the State the general excise tax and transient accommodations
14 tax.

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

17 **SECTION 2. Tax amnesty program; applicable time period.**

18 (a) The director shall develop and administer a one-time tax
19 amnesty program as provided in this part. The director, upon
20 the voluntary return and remission of transient accommodations
21 or general excise taxes and interest owed by any taxpayer, shall



1 waive all penalties that are assessed or subject to being
2 assessed for outstanding liabilities for taxable periods ending
3 or transactions occurring on or before December 31, 2018.

4 The director shall:

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

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

8 (b) Notwithstanding any other law to the contrary, the tax
9 amnesty program shall begin no later than October 31, 2019, and
10 shall be completed before January 1, 2020, and shall apply to
11 all taxpayers owing taxes, penalties, or interest administered
12 by the director under chapters 237 and 237D, Hawaii Revised
13 Statutes.

14 SECTION 3. **Application; eligibility requirements.** (a)

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

17 (1) Files all returns as may be required by the director
18 for all years or tax reporting periods as stated on
19 the application:

20 (A) For which returns have not previously been filed;
21 and



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1 (B) For which returns were filed but the tax
2 liability was underreported; and
3 (2) Pays in full the taxes due, including interest
4 thereon, for the years and tax reporting periods
5 stated on the application, at the time the application
6 is made or amnesty tax returns are filed within the
7 designated amnesty program period.

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

14 (b) An eligible taxpayer may participate in the amnesty
15 program regardless of whether the taxpayer is under audit,
16 notwithstanding the fact that the amount due is included in a
17 proposed assessment or an assessment, bill, notice, or demand
18 for payment issued by the director and without regard to whether
19 the amount due is subject to a pending administrative or
20 judicial proceeding. An eligible taxpayer may participate in
21 the amnesty program to the extent of the uncontested portion of



1 any assessed liability. However, participation in the program
2 shall be conditioned upon the taxpayer's agreement that the
3 right to protest or initiate an administrative or judicial
4 proceeding or to claim any refund of moneys paid under the
5 program is barred with respect to the amounts paid with the
6 application or amnesty return.

7 (c) The director shall allow installment payment
8 agreements in cases of severe hardship in lieu of the complete
9 payment required under subsection (a). In those cases, twenty-
10 five per cent of the amount due shall be paid with the
11 application or amnesty return, with the balance to be paid in
12 monthly installments determined by the taxpayer and the
13 director. Failure of the taxpayer to make timely payments shall
14 void the terms of the amnesty. All agreements and payments
15 shall not include interest due and accruing during the
16 installment agreement.

17 SECTION 4. **Amnesty provisions.** (a) Amnesty shall be
18 granted for any taxpayer who meets the requirements of section 3
19 of this Act in accordance with the following:

20 (1) For taxes that are owed as a result of the
21 nonreporting or underreporting of transient



1 accommodations or general excise tax liabilities or
2 the nonpayment of any accounts receivable owed by an
3 eligible taxpayer, the State shall waive criminal
4 prosecution and all civil penalties that may be
5 assessed under title 14, Hawaii Revised Statutes, for
6 the taxable years or periods for which the tax amnesty
7 is requested; and

8 (2) With the exception of instances in which the taxpayer
9 and director enter into an installment payment
10 agreement authorized under section 3(c) of this Act,
11 the failure to pay all taxes as shown on the
12 taxpayer's amnesty tax return shall invalidate any
13 amnesty granted pursuant to this part.

14 (b) This part shall not apply to any taxpayer who is on
15 notice, written or otherwise, that the taxpayer is the subject
16 of any criminal investigation or criminal prosecution for
17 nonpayment, delinquency, evasion, or fraud in relation to any
18 federal taxes, the state general excise tax, or the transient
19 accommodations tax.



1 (c) No refund or credit shall be granted for any interest
2 or penalty paid prior to the time the taxpayer requests amnesty
3 pursuant to section 3 of this Act.

4 (d) Unless the director, in the director's discretion,
5 redetermines the amount of transient accommodations or general
6 excise taxes and interest due, no refund or credit shall be
7 granted for any transient accommodations or general excise taxes
8 or interest paid under the amnesty program.

9 SECTION 5. **Public awareness.** The director shall publicize
10 the tax amnesty program in order to maximize the public
11 awareness of, and participation in, the program. For the
12 purpose of publicizing the tax amnesty program, the director may
13 contract with any advertising agency within or outside this
14 State.

15 SECTION 6. **Separate accounting; disposition of revenues.**
16 For purposes of accounting for the revenues received pursuant to
17 this part, the director shall maintain a separate accounting and
18 reporting of funds collected under the amnesty program. All
19 funds collected shall be remitted to the general fund; provided
20 that all revenues collected under the amnesty program pursuant
21 to sections 46-16.8 and 237-8.6, Hawaii Revised Statutes, shall



1 be disposed of pursuant to section 248-2.6, Hawaii Revised
2 Statutes.

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

16 The legislature further finds that, to increase
17 transparency and ensure the veracity of the taxes being
18 collected, transient accommodations brokers acting as tax
19 collection agents must provide pertinent information to the
20 department of taxation regarding the operators and plan managers
21 on whose behalf they collect taxes.



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

7 This part is not intended to:

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

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

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



1 "§237- Transient accommodations broker as tax
2 collection agent; transient accommodations broker; operator and
3 plan manager. (a) The director may permit a transient
4 accommodations broker to register as a tax collection agent on
5 behalf of all of its operators and plan managers by entering
6 into a tax collection agreement with the director or by
7 submitting a tax collection agent registration statement to the
8 director; provided that the transient accommodations broker
9 agrees in writing:

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

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

15 (3) That continuing to collect fees for booking services
16 in connection with a transient vacation rental, seven
17 days after receiving written notice from a state or
18 county governmental authority that the subject
19 property is not in compliance with state law or county
20 ordinance, is a violation of the tax collection
21 agreement.



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

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

16 The director shall issue a certificate of registration or
17 letter of denial within thirty days after a transient
18 accommodations broker submits to the director a completed and
19 signed tax collection agent registration statement, in a form
20 prescribed by the department.



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

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

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



1 subsection (h). For purposes of any other business activity,
2 the operators and plan managers shall be subject to all
3 requirements of title 14 and all county ordinances and rules
4 regulating short-term rentals, vacation rentals, or bed and
5 breakfast lodging within their jurisdictions as if this section
6 did not exist.

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

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



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1 registration until the registration is canceled as provided in
2 subsection (h).

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

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

19 (g) A registered tax collection agent shall file periodic
20 returns in accordance with section 237-30 and annual returns in
21 accordance with section 237-33. Each periodic return required



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1 under section 237-30 shall be accompanied by an electronic cover
2 sheet, in a form prescribed by the department that includes the
3 following information:

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

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

14 (A) The address of the transient accommodation;

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

19 (C) The amount of tax being remitted pursuant to this
20 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 to ensure compliance with this section, state tax laws
13 and county tax ordinances, and any applicable land use laws and
14 ordinances.

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

17 A registered tax collection agent may cancel its
18 registration under this section by delivering written notice of
19 cancellation to the director and each of its operators and plan
20 managers furnishing transient accommodations in the State not



1 later than ninety days prior to the effective date of
2 cancellation.

3 The director may cancel a tax collection agent's
4 registration under this section for any cause, including any
5 violation of this chapter or rules adopted pursuant thereto, or
6 for violation of any applicable tax collection agreement, by
7 delivering written notice of cancellation to the tax collection
8 agent not later than ninety days prior to the effective date of
9 cancellation.

10 (i) All transient accommodations brokers, prior to
11 publishing an advertisement, including an online advertisement,
12 on the availability of a property for lease or rent on behalf of
13 an operator or plan manager:

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 operator
21 or plan manager's transient accommodations number and



1 local contact information and include this information
2 in the advertisement, pursuant to section 237D-4;

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

9 (4) Shall require the operator or plan manager to provide
10 a statement to the transient accommodations broker
11 confirming compliance with all applicable land use
12 laws and ordinances.

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



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1 The state or county governmental authority shall provide a copy
2 of the written notice to the transient accommodations broker.

3 (j) Nothing in this section shall be construed to preempt
4 or prohibit the authority of a unit of local government in the
5 State, including counties and any other political subdivisions
6 of the State, to adopt, monitor, and enforce local land use
7 ordinances, rules, or regulations, nor to transfer the authority
8 to monitor and enforce these ordinances, rules, or regulations
9 away from the counties.

10 (k) For the purposes of this section:

11 "Booking service" has the same meaning as in section
12 481B-B.

13 "Director" means the director of taxation.

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

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

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

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

20 "Transient vacation rental" has the same meaning as in
21 section 481B-B."



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

4 "§237D- Transient accommodations broker as tax
5 collection agent; transient accommodations broker; operator and
6 plan 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 vacation rental, seven
20 days after receiving written notice from a state or
21 county governmental authority that the subject



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

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

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



1 (c) The registered tax collection agent's operators and
2 plan managers shall obtain registration under this chapter and
3 remain subject to the requirements of title 14; provided that
4 the registered tax collection agent shall report, collect, and
5 pay the taxes under this chapter on behalf of the operators and
6 plan managers for business activity conducted directly through
7 the registered tax collection agent, as set forth in this
8 section, from the date of registration until the registration is
9 canceled as provided in subsection (h). For purposes of any
10 other business activity, the operators and plan managers shall
11 be subject to all requirements of title 14 and all applicable
12 ordinances and rules regulating short-term rentals, vacation
13 rentals, or bed and breakfast lodging within their jurisdictions
14 as if this section did not exist.

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 237D-13.

20 (g) A registered tax collection agent shall file periodic
21 returns in accordance with section 237D-6 and annual returns in



1 accordance with section 237D-7. Each periodic return required
2 under section 237D-6 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 transient accommodations registration identification
10 number; and

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

16 (A) The address of the transient accommodation;

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

20 and



1 (C) The amount of tax being remitted pursuant to this
2 chapter and the amount of any federal form 1099
3 income that was derived from each transient
4 accommodation.

5 Upon request by the planning director or mayor of the
6 applicable county, a registered tax collection agent shall
7 disclose any of the information contained in the returns or
8 cover sheets required by this subsection to the planning
9 director or any county official designated by the mayor to
10 receive the information. Notwithstanding any law to the
11 contrary, including section 237D-13, the planning director and
12 county official designated to receive the information pursuant
13 to this subsection may examine and copy the returns and cover
14 sheets to ensure compliance with this section, state and county
15 tax laws and ordinances, and any applicable land use laws and
16 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 not
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 not later than ninety days prior to the effective date of
10 cancellation.

11 (i) All transient accommodations brokers, prior to placing
12 an advertisement, including an online advertisement, on the
13 availability of a property for lease or rent on behalf of an
14 operator or plan manager:

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

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



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1 or plan manager's transient accommodations number and
2 local contact information and include this information
3 in the advertisement, pursuant to section 237D-4;

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

10 (4) Shall require the operator or plan manager to provide
11 a statement to the transient accommodations broker
12 confirming compliance with all land use laws and
13 ordinances.

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



1 The state or county governmental authority shall provide a copy
2 of the written notice to the transient accommodations broker.

3 (j) Nothing in this section shall be construed to preempt
4 or prohibit the authority of a unit of local government in the
5 State, including counties and any other political subdivisions
6 of the State, to adopt, monitor, and enforce local land use
7 ordinances, rules, or regulations, nor to transfer the authority
8 to monitor and enforce these ordinances, rules, or regulations
9 away from the counties.

10 (k) For the purposes of this section:

11 "Booking service" has the same meaning as in section
12 481B-B.

13 "Transient vacation rental" has the same meaning as in
14 section 481B-B."

15 SECTION 10. Chapter 481B, Hawaii Revised Statutes, is
16 amended by adding two new sections to part I to be appropriately
17 designated and to read as follows:

18 **§481B-A Transient accommodations brokers.** (a) It shall
19 be unlawful for a transient accommodations broker to engage in
20 business with an operator or plan manager, including any person
21 or entity employed, contracted, or otherwise engaged by the



1 operator or plan manager for property management or as an
2 activity provider, who is not in compliance with all state laws
3 and county ordinances, including any laws and ordinances
4 regarding land use, taxes, and professional licenses.

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

14 (c) Violation of this section is a misdemeanor and shall
15 be punishable by a fine of not less than \$25,000.

16 (d) For the purposes of this section:

17 "Activity provider" has the same meaning as in section
18 468M-1.

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

20 "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 **§481B-B Booking services.** (a) It shall be unlawful for a
6 hosting platform to provide, and collect a fee for, booking
7 services in connection with transient vacation rentals located
8 in the State if those transient vacation rentals are not
9 lawfully certified, registered, or permitted as a transient
10 vacation rental under applicable county ordinance at the time
11 the transient vacation rental is rented.

12 (b) The appropriate officer or agency charged with the
13 administration of county zoning laws shall enforce this section
14 within each county.

15 (c) Violation of this section shall be a misdemeanor and
16 shall be punishable by a fine of not less than \$25,000.

17 (d) As used in this section:

18 "Booking service" means any reservation or payment service
19 provided by a person or entity that facilitates a transient
20 vacation rental transaction between an operator and a
21 prospective renter, and for which the person or entity collects



1 or receives, directly or indirectly through an agent or
2 intermediary, a fee in connection with the reservation or
3 payment services provided for the transient vacation rental
4 transaction.

5 "County" means the city and county of Honolulu and the
6 counties of Hawaii, Kauai, and Maui; provided that the county of
7 Maui shall include the county of Kalawao for the purposes of
8 this section.

9 "Hosting platform" means a person or entity that
10 participates in the transient vacation rental business by
11 providing, and collecting or receiving a fee for, booking
12 services through which an operator may offer a transient
13 vacation rental unit. Hosting platforms usually, though not
14 necessarily, provide booking services through an online platform
15 that allows an operator to advertise the transient vacation
16 rental unit through a website provided by the hosting platform
17 and the hosting platform conducts a transaction by which
18 potential renters arrange use and payment, whether the renter
19 pays rent directly to the operator or to the hosting platform.



1 "Operator" means any person operating a transient vacation
2 rental, whether as owner or proprietor or as lessee, sublessee,
3 mortgagee in possession, licensee, or otherwise, or engaging or
4 continuing in any service business that involves the actual
5 furnishing of transient vacation rental.

6 "Transient vacation rental" means "transient vacation
7 rental", "transient vacation unit", or "transient vacation use",
8 as defined by county ordinance."

9 SECTION 11. Section 46-1.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§46-1.5 General powers and limitation of the counties.**

12 Subject to general law, each county shall have the following
13 powers and shall be subject to the following liabilities and
14 limitations:

- 15 (1) Each county shall have the power to frame and adopt a
16 charter for its own self-government that shall
17 establish the county executive, administrative, and
18 legislative structure and organization, including but
19 not limited to the method of appointment or election
20 of officials, their duties, responsibilities, and
21 compensation, and the terms of their office;



- 1 (2) Each county shall have the power to provide for and
2 regulate the marking and lighting of all buildings and
3 other structures that may be obstructions or hazards
4 to aerial navigation, so far as may be necessary or
5 proper for the protection and safeguarding of life,
6 health, and property;
- 7 (3) Each county shall have the power to enforce all claims
8 on behalf of the county and approve all lawful claims
9 against the county, but shall be prohibited from
10 entering into, granting, or making in any manner any
11 contract, authorization, allowance payment, or
12 liability contrary to the provisions of any county
13 charter or general law;
- 14 (4) Each county shall have the power to make contracts and
15 to do all things necessary and proper to carry into
16 execution all powers vested in the county or any
17 county officer;
- 18 (5) Each county shall have the power to:
- 19 (A) Maintain channels, whether natural or artificial,
20 including their exits to the ocean, in suitable
21 condition to carry off storm waters;



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- 1 (B) Remove from the channels, and from the shores and
2 beaches, any debris that is likely to create an
3 unsanitary condition or become a public nuisance;
4 provided that, to the extent any of the foregoing
5 work is a private responsibility, the
6 responsibility may be enforced by the county in
7 lieu of the work being done at public expense;
- 8 (C) Construct, acquire by gift, purchase, or by the
9 exercise of eminent domain, reconstruct, improve,
10 better, extend, and maintain projects or
11 undertakings for the control of and protection
12 against floods and flood waters, including the
13 power to drain and rehabilitate lands already
14 flooded;
- 15 (D) Enact zoning ordinances providing that lands
16 deemed subject to seasonable, periodic, or
17 occasional flooding shall not be used for
18 residence or other purposes in a manner as to
19 endanger the health or safety of the occupants
20 thereof, as required by the Federal Flood



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- 1 Insurance Act of 1956 (chapter 1025, Public Law
2 1016); and
- 3 (E) Establish and charge user fees to create and
4 maintain any stormwater management system or
5 infrastructure;
- 6 (6) Each county shall have the power to exercise the power
7 of condemnation by eminent domain when it is in the
8 public interest to do so;
- 9 (7) Each county shall have the power to exercise
10 regulatory powers over business activity as are
11 assigned to them by chapter 445 or other general law;
- 12 (8) Each county shall have the power to fix the fees and
13 charges for all official services not otherwise
14 provided for;
- 15 (9) Each county shall have the power to provide by
16 ordinance assessments for the improvement or
17 maintenance of districts within the county;
- 18 (10) Except as otherwise provided, no county shall have the
19 power to give or loan credit to, or in aid of, any
20 person or corporation, directly or indirectly, except
21 for a public purpose;



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1 (11) Where not within the jurisdiction of the public
2 utilities commission, each county shall have the power
3 to regulate by ordinance the operation of motor
4 vehicle common carriers transporting passengers within
5 the county and adopt and amend rules the county deems
6 necessary for the public convenience and necessity;

7 (12) Each county shall have the power to enact and enforce
8 ordinances necessary to prevent or summarily remove
9 public nuisances and to compel the clearing or removal
10 of any public nuisance, refuse, and uncultivated
11 undergrowth from streets, sidewalks, public places,
12 and unoccupied lots. In connection with these powers,
13 each county may impose and enforce liens upon the
14 property for the cost to the county of removing and
15 completing the necessary work where the property
16 owners fail, after reasonable notice, to comply with
17 the ordinances. The authority provided by this
18 paragraph shall not be self-executing, but shall
19 become fully effective within a county only upon the
20 enactment or adoption by the county of appropriate and
21 particular laws, ordinances, or rules defining "public



1 nuisances" with respect to each county's respective
2 circumstances. The counties shall provide the
3 property owner with the opportunity to contest the
4 summary action and to recover the owner's property;

5 (13) Each county shall have the power to enact ordinances
6 deemed necessary to protect health, life, and
7 property, and to preserve the order and security of
8 the county and its inhabitants on any subject or
9 matter not inconsistent with, or tending to defeat,
10 the intent of any state statute where the statute does
11 not disclose an express or implied intent that the
12 statute shall be exclusive or uniform throughout the
13 State;

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

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

17 (i) Local police matters;

18 (ii) Matters of sanitation;

19 (iii) Matters of inspection of buildings;



- 1 (iv) Matters of condemnation of unsafe
- 2 structures, plumbing, sewers, dairies, milk,
- 3 fish, and morgues; and
- 4 (v) Matters of the collection and disposition of
- 5 rubbish and garbage;
- 6 (B) Provide exemptions for homeless facilities and
- 7 any other program for the homeless authorized by
- 8 part XVII of chapter 346, for all matters under
- 9 this paragraph;
- 10 (C) Appoint county physicians and sanitary and other
- 11 inspectors as necessary to carry into effect
- 12 ordinances made under this paragraph, who shall
- 13 have the same power as given by law to agents of
- 14 the department of health, subject only to
- 15 limitations placed on them by the terms and
- 16 conditions of their appointments; and
- 17 (D) Fix a penalty for the violation of any ordinance,
- 18 which penalty may be a misdemeanor, petty
- 19 misdemeanor, or violation as defined by general
- 20 law; provided that any violation of a county
- 21 transient accommodations ordinance shall result



1 in, at a minimum, a civil penalty of not less
2 than \$25,000 to be levied by the county planning
3 director;

4 (15) Each county shall have the power to provide public
5 pounds; to regulate the impounding of stray animals
6 and fowl, and their disposition; and to provide for
7 the appointment, powers, duties, and fees of animal
8 control officers;

9 (16) Each county shall have the power to purchase and
10 otherwise acquire, lease, and hold real and personal
11 property within the defined boundaries of the county
12 and to dispose of the real and personal property as
13 the interests of the inhabitants of the county may
14 require, except that:

15 (A) Any property held for school purposes may not be
16 disposed of without the consent of the
17 superintendent of education;

18 (B) No property bordering the ocean shall be sold or
19 otherwise disposed of; and



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1 (C) All proceeds from the sale of park lands shall be
2 expended only for the acquisition of property for
3 park or recreational purposes;

4 (17) Each county shall have the power to provide by charter
5 for the prosecution of all offenses and to prosecute
6 for offenses against the laws of the State under the
7 authority of the attorney general of the State;

8 (18) Each county shall have the power to make
9 appropriations in amounts deemed appropriate from any
10 moneys in the treasury, for the purpose of:

11 (A) Community promotion and public celebrations;

12 (B) The entertainment of distinguished persons as may
13 from time to time visit the county;

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

17 (D) The rendering of civic tribute to individuals
18 who, by virtue of their accomplishments and
19 community service, merit civic commendations,
20 recognition, or remembrance;

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



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- 1 (A) Construct, purchase, take on lease, lease,
2 sublease, or in any other manner acquire, manage,
3 maintain, or dispose of buildings for county
4 purposes, sewers, sewer systems, pumping
5 stations, waterworks, including reservoirs,
6 wells, pipelines, and other conduits for
7 distributing water to the public, lighting
8 plants, and apparatus and appliances for lighting
9 streets and public buildings, and manage,
10 regulate, and control the same;
- 11 (B) Regulate and control the location and quality of
12 all appliances necessary to the furnishing of
13 water, heat, light, power, telephone, and
14 telecommunications service to the county;
- 15 (C) Acquire, regulate, and control any and all
16 appliances for the sprinkling and cleaning of the
17 streets and the public ways, and for flushing the
18 sewers; and
- 19 (D) Open, close, construct, or maintain county
20 highways or charge toll on county highways;
21 provided that all revenues received from a toll



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- 1 charge shall be used for the construction or
2 maintenance of county highways;
- 3 (20) Each county shall have the power to regulate the
4 renting, subletting, and rental conditions of property
5 for places of abode by ordinance;
- 6 (21) Unless otherwise provided by law, each county shall
7 have the power to establish by ordinance the order of
8 succession of county officials in the event of a
9 military or civil disaster;
- 10 (22) Each county shall have the power to sue and be sued in
11 its corporate name;
- 12 (23) Each county shall have the power to:
- 13 (A) Establish and maintain waterworks and sewer
14 works;
- 15 (B) Implement a sewer monitoring program that
16 includes the inspection of sewer laterals that
17 connect to county sewers, when those laterals are
18 located on public or private property, after
19 providing a property owner not less than ten
20 calendar days' written notice, to detect leaks



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- 1 from laterals, infiltration, and inflow, any
2 other law to the contrary notwithstanding;
- 3 (C) Compel an owner of private property upon which is
4 located any sewer lateral that connects to a
5 county sewer to inspect that lateral for leaks,
6 infiltration, and inflow and to perform repairs
7 as necessary;
- 8 (D) Collect rates for water supplied to consumers and
9 for the use of sewers;
- 10 (E) Install water meters whenever deemed expedient;
11 provided that owners of premises having vested
12 water rights under existing laws appurtenant to
13 the premises shall not be charged for the
14 installation or use of the water meters on the
15 premises; and
- 16 (F) Take over from the State existing waterworks
17 systems, including water rights, pipelines, and
18 other appurtenances belonging thereto, and sewer
19 systems, and to enlarge, develop, and improve the
20 same;
- 21 (G) For purposes of subparagraphs (B) and (C):



1 (i) "Infiltration" means groundwater, rainwater,
2 and saltwater that enters the county sewer
3 system through cracked, broken, or defective
4 sewer laterals; and

5 (ii) "Inflow" means non-sewage entering the
6 county sewer system via inappropriate or
7 illegal connections;

8 (24) (A) Each county may impose civil fines, in addition
9 to criminal penalties, and remedies for
10 disgorgement of all profits and restitution of
11 any money, real property, or personal property
12 that was obtained through unfair or unlawful
13 business acts and practices, for any violation of
14 county ordinances or rules after a reasonable
15 notice and [~~requests~~] request to correct or cease
16 the violation [~~have~~] has been made upon the
17 violator. Any administratively imposed civil
18 fine shall not be collected until [~~after~~] either
19 an opportunity for [~~a~~]:

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



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1 (ii) Judicial review by the circuit court, as
2 prescribed by ordinance for specific
3 violations,
4 has been afforded. Any appeal shall be filed
5 within thirty days from the date of the final
6 written decision. These proceedings shall not be
7 stayed pending disposition of any criminal
8 proceeding for a related offense. These
9 proceedings shall not be a prerequisite for any
10 civil fine or injunctive relief ordered by the
11 circuit court[?]. Where a county seeks
12 injunctive relief for violations of an ordinance
13 related to transient vacation rental units, the
14 county need not show irreparable injury;
15 (B) Each county by ordinance may provide for the
16 addition of any unpaid civil fines, ordered by
17 any court of competent jurisdiction, to any
18 taxes, fees, or charges, with the exception of
19 fees or charges for water for residential use and
20 sewer charges, collected by the county. Each
21 county by ordinance may also provide for the

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1 addition of any unpaid administratively imposed
2 civil fines, which remain due after all judicial
3 review rights under section 91-14 are exhausted,
4 to any taxes, fees, or charges, with the
5 exception of water for residential use and sewer
6 charges, collected by the county. The ordinance
7 shall specify the administrative procedures for
8 the addition of the unpaid civil fines to the
9 eligible taxes, fees, or charges and may require
10 hearings or other proceedings. After addition of
11 the unpaid civil fines to the taxes, fees, or
12 charges, the unpaid civil fines shall not become
13 a part of any taxes, fees, or charges. The
14 county by ordinance may condition the issuance or
15 renewal of a license, approval, or permit for
16 which a fee or charge is assessed, except for
17 water for residential use and sewer charges, on
18 payment of the unpaid civil fines. Upon
19 recordation of a notice of unpaid civil fines in
20 the bureau of conveyances, the amount of the
21 civil fines, including any increase in the amount



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1 of the fine [~~which~~] that the county may assess,
2 shall constitute a lien upon all real property or
3 rights to real property belonging to any person
4 liable for the unpaid civil fines. The lien in
5 favor of the county shall be subordinate to any
6 lien in favor of any person recorded or
7 registered prior to the recordation of the notice
8 of unpaid civil fines and senior to any lien
9 recorded or registered after the recordation of
10 the notice. The lien shall continue until the
11 unpaid civil fines are paid in full or until a
12 certificate of release or partial release of the
13 lien, prepared by the county at the owner's
14 expense, is recorded. The notice of unpaid civil
15 fines shall state the amount of the fine as of
16 the date of the notice and maximum permissible
17 daily increase of the fine. The county shall not
18 be required to include a social security number,
19 state general excise taxpayer identification
20 number, or federal employer identification number
21 on the notice. Recordation of the notice in the



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1 bureau of conveyances shall be deemed, at [~~such~~
2 that time, for all purposes and without any
3 further action, to procure a lien on land
4 registered in land court under chapter 501.
5 After the unpaid civil fines are added to the
6 taxes, fees, or charges as specified by county
7 ordinance, the unpaid civil fines shall be deemed
8 immediately due, owing, and delinquent and may be
9 collected in any lawful manner. The procedure
10 for collection of unpaid civil fines authorized
11 in this paragraph shall be in addition to any
12 other procedures for collection available to the
13 State and county by law or rules of the courts;

14 (C) Each county may impose civil fines upon any
15 person who places graffiti on any real or
16 personal property owned, managed, or maintained
17 by the county. The fine may be up to \$1,000 or
18 may be equal to the actual cost of having the
19 damaged property repaired or replaced. The
20 parent or guardian having custody of a minor who
21 places graffiti on any real or personal property



1 owned, managed, or maintained by the county shall
2 be jointly and severally liable with the minor
3 for any civil fines imposed hereunder. Any
4 [~~such~~] fine under this paragraph may be
5 administratively imposed after an opportunity for
6 a hearing under chapter 91, but [~~such~~] a
7 [~~proceeding~~] hearing shall not be a prerequisite
8 for any civil fine ordered by any court. As used
9 in this subparagraph, "graffiti" means any
10 unauthorized drawing, inscription, figure, or
11 mark of any type intentionally created by paint,
12 ink, chalk, dye, or similar substances;

13 (D) At the completion of an appeal in which the
14 county's enforcement action is affirmed and upon
15 correction of the violation if requested by the
16 violator, the case shall be reviewed by the
17 county agency that imposed the civil fines to
18 determine the appropriateness of the amount of
19 the civil fines that accrued while the appeal
20 proceedings were pending. In its review of the



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1 amount of the accrued fines, the county agency
2 may consider:

- 3 (i) The nature and egregiousness of the
4 violation;
- 5 (ii) The duration of the violation;
- 6 (iii) The number of recurring and other similar
7 violations;
- 8 (iv) Any effort taken by the violator to correct
9 the violation;
- 10 (v) The degree of involvement in causing or
11 continuing the violation;
- 12 (vi) Reasons for any delay in the completion of
13 the appeal; and
- 14 (vii) Other extenuating circumstances.

15 The civil fine that is imposed by administrative
16 order after this review is completed and the
17 violation is corrected shall be subject to
18 judicial review, notwithstanding any provisions
19 for administrative review in county charters;

20 (E) After completion of a review of the amount of
21 accrued civil fine by the county agency that



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1 imposed the fine, the amount of the civil fine
2 determined appropriate, including both the
3 initial civil fine and any accrued daily civil
4 fine, shall immediately become due and
5 collectible following reasonable notice to the
6 violation. If no review of the accrued civil fine
7 is requested, the amount of the civil fine, not
8 to exceed the total accrual of civil fine prior
9 to correcting the violation, shall immediately
10 become due and collectible following reasonable
11 notice to the violator, at the completion of all
12 appeal proceedings; and

13 (F) If no county agency exists to conduct appeal
14 proceedings for a particular civil fine action
15 taken by the county, then one shall be
16 established by ordinance before the county shall
17 impose the civil fine;

18 (25) Any law to the contrary notwithstanding, any county
19 mayor, by executive order, may exempt donors, provider
20 agencies, homeless facilities, and any other program
21 for the homeless under part XVII of chapter 346 from



1 real property taxes, water and sewer development fees,
2 rates collected for water supplied to consumers and
3 for use of sewers, and any other county taxes,
4 charges, or fees; provided that any county may enact
5 ordinances to regulate and grant the exemptions
6 granted by this paragraph;

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

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

11 SECTION 12. Section 46-4, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

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

17 Zoning in all counties shall be accomplished within the
18 framework of a long-range, comprehensive general plan prepared
19 or being prepared to guide the overall future development of the
20 county. Zoning shall be one of the tools available to the
21 county to put the general plan into effect in an orderly manner.



1 Zoning in the counties of Hawaii, Maui, and Kauai means the
2 establishment of districts of [~~such~~] a number, shape, and area,
3 and the adoption of regulations for each district, to carry out
4 the purposes of this section. In establishing or regulating the
5 districts, full consideration shall be given to all available
6 data as to soil classification and physical use capabilities of
7 the land to allow and encourage the most beneficial use of the
8 land consonant with good zoning practices. The zoning power
9 granted herein shall be exercised by ordinance which may relate
10 to:

- 11 (1) The areas within which agriculture, forestry,
12 industry, trade, and business may be conducted;
- 13 (2) The areas in which residential uses may be regulated
14 or prohibited;
- 15 (3) The areas bordering natural watercourses, channels,
16 and streams, in which trades or industries, filling or
17 dumping, erection of structures, and the location of
18 buildings may be prohibited or restricted;
- 19 (4) The areas in which particular uses may be subjected to
20 special restrictions;



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- 1 (5) The location of buildings and structures designed for
- 2 specific uses and designation of uses for which
- 3 buildings and structures may not be used or altered;
- 4 (6) The location, height, bulk, number of stories, and
- 5 size of buildings and other structures;
- 6 (7) The location of roads, schools, and recreation areas;
- 7 (8) Building setback lines and future street lines;
- 8 (9) The density and distribution of population;
- 9 (10) The percentage of a lot that may be occupied, size of
- 10 yards, courts, and other open spaces;
- 11 (11) Minimum and maximum lot sizes; and
- 12 (12) Other regulations the boards or city council find
- 13 necessary and proper to permit and encourage the
- 14 orderly development of land resources within their
- 15 jurisdictions.

16 The council of any county shall prescribe rules,
17 regulations, and administrative procedures and provide personnel
18 it finds necessary to enforce this section and any ordinance
19 enacted in accordance with this section. The ordinances may be
20 enforced by appropriate fines [~~and~~], penalties, and remedies for
21 disgorgement of all profits and restitution of any money, real



1 property, or personal property that was obtained through unfair
2 or unlawful business acts and practices, civil or criminal, or
3 by court order at the suit of the county or the owner or owners
4 of real estate directly affected by the ordinances. In any
5 action brought under an ordinance adopted pursuant to this
6 section, the court or zoning agency, in addition to any fine
7 imposed upon the ordinance violator, shall allow costs of
8 action, including costs and fees of any nature and reasonable
9 attorney's fees, to be paid by the ordinance violator.

10 Each county shall adopt ordinances prohibiting transient
11 accommodations brokers from engaging in business with an
12 operator or plan manager who is not in compliance with all state
13 laws and county ordinances, including laws and ordinances
14 regarding land use, taxes, and professional licenses.

15 Each county shall adopt ordinances requiring an operator or
16 plan manager to remove an advertisement within seven days of
17 receiving a notice of noncompliance under section 237- (i) or
18 237D- (i), a violation of which shall be subject to a civil
19 fine of not less than \$25,000, to be levied by the county
20 planning director of the county where the subject property is
21 located.



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

6 Nothing in this section shall invalidate any zoning
7 ordinance or regulation adopted by any county or other agency of
8 government pursuant to the statutes in effect prior to July 1,
9 1957.

10 The powers granted herein shall be liberally construed in
11 favor of the county exercising them, and in such a manner as to
12 promote the orderly development of each county or city and
13 county in accordance with a long-range, comprehensive general
14 plan to ensure the greatest benefit for the State as a whole.
15 This section shall not be construed to limit or repeal any
16 powers of any county to achieve these ends through zoning and
17 building regulations, except insofar as forest and water reserve
18 zones are concerned and as provided in subsections (c) and (d).

19 Neither this section nor any ordinance enacted pursuant to
20 this section shall prohibit the continued lawful use of any
21 building or premises for any trade, industrial, residential,



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1 agricultural, or other purpose for which the building or
2 premises is used at the time this section or the ordinance takes
3 effect; provided that a zoning ordinance may provide for
4 elimination of nonconforming uses as the uses are discontinued,
5 or for the amortization or phasing out of nonconforming uses or
6 signs over a reasonable period of time in commercial,
7 industrial, resort, and apartment zoned areas only. A zoning
8 ordinance may provide for the amortization or phasing out of
9 conforming or nonconforming single-family transient vacation
10 rental units over a reasonable period of time in an area of any
11 zoning classification. In no event shall [~~such~~] the
12 amortization or phasing out of nonconforming uses apply to any
13 existing building or premises used for residential (single-
14 family or duplex) or agricultural uses[~~-~~] other than transient
15 vacation rental units, as provided in this section. Nothing in
16 this section shall affect or impair the powers and duties of the
17 director of transportation as set forth in chapter 262."

18 SECTION 13. The director of taxation shall make available
19 to transient accommodations brokers a form of application for
20 registration as a tax collection agent under the new section of
21 chapter 237, Hawaii Revised Statutes, added by section 8 of this



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1 Act, and under the new section of chapter 237D, Hawaii Revised
2 Statutes, added by section 9 of this Act.

3 SECTION 14. Upon the establishment by a county of a
4 process for providing verification of compliance by an operator
5 or plan manager with that county's land use ordinances, the
6 State shall transfer, from the transient accommodations tax
7 revenues, up to \$1,000,000 to each county for implementation or
8 enforcement of those land use ordinances.

9 PART II

10 SECTION 15. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$141,369,295 or so
12 much thereof as may be necessary for fiscal year 2019-2020 and
13 the same sum or so much thereof as may be necessary for fiscal
14 year 2020-2021 to be deposited into the tourism special fund.

15 SECTION 16. There is appropriated out of the tourism
16 special fund the sum of \$141,369,295 or so much thereof as may
17 be necessary for fiscal year 2019-2020 and the same sum or so
18 much thereof as may be necessary for fiscal year 2020-2021 for
19 the operating expenses, including staff salaries and fringe
20 benefits, of the Hawaii tourism authority.



1 The sums appropriated shall be expended by the department
2 of business, economic development, and tourism for the purposes
3 of this Act.

4 PART III

5 SECTION 17. If any provision of this Act, or the
6 application thereof to any person or circumstance, is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the Act that can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this Act are severable.

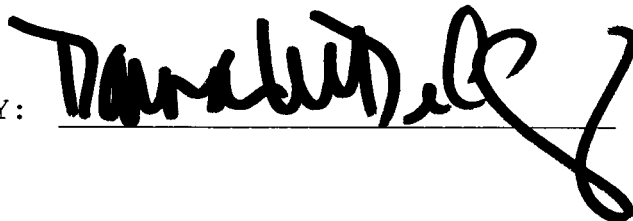
11 SECTION 18. In codifying the new sections added by
12 sections 8, 9, 10, and 15 of this Act, the revisor of statutes
13 shall substitute appropriate section numbers for the letters
14 used in designating the new sections in this Act.

15 SECTION 19. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 20. This Act shall take effect upon its approval.

18

INTRODUCED BY:



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Report Title:

Taxation; Transient Accommodations Tax; Vacation Rentals; General Excise Tax; Hawaii Tourism Authority; Operating Budget; Appropriation; Tourism Special Fund; Appropriation

Description:

Establishes a 1-time amnesty program for certain delinquent transient accommodations and general excise tax obligations. Allows transient accommodations brokers to register as a tax collection agent for its operators and plan managers. Requires registered tax collection agents to inquire with their operators and plan managers whether the transient accommodation is in compliance with all state and county 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. Makes it unlawful for transient accommodations brokers to engage in business with operators or plan managers that are not in compliance with all state laws and county ordinances. Authorizes counties to disgorge profits obtained through unfair or unlawful business practices. Authorizes counties to adopt ordinances to amortize or phase out transient vacation rental units. Allocates up to \$1,000,000 of TAT tax 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 a hosting platform to collect a fee for booking services regarding transient vacation rentals that are not lawfully certified, registered, or permitted under applicable county ordinance. Appropriates funds.

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

