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**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE

Regular Session of 2015

Wednesday, February 18, 2015

3:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 825, H.D. 1, RELATING TO TRANSIENT
ACCOMMODATIONS.**

TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Catherine Awakuni Colón, Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to submit testimony on House Bill No. 825, H.D. 1, Relating to Transient Accommodations ("H.B. 825").

The purpose of H.B. 825 is to establish licensing requirements and enforcement provisions for transient vacation rentals under the Department. The Department offers the following comments on this bill.

H.B. 825 would create a new chapter within the Hawaii Revised Statutes ("HRS") to regulate owners of transient vacation rentals. The bill sets forth requirements for

licensure powers of the Director, prohibited acts, and authorizes the Director to contract with qualified persons or delegate functions to the counties to enforce the new chapter. HRS § 26H-6 requires that new regulatory measures being considered for enactment be referred to the State Auditor for a sunrise analysis. Referral is required to be made by concurrent resolution that identifies a specific legislative bill to be analyzed. The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation. As such, the Department believes this bill should be deferred in accordance with the Hawaii Regulatory Licensing Reform Act until a sunrise analysis on this measure is conducted by the State Auditor.

The Department also recognizes that oversight of transient vacation rentals has been an ongoing concern for state and county agencies. It is unclear, however, whether the licensing and enforcement provisions in H.B. 825 are an effective response to address issues relating to transient vacation rentals. HRS § 26H-2 provides, in part, that “regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services.” In addition, HRS § 26H-2 also provides for the policy that “[p]rofessional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer.” It is not clear that the State’s interest in setting up a licensing program for transient accommodations is of the same kind as other currently regulated

trades and professions, nor is it clear that the risk to consumers in transient accommodation transactions rises to the same level as in the case of other regulated trades and professions. In fact, based on the popularity of these accommodations, it appears that consumers are not encountering the types of harm that would necessitate consumer protection regulation, and are instead relying on online reviews and comments to evaluate a particular location.

The Department notes that if DCCA licensure were mandated, the Department would necessarily ensure that the operator was in compliance with all applicable laws as a condition of licensure and before it provided the operator with state approval of the operation. This would mean that the Department would require an applicant to provide proof of the operator's transient accommodations tax number, as well as proof of compliance with applicable zoning requirements. As such, this licensing proposal as drafted would place additional layers of cost and regulation on the law-abiding operators without meaningfully capturing noncompliant operations.

The Department is by no means an expert in the challenges that face the counties and the Department of Taxation in their enforcement efforts, but does note that in another context, technology has proved to be a cost-effective way of bringing disparate pieces of information together in a timely fashion for procurement qualification. Hawaii Compliance Express, for example, operates to assist businesses in providing compliance certificates by serving as an online repository of information from the Department of Taxation, the Department of Labor and Industrial Relations, the Internal Revenue Service, and this Department. The Department suggests that in lieu

of establishing licensure to provide a centralized source of information, consideration be given to use of a Hawaii Compliance Express type model instead.¹

Perhaps alternative approaches to resolve the oversight issues concerning transient vacation rentals, such as the approach taken in Senate Bill No. 519, Relating to Taxation, that requires the conspicuous posting of a transient accommodations tax certificate of registration number on all advertisements for transient accommodations and time share rentals, would provide consumers the opportunity to differentiate between compliant and non-compliant establishments, as well as provide the counties and the Department of Taxation with meaningful enforcement provisions. The Department also recognizes that a primary focus of this measure appears to be on providing greater support to the counties in ensuring compliance with county zoning requirements (see page 7, lines 1-10; page 10, lines 1-3; page 11, line 3 to page 13, line 19), the intent of which the Department supports and believes could be accomplished without the creation of a new state-level licensing program.

The Department also suggests that issues relating to sharing of currently protected taxpayer information be addressed in a manner that will assist both the counties and the Department of Taxation in reconciling their records and better aligning their enforcement efforts.

The Department acknowledges the Legislature's concerns and is committed to working with all parties and government agencies to identify appropriate solutions that

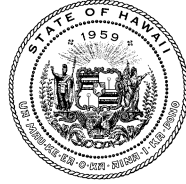
¹Hawaii Compliance Express can be found at the following webpage:
<https://vendors.ehawaii.gov/hce/splash/welcome.html#>

best address the permitting, tax, renting, and advertising issues related to transient vacation rentals in Hawaii.

Thank you for the opportunity to testify on H.B. 825. I will be happy to answer any questions the members of the Committee may have.

DAVID Y. IGE
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MARIA E. ZIELINSKI
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To: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 18, 2015
Time: 3:00 P.M.
Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 825, H.D. 1, Relating to Transient Accommodations

The Department of Taxation (Department) supports H.B. 825, H.D. 1 and offers the following comments.

H.B. 825, H.D. 1 creates a new chapter designed to regulate transient vacation rentals and places enforcement authority under the Department of Commerce and Consumer Affairs (DCCA). H.B. 825, H.D. 1 also makes complementary amendments to the Tax Law. The H.D. 1 version of this measure has a defective effective date of July 1, 2020.

The Department supports this measure because it believes the measure effectively addresses longstanding concerns of both the Legislature and community that the State is home to many unlawful transient vacation rentals. The Department is eager to partner with DCCA and the respective counties to ensure that transient vacation rental operators are paying their general excise and transient accommodation taxes.

In particular, the Department supports the DCCA being the lead agency in regulating the transient vacation rental industry, as it is better suited to regulate the business operations of the short-term rental industry. Ensuring that operators are compliant with land use laws, rental of real property and other consumer protection laws, will help identify the taxpayer responsible for the transient rental and assist the Department in enforcing its tax compliance duties.

The Department notes that previously enacted and proposed legislation has identified the Department of Taxation as the lead agency in regulating the transient vacation rental industry. For instance, Act 326, Session Laws of Hawaii 2012, placed the Department in charge of maintaining a database of transient rental operators in condominium or homeowners

associations; other legislation proposed for this session would place the Department in charge of other databases intended to help regulate the industry. While the Department is willing to enforce compliance of the applicable tax laws, the Department is unable to address many of the non-tax issues arising from short-term rental operations.

The House Committee on Tourism adopted all of the Department's suggested amendments to the previous version of this bill. The Department appreciates the consideration of its suggestions.

Thank you for the opportunity to provide comments.



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David Y. Ige
Governor

Ronald Williams
Chief Executive Officer

Testimony of
Ronald Williams
President and Chief Executive Officer
Hawai'i Tourism Authority
on
H.B. No. 825, H.D. 1
Relating to Transient Accommodations
House Committee on Consumer Protection & Commerce
Wednesday, February 18, 2015
3:00 p.m.
Conference Room 325

The Hawaii Tourism Authority supports H.B. No. 825, H.D.1, which proposes to regulate transient vacation rentals, by establishing statutory requirements for the licensing of transient vacation rentals.

H.B. 825, H.D.1 incorporates some of the provisions of Act 326, SLH 2012, various county ordinances, and concepts from the uniform professional and vocational licensing Act, to provide for the licensing and regulation of "transient vacation rentals", which are defined as a dwelling located in the State of Hawaii let by an owner or lessee for compensation for less than 180 days. It includes single-family dwellings, multi-family dwellings, bed and breakfasts, short-term rentals, apartments, which are further defined in various county ordinances. The definition is worded to include lodging rented thru short-term rental sites like Airbnb, which may be as simple as an air mattress in someone's living room, or Vacation Rentals by Owner, which claims to list over 13,000 vacation rentals in Hawaii.

H.B. No. 825, H.D.1, requires:

- The owners of a transient vacation rental to be licensed;
- The owner, among other requirements to post the contact information of a local contact in the unit and the rental agreement or contract, along with the license number;
- Compliance with all county ordinances regulating transient vacation rentals;
- Requires compliance with the covenants and by-laws required by a association of apartment owners, or condominium board;
- Establishment of a client trust account; and
- Establishes as prohibited acts, the unlicensed operation of a transient vacation rental, and provides that any advertisement in any form of a

transient vacation rental is *prima facie* evidence of the operation of a transient vacation rental.

H.B. 825, H.D.1, provides for the enforcement of the law utilizing contracted agents, or delegation of the authority to the county planning departments. It also provides for the establishment of inspection fees and provides that any penalties and fees are to be kept by the counties. This is declared to fulfill the requirements of article VIII, section 5 of the state constitution.

H.B. 825, H.D.1, establishes a clear and enforceable mechanism for the regulation of transient vacation rentals. For these reasons, we support the intent of this bill. We also find that HB 825, H.D. 1, will help to provide a more consistent and favorable experience for visitors who choose to stay in transient vacations rentals and provide increased safe guards while they are in the Hawaiian Islands.



February 18, 2015

The Honorable Angus L. K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 825 HD1, RELATING TO TRANSIENT ACCOMMODATIONS.

Aloha Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am Dan Monck, here to testify on behalf of the Hawai'i Association of Vacation Rental Managers ("HAVRM").

This letter is written in reluctant **OPPOSITION** of **HB 825 HD1**.

The Hawaii Association of Vacation Rental Managers, representing tourism professionals providing transient accommodations on Hawaii's four major islands, believes that the problem of illegal vacation rentals poses a serious challenge to the State's communities and consumer protection, and that this challenge needs to be meaningfully addressed. HB 825 HD1, while no doubt well intentioned, would completely fail to successfully address the illegal rental problem facing the State. In all likelihood, HB 825 HD1 would compound and expand this problem.

During the early 1980's, in the interests of Hawaii's growing Tourism industry, consumer protection, public safety, and important social mandates such as Fair Housing and Landlord Tenant regulations, the State of Hawaii mandated that vacation rental firms be licensed under Hawaii's Real Estate Code.

The objective of this decision was to insure the education, knowledge, and professional standards necessary to provide rental services to Hawaii visitors, and to the owners of the Hawaii rental properties existed. This specific knowledge and standards of conduct are only insured through the Real Estate licensing process, and the associated requirement of continuing education of this license. This decision also provided consumers and property owners the protection of the Real Estate Recovery Fund in the event of an unscrupulous licensee.

Over the past 35 years, this decision's wisdom has proven tremendously successful for the State of Hawaii.

The last 10 years of history has demonstrated that without a very clear, concise, and focused approach to the illegal rental problem, the operators of these rentals, many of them outside of Hawaii departments' jurisdiction, will evade and disregard Hawaii regulations with impunity.

HB 825 HD1 proposes a complex and confused approach where enforcement is "owned" by no one.

The proposed licensing of HB 825 HD1 would not provide any more information than is presently being secured for the Department of Taxation electronically via ACT 326 today.

HB 825 HD1 furthermore would greatly expand the number of unprofessional rental operators of by "deregulating" Hawaii's existing rental industry. Operators providing rental services to the public of 180 days or less would no longer have to be licensed under Hawaii's Real Estate Code, and the public would lose the benefits of professionals providing these services, the knowledge and training of these operators' requirements imposed upon these operators by the State, and the loss of far great Hawaii Tax revenues due to the loss of these "Third Party Rent Collectors" under HRS 237D-8.5, a supplemental function these operators provide to the State at no cost.

Additionally, these operators presently licensed under the Real Estate Code by today's State requirement, would be able to move their operations off shore to lower cost areas to free themselves of high cost of Hawaii operations. A loss of not only tax revenues, but jobs and benefits of employees receiving health insurance, TDI, etc.

Hawaii's hotels, which have only recently realized the competitive challenge of rental operators without the "overhead" of Hawaii companies, would under HB 825 HD1 face not only these present illegal operators, but now the addition of 11,000 of the present day legal operators with a large fraction of their overhead costs removed. HB 825 HD1 would cause serious harm to Hawaii hotels who would still have to carry their required overhead for Hawaii operations.

The issue of illegal rentals is a serious problem, requiring a serious solution. HB 825 HD1's proposed deregulation of the vacation rental industry in the face of 22,000+ operators, many of them illegal, is counterproductive and is not a solution to this problem. Adoption of this Bill, would have adverse effects upon our tourism industry, public safety, consumer protection, Hawaii's supply of affordable housing, community tranquility, our Hotels, and our many Hawaii employees.

Hawaii needs to stand up to this problem with an effective approach leveraging our proven processes.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Dan Monck", with a stylized flourish extending to the right.

Dan Monck
President
Hawaii Association of Vacation Rental Managers



Preserving Kailua's Character

To: The Honorable Rep. Angus L.K. McKelvey, Chair
And Members of the House Committee on Consumer Protection & Commerce

Re: Re: H.B. 825 HD1, Relating to Transient Accommodations

As written Bill HB825 HD1 has an unintended loophole that must be resolved! HB825 HD1 defines transient lodging (TVR) as a rental period of 180 days or less and the City & County of Honolulu defines TVR's rental period as 30 days or less. An illegal Oahu TVR could get a State TVR license (as proposed in HB825 HD1) by claiming to only rent 30 days or more... This would mislead the public and consumers into believing these Oahu TVR's are legitimate because they have a State TVR license and seal on their advertisement, but these businesses could still provide (illegally) less than 30 day stays in residential zoning without a NUC certificate.

A modification of HB825 HD1 could fixed this loophole by requiring the TVR's to also include their county's permit # or NUC certificate # and the TVR's address on all advertisements with their State license. In addition, all TVR's should document their "minimum" days of overnight stays in all advertisements and rental agreements as dictated by county zoning laws, and include a statement that clarifies it would be unlawful to provide less than the minimum days required.

Proposed changes to HB825 HD1;

Transient vacation rentals; requirements. (a) The owner or lessor of a transient vacation rental shall:

(1) Prominently post the name and phone number of the local contact in the transient vacation rental, and include the information in any transient vacation rental contract or rental agreement; and

(2) Include the license number, transient vacation rental address, official seal of the transient vacation rental, the proof of compliance with county ordinances relating to the

regulation of transient vacation rentals, including any registration number, license, permit, special use permit, or non-conforming use permit that may be required by the county, and the minimum-days rental as required in County ordinances, in any advertisements or solicitations of the transient vacation rental through an online rental service provider, an application or app, or other means of mass communication; and

(3) Include a declaration that all transient vacation rental must at all times comply with State and County laws including minimum stay requirements and are subject to fines up to \$10,000 in all transient vacation rental contracts or rental agreement and any advertisements or solicitations of the transient vacation rental through an online rental service provider, an application or app, or other means of mass communication.

Thank you for your consideration,

Keep it Kailua

Preserving Kailua's Residential Character and Quality of Life.

info@keepitkailua.com

www.keepitkailua.com

Facebook: keep it kailua

Keep It Kailua is a grassroots community group founded in 2004 whose purpose is to retain Kailua's family-oriented residential character and quality of life.

Keep It Kailua's goals are to:

- *Protect residential zoning and promote permanent residency in our neighborhoods*
- *Preserve and enhance scenic, civic, recreational and cultural features that define Kailua's sense of place*
- *Protect water resources essential to the health of the environment*
- *Preserve trees and maintain open green space*
- *Promote walking and the use of non-motorized bicycles as alternatives to automobile transportation within and around the town*
- *Promote businesses that serve the residential community*
- *Support other community groups with similar goals*

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 16, 2015 5:51 AM
To: CPCtestimony
Cc: adaeschen@yahoo.com
Subject: Submitted testimony for HB825 on Feb 18, 2015 15:00PM

HB825

Submitted on: 2/16/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ada Eschen	Individual	Oppose	No

Comments: I oppose this bill and support RBOAA's position on this matter.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 16, 2015 6:18 AM
To: CPCtestimony
Cc: barry_cohn@hotmail.com
Subject: *Submitted testimony for HB825 on Feb 18, 2015 15:00PM*

HB825

Submitted on: 2/16/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barry Cohn	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 15, 2015 10:46 PM
To: CPCtestimony
Cc: Palekaiko@hawaiiantel.net
Subject: Submitted testimony for HB825 on Feb 18, 2015 15:00PM

HB825

Submitted on: 2/15/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Della Halvorson	Individual	Oppose	No

Comments: I am writing to OPPOSE HB825. I am an owner of a transient vacation rental in a condominium complex in an approved TVR-zone in Maui and operate in compliance with all relevant requirements. I'd like to comment that the requirement for a trust account is not necessary. The primary reason for a client trust account is to keep separate the monies of the Trustor (Owner) and the Trustee (possibly a Property Manager) and the most important reason this is done is to ensure that the Trustor's (Owner's) money is not frozen during legal actions. If I am accepting the money directly from a guest for use of my property, there is no third party involved and therefore no need for a trust account. Many other aspects of this bill are unrealistic and clearly punitive towards a specific segment of the business community, namely vacation rental owner- operators. The RBOAA has come up with some recommendations and proposals that would address the key concerns of vacation rental owners like us. I respectfully request that you consider the RBOAA's testimony and incorporate its proposals. I OPPOSE HB825 as currently written. Respectfully submitted, Della Halvorson

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From: Elen Stoops <stoopse@gmail.com>
Sent: Tuesday, February 17, 2015 9:12 AM
To: CPCtestimony
Subject: Fwd: 2/18 Hearing HB825 SD1. OPPOSE

Dear Legislators,

Thank you for the opportunity to provide testimony on this measure.

I own and self manage a transient accommodation in a Hotel zoned district in Maui County. I comply with legal requirements specified in Act 326.

I OPPOSE HB825 SD1.

This Bill Fails to Address the State's Largest Problem with TVRs

This bill has little chance to effect its alleged purpose which is to bring under control and regulate unregulated rentals, or "to level the playing field" as is stated verbatim in two separate Hotel testimonies for HB825.

Legal rentals are ***already regulated (per Act 326)*** and are already registered with the proper County Agency. They are not underground, they have made themselves clearly identifiable, auditable and must comply with existing laws or face penalties as provided. This is NO Secret. But it's an inconvenient fact for the bill's primary supporters, who are economic beneficiaries if this measure or one like it are enacted.

Backers falsely present HB825 and its companion bill SB1237 as the way to solve the State's massive underground TVR problem.

They use the huge Public Uproar over the lack of results to stop the rental of TVRs that underground, illegal/unpermitted and unregulated ... to Set the Stage.

Next step: Presume Guilt. Guilt by Association is the method. Use Illusion to tie those guilty of NOT complying with the law to those who ARE meeting the letter of the law in every way.

Once they have accomplished this slight of hand to make all TVR owners guilty by association, exploit the Elephant in the Room ... employ the us vs. them or the Locals vs. non- Locals methodology to further deepen animosities, which provides a rational "justification" for penalizing non-residents for being non-residents. Now..... let's introduce a bill.

It's also an inconvenient fact that HB825 fails to produce what it's advertised to do. To the backers, however, this is of small consequence as the net result will be at least some economic benefit for themselves. With respect to the illegal and underground TVR problem, let us all now separate ourselves from *that* problem. We can deal with that one later.

Agencies Comment that the measure is flawed. Creates Problems, Confusions and unlikely to Achieve an Effective level of Enforcement.

I am thankful to have had the opportunity to carefully review the 66 pages of testimony provided for the first hearing of this measure, HB825. It afforded me further helpful insights into the responsibilities of Hawaii's State and County Legislative and Enforcement Bodies.

Support for this Measure

Review of comments provided by Director of Taxation in Honolulu in support of HB825 reveals:

- Department says it is unable to deal with the "non-tax related issues", and therefore the DCCA should be involved. Little detail or explanation is provided except mention of the responsibility to maintain a database.

It does not ensue that Department of Taxation has been burdened with enforcement of non-tax related issues. Local Tax Departments have been tasked with maintaining a database of information that is provided to them annually by owners or condominium Associations. This "non-tax related" item is not significant as to warrant or provide support for the proposal to create a new regulatory responsibility within the DCCA.

Reservations on this Measure

Review of comments provided by Directors and/or Officers of State and County Agencies, showed their reservations on HB825.

- duplicate processing requirements [proposed] are redundant, unfair, [and] serve no purpose. unclear impacts of additional licensing requirements - Honolulu DPP, RICO
- while civil fines assessed for those in blatant violation of the code should be sufficient to deter illegal use [ie illegal TVR], those illegals will in all likelihood not comply [with this new proposed law]. Unclear if proposed new regulations are an effective response to address issues relating to transient vacation rentals - Honolulu DPP, RICO
- this bill creates a requirement for a Sunrise Analysis, required by the Hawaii Regulatory Licensing and Reform Act." - RICO, DCCA
- [this bill, by] creation of two enforcement options may create confusion as to roles and responsibilities and thereby can undermine effective enforcement. - RICO
- lack of clarity on agencies' (plural) handling of fees and penalties and whether they would be applied concurrently on offenders. - RICO

Producing a REQUIRED Sunrise Analysis and the Likely Outcome

Guidelines in a Sunrise Analysis* provide that:

1. [new] regulation be undertaken only when reasonably necessary to protect consumers,

2. regulation may not be introduced to advance an occupation or reasonably restrict another , and
3. regulation must be "rational" in that its stated purpose is shown by evidence to be reasonably accomplished by the regulation.

*(per Hawaii Regulatory Licensing and Reform Act Section 26H-6)

Item 3 above requires that for new regulation to be enacted it must demonstrate evidence of likely accomplishment by new regulation.

If "evidence" were to be considered, the only related material/evidence available is a study that was performed which was referenced in the 2012 legislative session relating to bills for TVRs. It was advised to us by legislators about evidence in this study showing that non-residents of the state were evading making appropriate tax payments on their transient accommodations. This in turn was used to substantiate the need at that time to create special restrictions for rental real estate owners for those of us who were not from Hawaii.

What was discovered later was that the referenced study actually said the opposite. It essentially said that there was no difference in the rate of appropriate remittance of taxes owed to the state for vacation rental owners that lived either in the State or out of the State and in fact that out of state tax payers were "generally in compliance".

Since 2012 I am not aware of any studies that have been created that point to and substantiate tax remittance problems for those who are following the outlined procedures in Act. 326.

Development of Evidence is necessary for New Regulation that meets requirements set forth in Hawaii Regulatory Licensing Reform Act

If tax remittance is important to the Counties and the States and suspected to be a problem within the population owners of TVR a study should be performed by an independent 3rd party with no conflict of interest or stake in the outcome. In that certain groups have been regularly proposed by backers of these bills to be isolated and treated differently by the TVR related measures that have been proposed since 2012, it is useful that the study includes these artificial divisions , namely, tax remittance activities and rates for:

- Accommodations rented by an owner within a Property Management program
- Accommodations rented directly to guests by the owner
- Accommodations rented that are owned by someone off-island
- Accommodations rented that are owned by someone that resides on the same island
- Accommodations rented by those who have all applicable registrations and permits
- Accommodations rented by those who do not have all the applicable registrations and permits

This information will help the legislators enact meaningful laws and regulations and will potentially assist the Department of Taxation to more effectively focus its resources to improve tax collections. Any legislation that seeks to isolate one group and treat it differently and less favorably than another with no compelling evidence or need by the state to do so shall fail U.S. Federal Anti-Trust Law and will be litigated against.

Likely Outcome of a Sunrise Analysis - will reveal that HB825 SD1 fails in each of the required metrics

1. The evidence will show that the bill does not meet the criteria of new regulation being required to protect consumers.
2. The evidence will show that the bill does not meet the criteria that new regulation shall not be introduced where it advances one occupation or restricts another.
3. The evidence will show that the bill does not meet the criteria of a new regulation where stated purpose is supported by evidence it shall be reasonably achieved.

Meanwhile, The Real and Large Problem is not Effectively dealt with by this Measure and is Left Unattended to

Unfortunately the problem of illegal TVRs is in fact a real one and should not be neglected. Jurisdiction for this resides in the counties and the foundation and the first place to start is to ensure County Agencies are resourced appropriately for enforcement. If reasonable laws and enforcement activities are not in place at the counties, that needs to be corrected first.

Adding additional layers of regulations upon any county level regulations that are unenforced at best serves no purpose, and at its worst wastes taxpayer money and precious departmental resources. It is illogical and creates further complexities for the stakeholders to manage.

Illegal vacation rentals present a clear problem on Oahu. Problems exist, however to a much lesser degree on Maui and Kauai, as they have enacted new laws and steps to deal with the problems in recent times while Oahu has largely done nothing new for 30 years. Hawaii Island has the least restrictive stance on what is illegal regarding vacation rentals. Many people perceive and understand correctly that the illegal TVR problem is primarily an Oahu problem and ask why does the State allow its Legislative system to be used in an improper manner.

A recent comment offered by a Hawaii Real Estate Commission person from Maui offered this: [my] impression is that there is no universal solution to solve the problem. The issue should be handled by each individual county to address their specific issues.

Another HiREC official noted that it seems as if Hawaii County is the only County to have embraced vacation rentals.

So I appeal to you to oppose this measure. It is not a wise use of the State's Legislative system, it represents a large risk to meet any of the 3 standards required in the Sunrise Analysis, and it will not address the problem it may be purporting to solve.

My Conclusions and Requests

If permitting discrepancies and illegal TVR activity is known or suspected, give the Counties adequate resources and/or tools to the assist their responsible departments to identify which properties are illegally involved in providing transient accommodations, issue citations and enforce compliance.

If subsidies are required to help the Hotel industry to "level the playing field" or to become more attractive to Hawaii's visitors, please consider hotel subsidies as a more direct and suitable solution. Tourism is essential to Hawaii's economic welfare and Hotels are an essential element in ensuring the State's continued success. It is

proper for a State or Municipality to support it's economic needs, but not to suppress the wellbeing of it's legally compliant investors (which includes licensed, legal, taxpaying self-managed TVRs).

Please allow us taxpaying owners of legally compliant vacation rentals the chance to go back to doing what we do best - providing genuinely wonderful vacation lodging options for the visitors of this Great State and contributing handsomely to Hawaii's economy and the welfare of affiliated small businesses' owners and employees.

I OPPOSE this measure. Please vote no on HB825 SD1

Thank you for considering my comments on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 14, 2015 1:59 PM
To: CPCtestimony
Cc: crumps5@sbcglobal.net
Subject: *Submitted testimony for HB825 on Feb 18, 2015 15:00PM*

HB825

Submitted on: 2/14/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Katie Crump	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: Linda Mitchell <lindafinearts@gmail.com>
Sent: Tuesday, February 17, 2015 7:46 AM
To: CPCtestimony
Subject: Oppose HB 825 HD 1

I am Linda Mitchell, an owner of two condos on Maui used for transient accommodations. I am opposing HB 825 HD1.

Why should my money be put in a trust account? No one has complained about my services or the charges for them. Although I have a cancellation policy in my contract, I have felt sorry for people who could not go to Maui and I returned their money, even though, I could have legally kept it. I thought no one would cancel a trip to Maui unless there was a serious problem. I wanted to do what I could to bless them in their difficult situation. The money that comes in is mostly used to pay my bills and do remodeling. I resent the idea that someone else needs to oversee my money. A trust account would only be necessary if a third party were involved. I provide a service, I am paid, and I pay my bills and the taxes. Please do not add this unnecessary and restrictive mandatory use of a trust fund

TVR owners that would largely be impacted are the ones already operating legally with Tax IDs, permits and in compliance with Act 326.

The provisions are burdensome and the penalties excessive for those who are generally doing what is appropriate and required by law.

To remedy the State's problem caused by those who do not follow the law, please enact more appropriate measures that will identify TVR operators who ARE NOT permitted and registered with the Department of Taxation and filing GE and TA tax returns.

I ask you to Oppose this measure and please carefully consider the detailed proposals offered in Testimony from RBOAA.

Sincerely,
Linda Mitchell

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 15, 2015 9:01 AM
To: CPCtestimony
Cc: mhubner@halehubner.com
Subject: Submitted testimony for HB825 on Feb 18, 2015 15:00PM

HB825

Submitted on: 2/15/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Hubner	Individual	Oppose	No

Comments: Dear honorable Members of the Committee, I write to you today in opposition of HB825 HD1. I am the owner of a legal and tax- paying transient vacation rental (TVR) on the island of Hawai'i. I thoroughly agree with the State's intent to assist counties with the collection of taxes and protection of consumers/tourists; however, my review of this Bill indicates that the measures contained within it go far beyond such intent. I comply with Act 326 and ask that any new requirements fairly align with the Act. I have serious issues with the requirement in this Bill that TVR owners establish a client trust account. Many TVR websites (Flipkey, AirBnB, etc.) do not pay owners until 24 hours after the stay. Establishing a trust account in the state would be redundant, as the companies described above are already holding funds in trust. In instances where I directly receive rental funds, I have concern that such requirements would void my civil liberties in directing me to only have an account within the State of Hawaii. The funds that I receive are typically coming from without the State, and making the requirement that they be funneled there may be in opposition to US Commerce laws. Additionally, I find that requirements of adding a seal and new license number to every online advertisement will be overly burdensome and will not likely result in greater compliance with the law, as I do not know if the current requirements are enforced. I do not object to an additional TVR license, if such license will be effective to assisting the Departments of Consumer Affairs and Taxation weed out bad actors and bring TVRs into compliance with existing laws; however, the intent behind such licensing and the manner in which the Director may immediately revoke such licenses is not clearly defined in this Bill. This Bill establishes enhanced investigation options for the State to utilize; however, I'm not sure if the simple requirements of of Act 326, such as placing Tax IDs on our advertisements, have been clearly enforced since it's adoption in 2012. I suggest that the State start with enforcement of the current law before implementing additional measures. In the end, I truly want to express that my primary concern in this small business I have created is the safety and happiness of my customers. I support any reasonable action that this State can take to receive it's taxes due and better help it's consumers/visitors. I do not believe this Bill is one of those actions. I request that this Bill be deferred, and I strongly suggest that any bills relating to TVRs in future legislative sessions be drafted with full stakeholder involvement. Mahalo for your time and allowing this testimony. Matt Hubner

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woodson2-Rachel

From: Tracy Whitmore <whit11@me.com>
Sent: Monday, February 16, 2015 5:37 PM
To: CPCtestimony
Subject: OPPOSE HB825

I am an owner at Wailea Ekahi Village and I am writing this to indicate my strong opposition to HB825.

Tracy Whitmore

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 15, 2015 5:32 AM
To: CPCtestimony
Cc: tlvu@live.com
Subject: Submitted testimony for HB825 on Feb 18, 2015 15:00PM

HB825

Submitted on: 2/15/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tuan Vu	Individual	Oppose	No

Comments: Honorable Chair and Committee Members: In June 2014 CNBC named Hawaii the 2nd WORSE state to conduct business in the US. This bill is an excellent example of that. I have a condo in the Maui Vista resort in Kihei that I self-manage for the last three years. I list my condo on VRBO with my Hawaii Tax ID clearly spelled out. I collect the GE and TA taxes from my guests and submit them to the Hawaii Taxation Department religiously. The state has existing laws to protect consumers and to penalize those operating "under the radar" for not submitting their fair share of GE and TA taxes. Please hire more resources to police the existing laws. This new bill is unfair and extremely heavy handed and penalizes owners who manage out properties by introducing more red tapes to the system. The dishonest owners will not follow these new rules because of a lack of enforcement, only the honest owners get hurt by this new bill. For this reason I oppose bill SB 1237. Mahalo for the opportunity to provide testimony.

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Dear Legislators,

My name is Bonnie Aitken and I own a TVR on Kauai. I am in **STRONG OPPOSITION** to HB825 HD1. I do not understand the draconian measures you are suggesting be enacted into law that I must now follow or lose my ability to self-manage my TVR. The way this bill reads, it seems like the state assumes all TVR owner-operators are illegal or tax cheats and must be audited within 3 days and inspected at the whim of a governmental employee. I find this bill extremely offensive. I am losing my interest in doing business in the state of Hawaii. I do contribute a significant tax to the economy but I am seriously considering moving away from this state. Why stay in a state that does not want you to do business there?

I do not know why you need any more documents proving I have a legitimate business. I have a TAT and GET license. I have a county permit showing I am within the zoned area for a TVR. The tax department has all this information already. My property taxes reflect that I am in a TVR approved area and I am already paying a higher property tax because of that. The tax department already knows who I am. Furthermore, I am registered with the state and the state sends me my GET & TAT forms to fill out. I fill out a TAT form monthly, a GET form quarterly, and a yearly form to catch any errors I may have made. These forms are already filed with the tax department. You already have the means to verify my tax status. Why are you attempting to add another layer of duplicitous bureaucracy when you already have the means to obtain the necessary information? Save some tax dollars please!

Why are you insisting a self-managing owner establish a client trust account? In my contracts, the guest (client) owes me rent a certain number of days prior to their stay. Up until then, they may cancel their contract and owe nothing. I only collect rent when it is due and it becomes non-refundable as per the contract. I have given money back if people cancel but it is with my discretion and as I don't want a bad review on the website, I have always returned the rent when asked. I want happy guests! What purpose would a client trust account serve? Money isn't collected until it is due by the contract they signed. It is stated in my contract that should the condo become uninhabitable, I will refund their money and find an alternative place for them to stay. I propose you eliminate the bank trust account as it serves no purpose for a self-managed condo rental with the owner handling all the financial transactions. As SB1237 is now worded, unless I establish a client trust account, I am not allowed to do business in Hawaii.

I maintain my books but sometimes I go on vacation and would not be home to turn over my books for inspection and an audit within 3 days or face stiff fines. You are acting as a police state. This bill also demands that my property can be entered and inspected, at my expense, by any employee or member of the zoning department upon written notification to confirm I am following the laws. Will my guests be interrupted by an inspector during their stay? Please eliminate this aspect of HB825 HD1.

As for my local contact being available 24-7, I recommend you delete this provision. Reasonable hours I can expect but 24-7 is not reasonable. I have posted in my condo several other individuals to contact in case of a true emergency such as medical, plumbing or wiring issues that need attention immediately. Show me a real estate agent that conforms to the 24-7 requirement.

The powers you are giving to the" Director "need to be more limited. The director can issue a "fee" but it is not stated what the fee will be. The director does not seem accountable to anyone and can cause harm to a small business at their whim.

To sum up, I do not support any part of this bill and suggest you scrap the entire bill as it is poorly thought out. It would impose excessive burdens on the small business owner.

Thank you for the opportunity to voice my opposition to HB825 HD1.

Dear Hawaiian Legislators.

I am strongly opposed to HB825/SB1237

Comments: As a transient rental property owner, I am writing in opposition of the proposed HB825/SB1237 legislation which calls for the licensing of all transient rental properties in the state. I currently have a business license, it is displayed on all my advertising, I remit and GE and TA taxes monthly and have so for several years. These bills would create onerous and needless license application and filing requirements for tens of thousands of owners. This would then cost the state to administer a level of licensing that is entirely unnecessary.

These Bills do not state how much a license will cost nor on what grounds it will be granted or denied. It is also unclear whether hotel operators would be required to obtain a license for every room. The fine of \$10,000 is also extremely excessive and exceeds most criminal penalties.

It is not clear what problem these Bills are attempting to solve since today Hawaii is successfully hosting a billion dollar transient rental business operating without any such undue licensing requirement which is one of the single largest sources of tax income for the state. Attempting to overregulate this will not only be onerous to transient property owners but also be a significant burden on the Hawaiian government and its taxpayers. The State's efforts would be far better spent focusing on specific areas of enforcement of current transient rental laws rather than create an entirely new, unnecessary, and expensive layer of bureaucracy.

Mahalo for the opportunity to submit testimony.

Jill Oudil

244 130 Kai Malina

Lahaina HI 96761

Neal Halstead
C312, 2531 S. Kihei Road
Kihei, HI
96753
nealhalstead@yahoo.ca

Dear Members of the Committee:

In respect of HB825:

Together with RBOAA, I have to **OPPOSE** this bill, however, there are many good ideas in this bill and so a small group of RBOAA members and advisors dedicated significant resources to develop a number of **SUGGESTED AMENDMENTS** which we believe will **SIGNIFICANTLY IMPROVE** the bill.

This bill is very long, very complex and very comprehensive, resulting in this testimony being long and comprehensive. We have provided an executive summary, followed by the detailed changes proposed.

1. Rather than create a new license which would be subject to the Hawaii Sunrise Analysis, we propose to utilize the existing DCCA "designation of a business in good standing". The requirements to obtain the designation would largely be the same as provided in the bill.
2. We propose to eliminate the bank trust account. The nature of our business is such that we are not holding funds *on behalf* of other parties, therefore there is no need to keep such funds separate from our own business. Once a guest pays for the rental, the funds belong to the owner. This change makes this bill consistent with the landlord tenant code.
3. We propose that the Department of Taxation be responsible for investigating non-compliance with the tax codes and levying penalties as necessary, in accordance with the tax codes.
4. We propose that the counties be responsible for investigating non-compliance with county zoning and bylaws, and levying penalties as necessary, in accordance with the county laws
5. We propose that the circumstances under which the Director could revoke licenses be listed. We are suggesting it be limited to 3 specified violations.
6. We propose the Director be responsible for communicating the requirements of a transient vacation rental owner to all property owners.
7. We propose the Director set up an online database which can be searched to determine if a designation of a business in good standing has been issued.
8. We propose the property manager or caretaker/custodian be held liable for maintaining compliance under this section when engaged to do so by the owner.

9. We propose the definition of transient accommodation be any rental under 180 days to conform to the landlord tenant code.
10. We propose to delete the 24x7 availability requirement of the local contact
11. We propose hotels and resort clubs be liable to collect TAT on the full rental amount.
12. We have proposed a number of other administrative changes.

Our suggested amendments, in order they appear, along with the reasoning for the amendments follows:

- In the definition of Local Contact, remove “...or having a principal place of business”.
 - The Local Contact was intended to be an individual.
- In the definition of Local Contact remove “...who shall be available on a twenty four hour, seven day a week basis.”
 - There is no other business other than emergency services which is required *by legislation* to provide that level of customer service.
- In the definition of Transient, change the “thirty days” to “less than 180 days”
 - to be consistent with the landlord tenant code and the definition of Transient Accommodations on page 16.
- In the definition of Transient vacation rental, change the “thirty days” to “less than 180 days”
 - to be consistent with the landlord tenant code and the definition of Transient Accommodations on page 16.
- In the definitions, add the definition of License, being “License means a designation of a transient vacation rental business in good standing issued by the Director”
 - This will avoid the state auditors test to determine the appropriate level of regulation and simplify the implementation of this bill.
 - *Note: inserting the definition of license is a shortcut method solely for the purposes of this testimony to avoid identifying every time the word “license” needs to be replaced with “designation of a transient vacation rental business in good standing” in every place it appears.*
- Clause 2 (3) – Powers and duties of the Director. Replace “any cause” with “a) failure to collect and remit GET and TAT; or b) failure to maintain compliance with county ordinances; or c) failure to maintain a Local Contact.”
 - The term “any cause” is very broad and therefore difficult for both the director and the transient accommodation provider to comply with.

- Clause 2 (5) Insert a new clause “Clearly communicate all of the requirements of a transient vacation rental owner or operator a) on a separate page on the DCCA website, b) in a brochure mailed to all current and new holders of a transient accommodation tax registration number, c) through the purchasing real estate salesperson, all purchasers of property in the state of Hawaii, and d) to all current owners of property in areas where there is transient vacation rental activity.”
 - We believe the director should have an education mandate as well.
- Clause 2 (6) Insert a new clause “Create an online database which will allow any person to search an address to determine if a designation of a transient vacation rental business in good standing has been issued”.
- Clause 3 (a) – Replace the current wording with “The Director will establish the designation of “transient vacation rental business in good standing”. The designation will be given when the criteria identified in Clause 3 (b) are submitted by the TVR owner along with the appropriate fees, which shall be deposited into the compliance resolution fund under section 26-9(o).”
 - This amends the clause to be consistent with the concept of not being licensed and using the business in good standing which already exists in Hawaii.
- Clause 3(b)(4) – replace this clause with “A certificate from any nongovernmental entity with authority over the property on which the transient vacation rental is located declaring the owner is in compliance with the regulations of the nongovernmental entity.”
 - In the interests of expediency and to prevent the waste of paper and digital memory space
- Clause 3 (b)(6) – Delete this requirement. Alternatively, insert the words “If the operator is a real estate licensee” at the start of the clause.
 - Real estate licensees are required to hold separate client funds from their own business funds. In the case of the owner-operator, this is not applicable as the funds are received from guests at the time the contract terms are met and therefore are not held in trust for another party.
- Clause 3 (b)(7)(C) – As returns are filed electronically, amend to read “...tax filings, or proof of filings for the previous two years ...”.
 - If the Department of Tax has the ability to issue a certificate of compliance, this would be the most preferable documentation.
- Clause 3 (b)(7)(C) – Insert the words “...except for new applications or for applicants who have operated for less than two years”.
 - Obviously, if an owner has not operated a transient vacation rental for two years, they could not have two years of tax filings.

- Clause 3(c) – Amend to read “The owner or operator....”
 - Many owners have chosen to delegate the operating responsibilities to a real estate licensee who would therefore be responsible for compliance with this legislation.
- Clause 3(c) – Further amend to include “The owner or operator of the transient vacation rental shall update the Director of any changes within 60 days”.
 - Currently this text is not included in any numbered clause.
- Clause 5(a)(2) – Remove the reference to “seal” and replace with “designation of transient vacation rental in good standing”.
 - We are unsure how one would be able to include an official seal in an on-line advertisement. Websites such as VRBO and FlipKey do not permit graphics.
- Clause 5(b) – Amend to read “The owner or operator shall...”
 - Many owners have chosen to delegate the operating responsibilities to a real estate licensee who would therefore be responsible for compliance with this legislation
- Clause 5(b)(3) – Remove “...who shall be available on a twenty four hour, seven day a week basis.”
 - There is no other business other than emergency services which is required *by legislation* to provide that level of consumer protection.
- Clause 6(a). Recommend deleting this clause entirely. Alternatively, Insert the words “If the operator is a real estate licensee” at the start of the clause.
 - Real estate licensees are required to hold separate client funds from their own business funds. In the case of the owner-operator, this is not applicable as the funds are received from guests at the time the contract terms are met and therefore are not held in trust for another party.
 - Furthermore, this would be inconsistent with the requirements of landlords under the Landlord Tenant Act who do hold funds and are not required to have trust fund accounts in a Hawaiian bank.
 - It would be helpful to understand that most owner-operators do not receive guest funds from the property manager or the Online rental service provider until the guest has checked in and therefore, there are usually no funds held in advance.
- Clause 6(b) Amend to read “The owner or operator”.
 - Many owners have delegated the operating responsibilities to a real estate licensee who would therefore be responsible for compliance with this legislation.

- Clause 6(b) - Amend to read "...copies of all bank statements, deposit slips, cancelled checks and drafts in accordance with application of Department of Tax requirements."
 - To be consistent with Section 3 added below.
- Clause 6(b) – Amend the wording from "three business days" to "thirty business days"
 - to align with many other governmental audit notice periods and to be consistent with Section 3 added below.
 - It would be helpful to understand that most owner-operators are small business people and sole proprietors, usually with full time jobs. Three days could be impossibly onerous to comply with.
- Clause 7. Omit this section
 - it is redundant given the requirements set out elsewhere in this bill.
- Clause 8(a). Remove the phrase "...shall be exempt from Chapter 76, ..."
 - It is not reasonable for a branch of the civil service to be exempt from the Hawaii Civil Service Law.
- Clause 8(b)(c)(d). I am not a lawyer and I would defer to a lawyer, but the powers vested in the investigators seem more suited to criminal investigations than civil investigations. I would strongly urge the legislators to ensure there is due process and the rights of citizens are protected.
- Clause 8. Suggest deleting this section entirely and replacing with Section 3 as described below.
- Clause 9 – Replace all of the existing wording with "All penalties are applicable as referenced under the jurisdiction of the department of taxation. The counties shall maintain their own authority to impose penalties for non-compliance with local rules, by-laws and regulations. The Landlord Tenant Code fully contains all rules and regulations and remedies under the law for enforcement under the same."
 - This amendment is intended to incorporate existing regulations and penalties and to prevent jurisdictional overlap between departments and levels of government.
- Section 2 (1) Amend the definition of Gross Rental by replacing "club fees" with "any and all non-discretionary fees".
 - There are many ways to break the total rental into component parts, but for purposes of Transient Accommodation Tax, all components of the rental must be taxable.

- Section 3. Insert new section 3 to read:

“SECTION 3. Section 237D-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of taxation shall administer and enforce this chapter. In respect of: (1) The examinations of books and records and of taxpayers and other persons, (2) Procedure and powers upon failure or refusal by a taxpayer to make a return or proper return, and (3) The general administration of this chapter, the director of taxation shall have all rights and powers conferred by chapter 237 with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8 and 237-36 to [237-41] 237-41.5 are made applicable to and with respect to the taxes, taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by chapter 237.

(b) The counties maintain authority and have jurisdiction to enforce their own permitting and zoning regulations”

Mahalo for your time and consideration

Neal Halstead

I am strongly opposed to HB825/SB1237

Comments: As a transient rental property owner, I am writing in opposition of the proposed HB825/SB1237 legislation which calls for the licensing of all transient rental properties in the state. I currently have a business license, it is displayed on all my advertising, I remit and GE and TA taxes monthly and have so for several years. These bills would create onerous and needless license application and filing requirements for tens of thousands of owners. This would then cost the state to administer a level of licensing that is entirely unnecessary.

These Bills do not state how much a license will cost nor on what grounds it will be granted or denied. It is also unclear whether hotel operators would be required to obtain a license for every room. The fine of \$10,000 is also extremely excessive and exceeds most criminal penalties.

It is not clear what problem these Bills are attempting to solve since today Hawaii is successfully hosting a billion dollar transient rental business operating without any such undue licensing requirement which is one of the single largest sources of tax income for the state. Attempting to overregulate this will not only be onerous to transient property owners but also be a significant burden on the Hawaiian government and its taxpayers. The State's efforts would be far better spent focusing on specific areas of enforcement of current transient rental laws rather than create an entirely new, unnecessary, and expensive layer of bureaucracy.

Mahalo for the opportunity to submit testimony.

Terry Gardiner

244 130 Kai Malina

Lahaina HI 96761

From: Adam Leamy <adamleamy@gmail.com>
Sent: Tuesday, February 17, 2015 8:03 AM
To: CPCtestimony; The Honourable Stephen Harper, Prime Minister of Canada; Canadian Minister of International Trade The Honourable Ed Fast; Premier of British Columbia The Honourable Christy Clark; Premier of Alberta The Honourable Jim Prentice; Premier of Saskatchewan The Honourable Brad Wall; Premier of Manitoba The Honourable Greg Selinger; Premier of Ontario The Honourable Kathleen Wynne
Cc: Adam Leamy Desktop
Subject: Oppose HB825 HD1 and all Hawaii bills that violate NAFTA

Dear Members of the Hawaii Legislative Committees considering HB825 HD1, the Right Honourable Stephen Harper, Prime Minister of Canada, the Honourable Ed Fast, Canadian Minister of International Trade, and the Honourable Premiers of British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario:

I am taking the extraordinary step of writing in this manner because of the escalating threat posed to Canadians' cross-border real-property investments in Hawaii by the progress of bills that have been put before Hawaii legislators. I oppose this bill in its current form, and urge you to do the same. Indeed, as this bill represents an assault on the cross-border investments of Canadians and on the provisions of the North American Free Trade Agreement (NAFTA) that Canadians rely upon in investing in the US, it is essential that Canadian and Hawaii officials be included in the dialogue: should the efforts of Hawaii stand, and spread to other states, Canadians' real property investments in the US will be at significant risk.

Indeed, HB825 HD1 is but one of myriad bills provided to Hawaii legislators that offends NAFTA. SB201, SB519, SB1031, SB1137, SB1246, HB803, HB968, HB198, and HB1288 do the same. Said bills, in whole or in part, and certainly cumulatively, would apply the following sanctions against Canadian cross-border investors in Hawaii: Strip legal protections from Canadian property owners that others continue to enjoy. Force Canadians to use Hawaii banks. Require Canadian owners of investment property to hand over control of same to parties chosen by the state, i.e., local realtors. Impose operational standards on Canadians that are not imposed on other investors. Elevate to Class-C, felony-level penalties for infractions by Canadians but not others. Require annual licensing requirements for Canadian property investments that are promoted as being uncertain for annual renewal. Apply special rules for Canadians' operation of investment properties that are not applied to others. Award subsidies and tax relief, to local investors while excluding Canadian investors. Apply 'consumer protection' requirements to Canadian investors from which other investors are exempted.

All of these bills *directly* and, to be sure, *cumulatively* violate the opportunities and protections Canadians have under NAFTA.

And make no mistake, it is the cumulative intent and impact of these bills that is as pernicious an attack on NAFTA as that represented by individual bills and parts thereof that also violates Hawaii's commitments and obligations under NAFTA. That said, NAFTA anticipated such "fingers on the scale" and "lack of clean hands" by legislators and regulators in advancing singular and multiple laws or regulations which, individually or collectively undermined its commitment and purpose to end barriers to trade and investment, i.e., laws or regulations or other policy structures that were disguised efforts to limit or restrict investment and trade. As NAFTA notes at "*Chapter 11: Performance Requirements*" no party to NAFTA, i.e., Hawaii, may offer "[A] *disguised restriction on international trade or investment.*" The blizzard of bills in the Hawaii legislature is

precisely this, on their own, but especially when viewed as a collective. They are, quite simply, a disguised restriction on Canadians' trade with and investment in Hawaii.

In terms of context, Canadian have for years been significant investors in US real-property. The National Association of Realtors, in its "2014 Profile of International Home Buying Activity" advises that "Over the 12 months ended March 2014, Canadians purchased U.S. properties estimated at \$13.8 billion in total value, which is approximately 15 percent of total international sales. Approximately 73 percent of reported purchases by Canadian buyers were for properties in Florida, Arizona, and California. The median price of the reported properties was \$212,500 and the mean price was \$314,718. Approximately 86 percent of buyers purchased on an all-cash basis. The intended use of the property was for vacation/residential rental in a suburban or resort area with an intended length of stay of less than six months. About half of Canadians bought single-family type houses and about a third purchased a condominium/apartment type house."

The Hawaii situation is quite similar. Coldwell Banker reports that Canadians were the top foreign buyers of Hawaii properties in 2013, purchasing \$244.6 million worth of property. Canadians have been investing in Hawaii real estate for decades, and this cumulative Canadian cross-border investment in just this one US state is in the billions.

These findings, particularly for Hawaii, are not surprising. Canadians have always been good to Hawaii, making huge short- and long-term investments in the state. The Hawaii Tourism Authority reports that for 2013, Canadians accounted for almost 10% of state visitors, and pumped \$1.1 billion into the economy. Many of the 500,000 Canadians who visited Hawaii like staying in condos, whose popularity with Canadians has been rising at the expense of their preference for staying in hotels. And as different as Canadians and Americans may be, this same Hawaii Tourism Authority report shows that in accommodation preference in Hawaii for condos over hotels, we're the same: Americans from the other 49 states, just like Canadians, are embracing accommodation choice, and increasingly choosing accommodation other than hotels when choosing to visit Hawaii.

Ahh, the emerging US and international global preference for staying in condos over hotels. And there's the source of these Hawaii bills.

It will be as hard for Hawaii hoteliers as it is for any business when consumer preferences change, and people prefer less and less the product you offer. Ask the makers of rotary-dial phones. Cassette tapes. VCRs. Fax machines. Times change; we may not like the change — ask ABC, NBC, and CBS how they feel about HBO and cable — but clever people, companies and industries learn to adapt to changing preferences. They employ innovation and embrace adaptation to find a new niche amidst the new consumer preferences. The less admirable people, the ones who aren't nimble, the dangerous companies and industries? Rather than compete and move forward, they look for ways to set back the hands of progress.

And they cause irreparable damage in the effort.

Many of the Canadians who have invested in Hawaii have done so through the opportunities and protections for cross-border investment the North American Free Trade Agreement (NAFTA) created when it came into force in 1994. But these Hawaii bills ignore NAFTA and Canadians' protections under it. Indeed, HB825 HD1, like the other bills named above, establishes such new, onerous, and both specific and unclear requirements for cross-border investors that one is left to wonder if bill drafters were even aware of the state's obligations under NAFTA when they advanced this and similarly festering bills to Hawaii legislators.

Part Five of NAFTA (Investment, Services, and Related Matters), at *Chapter 11* ("Investment") sets out the behaviours each party (which, in this case, means the US and Canada and their respective states and provinces)

agreed to extend to each other in signing NAFTA. Hawaii is bound by the requirements of, and protections offered by, NAFTA.

While it may have been the case that among all parties to NAFTA there were, at the time of signing, laws and regulations on the books that pre-dated NAFTA, agreeing to NAFTA meant agreement to removal of most barriers to trade and investment. Moreover, when NAFTA was created, all parties were able to identify and agree upon exceptions to NAFTA in areas of trade, commerce, and regulation where NAFTA provisions would not apply. In NAFTA, at neither Chapter 21 (“Exceptions”) or at Annexes (“Reservations”) is found any language that would exclude Hawaii from either offering or benefitting from the full protections and benefits of NAFTA.

In its current form, HB825 HD1 fails several NAFTA tests. And further to the point above, it would indeed appear that drafters and proponents of HB825 HD1 have taken inadequate care to ensure that legislators who introduced the bill, and those who may consider it, have been apprised of their role in upholding these NAFTA provisions and protections. It appears that Hawaii legislators have been grossly misled by the bill’s drafters. Perhaps it’s just an oversight by the drafters, a simple mistake. Well, whether intentional or accidental, per their own legislative proposals elsewhere this session, it’s unforgivable, one that would see them, per HB968, unable to defend themselves, and through SB201, guilty of a Class C felony and facing up to five years in prison, and a fine of up to \$10,000.

In the effort to aid understanding of consideration of HB825 HD1, the NAFTA section of singular import is, as noted above, Chapter 11, which obliges Hawaii to uphold NAFTA commitments. On the strong likelihood that the bill drafters did not provide Hawaii legislators with accompanying briefing materials on the NAFTA protections and provisions Hawaii is bound to uphold, the key ones that apply to HB825 HD1 are provided at the close of my testimony, below.

In respect of the obligations of Hawaii under Article 1106: Performance Requirements, a read of HB825 HD1 sees it fail the NAFTA test on the most primary of grounds, i.e., that HB825 HD1 is “[A] disguised restriction on international trade or investment.” One example of this is offered by the language in HB825 HD1 specifying where and how owners of transient accommodations must do their banking, i.e., requiring trust accounts and requiring their location in Hawaii banks. This type of requirement is a violation of the NAFTA prohibition against, and investor protection from, a NAFTA party, i.e., Hawaii, requiring an investor, “to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory.”

Indeed that requirement to create a trust account would create for Canadian investors in Hawaii vacation rental properties a standard applying to Canadians’ management and operation of their properties that does not apply to others in Hawaii who rent lodging to renters. It is, therefore, little more than a capricious attempt by the bill’s drafters to encumber cross-border investments of Canadians in Hawaii.

Happily, NAFTA was clear about efforts to saddle Canadians with such burdens. NAFTA *Article 1102: National Treatment* provides that each Party shall accord to investors investments of investors of another Party “treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.” Put simply, if Hawaii intends to force Canadian owners of transient accommodations to maintain a trust account for the renting out of such lodging, it will need to apply the same requirement to all in Hawaii who make available their own lodging for rent. Until that happens, per *Article 1104: Standard of Treatment* Canadians’ investments, and investments of Canadians, i.e., transient accommodations in this instance, are to be accorded “the better of the treatment required by Articles 1102 and 1103.” To be clear: Pass this bill, with this lop-sided, trust-fund provision, and it cannot be enforced upon Canadians with cross-border investments in Hawaii transient accommodations.

Bill HB825 HD1 is an affront to NAFTA and Canadians' opportunities and protections under it in other ways, too. In respect of annual licensing of vacation rentals required by HB825 HD1, any number of unknown variables may preclude annual licensing of a transient vacation rental, significantly jeopardizing investors' investment in the United States. As NAFTA makes clear, in a lengthy section, excerpted here, "*No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party . . .*" This is a particularly applicable example when one considers, which one must, the condition placed upon the licensing HB825 HD1 purports to advance by HB198 and the like.

To reiterate, Canadians have been good to Hawaii, accounting for almost 10% of state visitors in 2013. Those 517,000 Canadians pumped \$1.1 billion into the Hawaii economy. And many of the 517,000 Canadians who visited Hawaii like staying in condos, whose popularity with Canadians choosing to visit Ha waii has been rising at the expense of their preference for staying in Hawaii hotels. And while they are making short-term investments in Hawaii's tourism export, Canadians are making long-term investments in Hawaii, too, and in 2013, bought \$244.6 million worth of property. Canadians' cumulative cross-border investment in Hawaii is in the billions.

First, it is unlikely that those who drafted this bill believe that Canadians with property investments in Hawaii require notification that, under HB825 HD1 and other bills making their way through the legislature, their current Hawaii property investments are at risk.

Second, it is unlikely that those who drafted this bill believe that Canadians considering making property investments in Hawaii require notification that this and other bills like it, in their current forms, make future investment in Hawaii a dubious action in an unstable jurisdiction.

Third, it is unlikely that those who drafted this bill have considered if Canadians might continue to visit Hawaii if it were understood that Hawaii legislators had nationalized the real property investments in the state by Canadians by forcing them to cede control of their management and operation to others chosen by the state.

And fourth, it is unlikely that those who drafted this bill have considered that Hawaii legislators, by acceding to the wishes of hoteliers to end consumer choice in accommodation options in Hawaii, will eliminate a preferred accommodation choice favoured by Canadians, thereby making Hawaii a disadvantaged cousin to the competitive and robust US and international Canadian-friendly sun destinations that offer an array of accommodation choice that Canadians seek.

As those who have drafted this bill have failed in each of the above four points, it falls to those who support competition and the consumer choice it makes available — and the level of consumer protection that comes with choice — to warn Canadians that Hawaii is turning its back on them in favour of creating a hotel monopoly in accommodation, and will nationalize their property investments in Hawaii in order to do so. And that Hawaii may be encouraging, or complicit in, actions by other states to interfere with the billions of dollars of cross-border investments in real-property that Canadians have made in Hawaii and the other US states.

It is as true in Hawaii as it is anywhere in the world: The Digital Age has changed us all. It has brought opportunity, and it has brought challenge. That's the way of innovation. But so far, those in Hawaii unable or unwilling to adapt and compete in the Digital Age — hoteliers and condo rental agencies particularly — have simply turned to state legislators for an easy-button solution.

They've proposed bills that will force investors in Hawaii to cede control and management of their investment properties to state-sanctioned third parties, namely themselves.

They have proposed legislation so confusing and complex, with penalties so high for any unintentional error in compliance, and have stripped legal rights to defence for such circumstances that such bills will surely cause

some operators of legal transient accommodations to vacate the marketplace in search of more reliable and stable investment climates in other states or countries, thereby creating a hotel monopoly that such bill proponents seek.

And most egregious, they are putting bills in front of Hawaii legislators who, if they accede to their content, will demonstrate that Hawaii's word as signatory to the foundations of our society — be they constitutions, trade agreements or contracts — cannot be relied upon.

It is a dismal and sad finding, but one that is inescapable nonetheless: When one considers the affront to all offered by those who drafted and advanced HB825 HD1 and the other bills like it, it is clear that not all America's enemies reside abroad. In giving these odious bills light of day, it is equally clear that Hawaii is no longer a friend of Canada and those who have made short-term investments in the state by purchasing its tourism export, and those who have made long-term investments in Hawaii by purchasing real-property there and operating legal vacation rental properties.

HB825 HD1 is certainly about licensing, but not as its drafters would have us believe. HB825 HD1 gives license to those who seek to gain by deceit, contrivance, and manipulation. It should generate your opposition for its craven and dishonourable effort to use your role as legislators to tilt the vibrant — and yes, naturally competitive and ever-evolving — Hawaii accommodation landscape into state-created monopoly.

And make no mistake, the claims by the drafters and pushers of HB825 HD1 that it will “level the playing field” are as self-serving as they are reprehensible. Unable to compete with the emerging preferences of US and international tourists (as the Hawaii Tourism Authority report makes clear), they advance monopoly and nationalization of private property as solutions for their inadequacy. Too timid to name their solutions for what they really are, they dust off the old chestnut of claiming they are trying to “level the playing field.” And in so doing, they hope that Hawaii legislators will be unable to spot the difference, and their vulpine temerity in trying to saddle said legislators with the consequences and fallout.

Bill HB825 HD1 deserves our collective scorn for the betrayal it represents of a commitment we make to constitutions, trade agreements, and the grand and noble principles upon which they are built.

It cannot go unmentioned in all this that the Hawaii Rental By Owner Awareness Association (RBOAA) was not consulted on the intent or content of this or any of the other NAFTA-violating bills placed before Hawaii legislators, despite several years of active and supportive efforts with Hawaii to ensure its legislative efforts in this area are compliant with constitutions and trade agreements. And that's an oversight that justly imbues HB825 HD1, as it does the other bills, with a cloak of the furtive, and the smell of the desperate. And that is, indeed, a failure in open and transparent consultation, one that should make Hawaii legislators further question if those who drafted HB825 HD1 — and others like it — and are placing such bills before them are playing them for rubes; a pack of fools. Such a lack of consultation legitimizes the peril inherent in any embracement of HB825 HD1, and bills like it: That they are nothing more than special-interest-driven measures whose authors care not a whit that, in adopting them, Hawaii legislators will fall offside with the same NAFTA provisions and protections that benefit and protect Hawaii investors in NAFTA partners, and that benefit and protect NAFTA partners' investments in Hawaii.

I hope that Hawaii legislators, in considering HB825 HD1 and the other above-named bills related to it, will continue to bring balance, clarity, and NAFTA conformity to all matters legislative, and will work to reject or amend such legislative proposals until they embrace and uphold these important standards. I hope, too, that Hawaii will warmly and openly seek and accept the input of Canadian and US trade officials to ensure that this is the case. I believe that all Hawaii legislators will stand against those who smugly believe the role of Hawaii legislators is to create a hotel-room accommodation monopoly, and to facilitate state nationalization of Canadians' real-property investment and the award of its management and operation to third parties.

Please oppose HB825 HD1 and all bills like it that so thoroughly discredit Hawaii as a tourism destination and stable location for investment. And in doing, send a message to the external drafters of such bills that while they may treat the Hawaii Legislature as the grubbiest little house on a block owned solely by them, it is, in fact, like all the great and effective legislatures and parliaments receiving this letter — a House where balance, fairness, honouring one's word, and upholding agreements continue to be the foundations of strength, trust, and the progress and goodwill that result.

With kind regards,

Adam

NAFTA Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.
4. For greater certainty, no Party may:
 - (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or
 - (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 1104: Standard of Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

Article 1106: Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or
- (g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.

3. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides y to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) necessary for the conservation of living or non-living exhaustible natural resources.

From: Stu Simmons <stu_simmons@hotmail.com>
Sent: Tuesday, February 17, 2015 10:34 AM
To: Keep it Kailua; CPCtestimony; Rep. Angus McKelvey; Rep. Justin Woodson; Rep. Della Belatti; Rep. Tom Brower; Rep. Richard Creagan; Rep. Sharon Har; Rep. Mark Hashem; Rep. Derek Kawakami; Rep. Chris Lee; Rep. Mark Nakashima; Rep. Marcus Oshiro; Rep. Joy San Buenaventura; Rep. Gregg Takayama; Rep. Ryan Yamane; Rep. Beth Fukumoto Chang; Rep. Bob McDermott; achallacombe@honolulu.gov; gatta@honolulu.gov; Rep. Cynthia Thielen; Sen. Jill Tokuda; Sen. Laura Thielen
Subject: Support RE: Please Modify HB825 HD1

Dear Honorable Rep. Angus L.K. McKelvey, Chair and Members of the House Committee on Consumer Protection & Commerce;

I support the proposed modification from Keep it Kailua. This is a serious and detrimental loophole that could undermine the City and County of Honolulu efforts to enforce the zoning ordinances.

Many communities on Oahu, including Kailua have suffered from the proliferation of illegal visitor lodging businesses in their residential-zoned neighborhoods. Visitor lodging businesses reduce the housing supply for local residents in residential zoning and raise the housing cost for both local home-buyers and renters. They also change the residential character of the neighborhoods and communities by displacing local residents. The safety, social fabric and stability of the neighborhood and the surrounding community is undermined. Recent studies estimate there are over 5000 short-term rentals on Oahu and over 80% of the rentals are illegal.

Best regards

Stu Simmons
Kailua

From: info@keepitkailua.com
To: cpctestimony@capitol.hawaii.gov; repmckelvey@capitol.hawaii.gov; repwoodson@capitol.hawaii.gov; repbelatti@capitol.hawaii.gov; repbrower@capitol.hawaii.gov; repcreagan@capitol.hawaii.gov; repshar@capitol.hawaii.gov; rephashem@capitol.hawaii.gov; repkawakami@capitol.hawaii.gov; repclee@capitol.hawaii.gov; repnakashima@capitol.hawaii.gov; repmoshiro@capitol.hawaii.gov; repsanbuenaventura@capitol.hawaii.gov; reptakayama@capitol.hawaii.gov; repyamane@capitol.hawaii.gov; repfukumoto@capitol.hawaii.gov; repmcdermott@capitol.hawaii.gov
Subject: Please Modify HB825 HD1
Date: Tue, 17 Feb 2015 19:05:01 +0000

To: The Honorable Rep. Angus L.K. McKelvey, Chair
And Members of the House Committee on Consumer Protection & Commerce

From: Keep it Kailua

Re: Re: H.B. 825 HD1, Relating to Transient Accommodations

As written Bill HB825 HD1 has an unintended loophole that must be resolved! HB825 HD1 defines transient lodging (TVR) as a rental period of 180 days or less and the City & County of Honolulu defines TVR's rental period as 30 days or less. An illegal Oahu TVR could get a State TVR license (as proposed in HB825 HD1) by claiming to only rent 30 days or more... This would mislead the public and consumers into believing these Oahu TVR's are legitimate because they have a State TVR license and seal on their advertisement, but these businesses could still provide (illegally) less than 30 day stays in residential zoning without a NUC certificate.

A modification of HB825 HD1 could fixed this loophole by requiring the TVR's to also include their county's permit # or NUC certificate # and the TVR's address on all advertisements with their State license. In addition, all TVR's should document their "minimum" days of overnight stays in all advertisements and rental agreements as dictated by county zoning laws, and include a statement that clarifies it would be unlawful to provide less than the minimum days required.

Proposed changes to HB825 HD1;

Transient vacation rentals; requirements. (a) The owner or lessor of a transient vacation rental shall:

(1) Prominently post the name and phone number of the local contact in the transient vacation rental, and include the information in any transient vacation rental contract or rental agreement; and

(2) Include the license number, transient vacation rental address, official seal of the transient vacation rental, the proof of compliance with county ordinances relating to the regulation of transient vacation rentals, including any registration number, license, permit, special use permit, or non-conforming use permit that may be required by the county, and the minimum-days rental as required in County ordinances, in any advertisements or solicitations of the transient vacation rental through an online rental service provider, an application or app, or other means of mass communication; and

(3) Include a declaration that all transient vacation rental must at all times comply with State and County laws including minimum stay requirements and are subject to fines up to \$10,000 in all transient vacation rental contracts or rental agreement and any advertisements or solicitations of the transient vacation rental through an online rental service provider, an application or app, or other means of mass communication.

Thank you for your consideration,

Keep it Kailua

Preserving Kailua's Residential Character and Quality of Life.

info@keepitkailua.com

www.keepitkailua.com

Facebook: keep it kailua

Keep It Kailua is a grassroots community group founded in 2004 whose purpose is to retain Kailua's family-oriented residential character and quality of life.

Keep It Kailua's goals are to:

- *Protect residential zoning and promote permanent residency in our neighborhoods*
- *Preserve and enhance scenic, civic, recreational and cultural features that define Kailua's sense of place*
- *Protect water resources essential to the health of the environment*
- *Preserve trees and maintain open green space*
- *Promote walking and the use of non-motorized bicycles as alternatives to automobile transportation within and around the town*
- *Promote businesses that serve the residential community*
- *Support other community groups with similar goals*

Opposition to HB 825

This is the 5th legislative year of proposed Bills concerning transient accommodation rentals. Act 326 was adopted in 2012. It took time for the Tax Department to be prepared to receive the "relevant information" that was required. TA advertising contains the I.D. of the operator which the Director of the Tax Department in 2012 testified would assist the department with tax compliance. The tax department has the tools necessary

TA operators must comply with: (1) State taxing authorities, (2) Local zoning, permitting, and (3) Landlord tenant laws. 825 does not change any of these requirements and each agency and county will, of course, retain their authority.

What does change in 825 however, is as an individual we would need to have a special Professional and Vocational license to pay taxes, comply with zoning and comply with landlord tenant responsibilities. I do not understand the necessity of a special Professional and Vocational license to do these functions. No other tax payer, dwelling owner or landlord needs a special Professional and Vocational license to do these same things that this Bill is requiring of us. The enforcement section is not likely to be lawful as it does not allow for due process. Please see the tax department's code, it requires probable cause.

The commerce we are conducting is under landlord tenant. The laws that an owner of property must comply with are the same for short term as well as long term (with the exception being that short term has the additional TAT tax and posting of "local contact" in the unit, as well as give information to the AOA.) If you now are going to place a new Professional and Vocational requirement on renting of properties by owners, any changes to law must be *applied equally to all those who rent property in the state* - regardless of less than 180 days or more than 180 days.

Please see HRS 467-2 It provides for an owner of property to manage and rent their own property. It is not subject to a special Professional and Vocational licensing to be able to exercise this right.

Additionally this very same commerce is again reaffirmed in 237D-4 Hawaii law relating to Transient accommodation under section entitled-certificate of registration.

Section 3(b)(quote) ... the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.(end quote)

If the tax department does not have authority to withhold registration due to the US Constitution -- then would it be Constitutional for DCCA to withhold this privilege for any cause.

A significant factor in the level of compliance is based on education and knowledge. If you keep changing the rules, it impedes achieving compliance. Any new changes to the laws creates confusion. Act 326 was only fully implement last year - two full years after it was approved. DCCA/RICO produced an excellent educational pamphlet that makes understanding the requirements easier. RICO was only able to publish this pamphlet last year. Again, it will take years to fully implement new changes.

Please do not strive to achieve tax compliance by continually changing laws. Please let the Tax department achieve compliance through their powers to do so. Act 326 works. Please enforce the laws you have and bring stability to this issue.

Thank you for the opportunity to submit testimony.

R. Stewart

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 17, 2015 1:56 PM
To: CPCtestimony
Cc: annettelohman@earthlink.net
Subject: Submitted testimony for HB825 on Feb 18, 2015 15:00PM
Attachments: HB825-HD1.docx

HB825

Submitted on: 2/17/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Annette Lohman	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB825

Submitted on: 2/17/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Annette Lohman	Individual	Oppose	No

Comments:

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From: Lisa Marten <lisamarten@hawaii.rr.com>
Sent: Tuesday, February 17, 2015 2:14 PM
To: Lisa Marten
Cc: CPCtestimony; Rep. Angus McKelvey; Rep. Justin Woodson; Rep. Della Belatti; Rep. Tom Brower; Rep. Richard Creagan; Rep. Sharon Har; Rep. Mark Hashem; Rep. Derek Kawakami; Rep. Chris Lee; Rep. Mark Nakashima; Rep. Marcus Oshiro; Rep. Joy San Buenaventura; Rep. Gregg Takayama; Rep. Ryan Yamane; Rep. Beth Fukumoto Chang; Rep. Bob McDermott
Subject: Please Modify HB825 HD1

Dear Honorable Rep. Angus L.K. McKelvey, Chair and Members of the House Committee on Consumer Protection & Commerce;

I appreciate the initiative in the legislature to improve regulation of transient vacation rentals (TVRs), but want to alert you to a way in which this Bill could backfire for Oahu residents. Currently no new non-conforming use (NUC) certificates are being issued by Honolulu County for TVRs as it was determined to be incompatible with residential zoning on our island. Illegal short term vacation rentals who cannot get a license to rent for under 30 days could apply for a state TVR license for under 180 days and appear to be legal even though they continue to rent illegally for under 30 days.

Please include in the requirements to post NUC certificate number as required by each county, and minimum number of days per rental contract as required by County and to include it in any forms of advertising.

Thank you, Lisa Marten

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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

LATE

KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

February 18, 2015

The Honorable Angus L. K. McKelvey, Chair
and Members of the Committee on Consumer
Protection & Commerce
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey, and Members:

Subject: House Bill No. 825, HD1
Relating to Transient Accommodations

The Department of Planning and Permitting (DPP) **supports with concerns** the intent of House Bill No. 825, HD1, due to inconsistencies in the Bill and the lack of clarity in the enforcement section of the Bill.

The Bill as written would establish under the Department of Commerce and Consumer Affairs (DCCA) licensing requirements and enforcement provisions for transient vacation rentals. We have no problem with DCCA regulating the commercial aspects of transient vacation rentals since the Bill provides that the DCCA licenses can only be issued after DCCA receives proof of compliance with county zoning. As such, the Bill does not supersede the county land use regulation. Further, we agree that there is a need for stronger regulation of vacation rental operations and that the civil fines assessed against those who blatantly violate the code should be at a level sufficient to deter the illegal use.

However, those who operate illegal vacation rentals will in all likelihood not comply with the provisions of the Bill, nor seek to obtain the DCCA license knowing that they will not be able to obtain the required zoning clearance. Secondly, we are concerned that there are redundant processing requirements levied on those who would be required to obtain a DCCA license in addition to the City permit processing requirement to conduct the use. The Land Use Ordinance (LUO) states that although

short-term vacation rental operations (less than 30-days) are a permitted use in the Resort District and the Resort Mixed Use Precinct of Waikiki, the use is prohibited in all other zoning districts/precincts, unless a Nonconforming Use Certificate (NUC) is issued to the operator by the Department of Planning and Permitting (DPP). This certificate is renewed biannually at a cost of \$400 per renewal. Our concern is that if DCCA would issue a license to an operator of a transient vacation rental operation and require the license to be renewed annually with an assessed processing fee, the DCCA licensing requirement combined with the City's imposed permit renewal requirement would impose duplicate processing requirements on the applicant and would be viewed as an unfair, duplicative fee assessment.

Finally, the Bill contains definitions that are inconsistent and contrary to definitions used by the City's LUO for similar terms. The discrepancies are as follows:

1. The definition "bed and breakfast establishment" or "bed and breakfast home" means a single-family dwelling occupied by an owner or a guest house let for consideration for less than 30 days. The reference to a guest house is conflicting with the LUO definition of "bed and breakfast home," which means a use in which overnight accommodations are provided to guests for compensation for periods less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling. To be consistent with the LUO the bed and breakfast use cannot be conducted separately from a guest house.
2. The definition "Dwelling" means...(3) a bed and breakfast establishment or bed and breakfast home. According to the LUO, the bed and breakfast home is conducted from the same detached dwelling as that occupied by an owner, operator, or proprietor of the detached dwelling. The bed and breakfast home is accessory to the principle use and cannot be a stand alone dwelling.
3. The penalty provisions of the Bill are unclear and should be clarified to distinguish between the \$10,000 civil penalty for each separate offense and the subsequent provision that the owner is subject to a fine of \$2,000 for each separate offense. It is also suggested that DCCA and not the counties will enforce the DCCA license and trust account requirements as the City inspectors do not have a working knowledge of these matters. The City will soon be introducing to the City Council legislation that will establish a similar civil fine structure as the \$10,000 provision proposed in this Bill.

The Honorable Angus L. K. McKelvey, Chair
and Members of the Committee on Consumer
Protection & Commerce
Hawaii House of Representatives
Re: House Bill 825, HD1
February 18, 2015
Page 3 of 3

4. The definition "Transient" means any person who rents or uses a transient vacation rental for compensation or fees for one hundred days or less. This definition is inconsistent with the definition of less than thirty days provided in the LUO and has been the source of confusion for Hawaii residence engaged in transient accommodation operations.

In summary, the City and County of Honolulu is willing to participate in any discussions that would address the concerns expressed in our testimony. Thank you for this opportunity to testify on House Bill No. 825, HD1.

Very truly yours,



George I. Atta, FAICP
Director

GIA:fmt
HB825HD1-TransientAccommodations-mf



LATE

Testimony of George Szigeti
President & CEO
HAWAI'I LODGING & TOURISM ASSOCIATION
Committee on Consumer Protection and Commerce
Hearing on February 18, 2015, 3:00 P.M.
HB825 HD1 Relating to Transient Accommodations

Dear Chair McKelvey, Vice Chair Woodson, and Members of the Committee. My name is George Szigeti and I am the President and CEO of the Hawai'i Lodging & Tourism Association.

The Hawai'i Lodging & Tourism Association (HLTA) is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai'i's visitor industry. Our membership includes over 150 lodging properties, representing over 50,000 rooms, and over 400 other Allied members. The visitor industry was responsible for generating \$14.9 billion in visitor spending in 2014 and supported 170,000 jobs statewide – we represent one of Hawai'i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer this testimony regarding House Bill 825 HD1 relating to transient accommodations, which tasks the Department of Commerce and Consumer Affairs with the licensing and enforcement of transient vacation rentals.

The Hawai'i Lodging & Tourism Association supports this measure, because it will help to create parity between the individually advertised vacation rentals and the rest of the lodging industry, by giving licensing and enforcement authority to the DCCA. With advances in technology and the popularization of the "sharing community", Hawai'i has seen a growing capacity of advertised individual rental units by owner. As a State our total lodging inventory is comprised of approximately 25% of these individual rental units, most of which we currently have no means of enforcing a level playing field with. We support HB825 HD1 as it aims to create necessary requirements for legitimacy such as owner contact, local contact, license number, GET license number, TAT registration number, and it also requires the compliance with county ordinances regulating transient vacation rentals. Also, the requirement to establish a client trust account and the enforcement of the law under these guidelines will bring about a better experience for both neighbors of these transient vacation rentals and visitors alike.

We urge your favorable consideration of this bill.

Thank you for this opportunity to testify.



LATE

Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

HB 825 HD1

Relating To Transient Accommodations

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Wednesday, February 18, 2015, 3:00pm

Conference Room 325

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 150 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 20,000 local residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA **supports** HB 825 HD1 that establishes licensing requirements and enforcement provisions for transient vacation rentals to be administered by the department of commerce and consumer affairs.

MHLA **supports** this measure, because it helps to define required registration and advertising; defines violations and penalties; and it amends the definition of "transient accommodations" to include single family dwellings. This will help the State and counties better manage the overall enforcement of transient accommodations tax on transient vacation rentals, which will help reduce the tax burden on local residents. With advances in technology and the popularization of the "sharing community" Hawai'i has witnessed a growing number of vacation rentals by owners (VRBO's), most of which are not operating within a legal capacity. By allowing the Department of Commerce and Consumer Affairs to create a comprehensive database of transient accommodations through a registration process and enforcement of penalties for noncompliance, this measure is an important step in regulating and bringing fair equity to all accommodation options within the State of Hawaii.

Thank you for the opportunity to testify.



Board of Directors

Richard Rowland
Chairman and Founder

Keli'i Akina, Ph.D.
President/CEO

Eddie Kemp
Treasurer

Gilbert Collins

Robin Tijoe

February 18, 2015

3:00 PM

Conference Room 325

To: House Committee on Consumer Protection & Commerce
Rep. Angus McKelvey, Chair
Rep. Justin Woodson, Vice Chair

From: Grassroot Institute of Hawaii
President Keli'i Akina, Ph.D.

RE: HB 825 -- RELATING TO TRANSIENT ACCOMODATIONS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB 825, which would establish licensing requirements and enforcement provisions for transient vacation rentals, which would then be administered by the Department of Commerce and Consumer Affairs.

The Grassroot Institute recommends the committee carefully consider an unintended consequence of the proposed measure. While the bill purports to bring oversight and regulation to the many undocumented vacation rentals in the state, it provides little incentive and enforceable process for such establishments to "come out of the shadows." Instead, the effect of this bill is to burden the compliant small businesses and owner/operator establishments by creating a system that favors larger rental companies and hotels.

Tourism is the lifeblood of the state's economy, and any proposal that could have far-reaching effects on the state's ability to attract new visitors and reach new markets must be considered carefully before action is taken. There remain questions regarding the practical enforceability of the bill in question, the interpretation of the language used, and its economic effect—both on small, locally-owned businesses and for the tourist industry generally.

Thank you for the opportunity to submit our comments.

Sincerely,
Keli'i Akina, Ph.D.
President, Grassroot Institute of Hawaii

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 17, 2015 10:28 PM
To: CPCtestimony
Cc: prentissc001@hawaii.rr.com
Subject: Submitted testimony for HB825 on Feb 18, 2015 15:00PM

LATE

HB825

Submitted on: 2/17/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss	Kailua Neighborhood Board	Support	No

Comments: This bill provides necessary improvements to the enforcement process.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 17, 2015 3:10 PM
To: CPCtestimony
Cc: bpacker@maui.net
Subject: Submitted testimony for HB825 on Feb 18, 2015 15:00PM

LATE

HB825

Submitted on: 2/17/2015

Testimony for CPC on Feb 18, 2015 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
SharLyn Foo	Individual	Support	No

Comments: I support this bill to help DPP with enforcing laws on the books.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Rental By Owner
Awareness Association

LATE TESTIMONY

House of Representative
The Twenty-Eighth Legislature
Regular Session of 2015

To: Rep. Agnus McKelvey, Chair
Rep. Justin Woodson, Vice Chair

Date: February 13, 2015

Time: 3:00 p.m.

Place: Conference Room 325
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: House Bill 825 HD1, Relating to Transient Accommodations

Chair McKelvey, Vice Chair Woodson and Members of the Committee on Consumer Protection & Commerce:

Rental By Owner Awareness Association (RBOAA) is a non-profit entity incorporated in Hawaii that speaks for hundreds of very small business that consists of law-abiding Hawaiians and non-Hawaiians who rent their homes out to visitors.

RBOAA would like to voice our **opposition** to H.B. No. 825 HD1.

We understand the intent of the bill is to address a number of issues facing the Cities and Counties of Hawaii, specifically noncompliance of tax payments and illegal short-term rentals.

We believe that the laws already exist for compliance and punishment of these acts. To burden the taxpayers with more agency control would not be beneficial to enforcing non compliance and will take years to get a system in place to license and monitor the owners of transient accommodations (TA).

We would be better served to allow the counties needed funds to hire a staff to investigate and regulate their current laws.

2 HB 825 RELATING TO TRANSIENT ACCOMODATIONS

We believe there are other requirements that would better assist the communities. No. 1 is education of the current laws. No. 2, Transient Accommodation Numbers could be property specific.

In reference to a client trust account with a financial institution located in Hawaii. It is not a requirement of all business in Hawaii to have a Hawaiian bank account so why should someone offering a TA be required. Nor should it be a requirement for an owner of a property to place his or her own money in a trust account.

The operator of a transient operation is conducting business and the tax department already has audit rights for the books and records of such business therefore we see no need for someone else to audit our financial records.

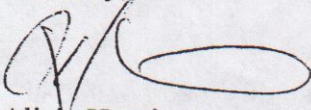
In reference to enforcement and inspection, it is the counties responsibility to determine who is legally zoned for a TA.

RBOAA opposes the \$10,000 civil penalty for each separate offense and the revocation of any license for any cause. These are harsh punishments for any small infraction.

In taking into all the testimony of the other agencies and the legal problems associated with proceeding with this measure and you intend to proceed with this measure we have developed a long list of amendments designed to improve the bill.

Thank you for the opportunity to testify on this measure.

Sincerely,



Alicia Humiston
President