
A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

PART I

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

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



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

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

10 This part is not intended to:

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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

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



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

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

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

15 (A) The address of the transient accommodation;

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

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



1 income that was derived from each transient
2 accommodation.

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

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

17 A registered tax collection agent may cancel its
18 registration under this section by delivering written notice of
19 cancellation to the director and each of its operators and plan
20 managers furnishing transient accommodations in the State no



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

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

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

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

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



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

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

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

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



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

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

10 (k) For the purposes of this section:

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

19 "Director" means the director of taxation.

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

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



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

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

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

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

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



- 1 (1) To obtain written consent from all of its operators
- 2 and plan managers for the disclosure of periodic
- 3 returns and information required under subsection (g);
- 4 (2) To furnish information to the counties as required in
- 5 subsection (g); and
- 6 (3) That continuing to collect fees for booking services
- 7 in connection with a transient vacation rental, seven
- 8 days after receiving written notice from a state or
- 9 county governmental authority that the subject
- 10 property is not in compliance with state law or county
- 11 ordinance, is a violation of the tax collection
- 12 agreement.

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

20 The director shall deny an application for registration as
21 a tax collection agent under this section for violations of this



1 subsection and may deny an application for any other cause
2 authorized by law, including any violation of this chapter or
3 rules adopted pursuant thereto, violation of any prior tax
4 collection agreement, or failure to meet minimum criteria that
5 may be set forth by the department in rules adopted pursuant to
6 chapter 91.

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

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



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

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



1 ordinances and rules regulating short-term rentals, vacation
2 rentals, or bed and breakfast lodging within their jurisdictions
3 as if this section did not exist.

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

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



1 charged with the responsibility for the filing of returns or the
2 payment of taxes.

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

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

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



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

6 (A) The address of the transient accommodation;
7 (B) The number of nights that each transient
8 accommodation was rented and the rate or price at
9 which each transient accommodation was rented;
10 and

11 (C) The amount of tax being remitted pursuant to this
12 chapter and the amount of any federal form 1099
13 income that was derived from each transient
14 accommodation.

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



1 county official designated to receive the information pursuant
2 to this subsection may examine and copy the returns and cover
3 sheets to ensure compliance with this section, state and county
4 tax laws and ordinances, and any applicable land use laws and
5 ordinances.

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

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

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



- 1 (i) All transient accommodations brokers, prior to placing
2 an advertisement, including an online advertisement, on the
3 availability of a property for lease or rent on behalf of an
4 operator or plan manager:
- 5 (1) Shall notify the operator or plan manager that the
6 subject property is required to be in compliance with
7 applicable state land use laws and county land use
8 ordinances prior to retaining the services of the
9 transient accommodations broker;
- 10 (2) Shall require the operator or plan manager to provide
11 the transient accommodations broker with the operator
12 or plan manager's transient accommodations number and
13 local contact information and include this information
14 in the advertisement, pursuant to section 237D-4;
- 15 (3) Shall require the operator or plan manager to provide
16 the transient accommodations broker with verification
17 of compliance with state land use laws and county land
18 use ordinances in the form of a written certification,
19 verification, or permit, as applicable, issued by the
20 appropriate county agency; and



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

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

15 (j) Nothing in this section shall be construed to preempt
16 or prohibit the authority of a unit of local government in the
17 State, including counties and any other political subdivisions
18 of the State, to adopt, monitor, and enforce local land use
19 ordinances, rules, or regulations, nor to transfer the authority
20 to monitor and enforce these ordinances, rules, or regulations
21 away from the counties.



1 (k) For the purposes of this section:

2 "Booking service" means any reservation or payment service
3 provided by a person or entity that facilitates a transient
4 vacation rental transaction between a transient vacation rental
5 operator and a prospective renter, and for which the person or
6 entity collects or receives, directly or indirectly, through an
7 agent or intermediary, a fee in connection with the reservation
8 or payment services provided for the transient vacation rental
9 transaction.

10 "Transient vacation rental" means "transient vacation
11 rental", "transient vacation unit", or transient vacation use",
12 as defined by county ordinance."

13 SECTION 4. Section 46-1.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§46-1.5 General powers and limitation of the counties.**

16 Subject to general law, each county shall have the following
17 powers and shall be subject to the following liabilities and
18 limitations:

- 19 (1) Each county shall have the power to frame and adopt a
20 charter for its own self-government that shall
21 establish the county executive, administrative, and



1 legislative structure and organization, including but
2 not limited to the method of appointment or election
3 of officials, their duties, responsibilities, and
4 compensation, and the terms of their office;

5 (2) Each county shall have the power to provide for and
6 regulate the marking and lighting of all buildings and
7 other structures that may be obstructions or hazards
8 to aerial navigation, so far as may be necessary or
9 proper for the protection and safeguarding of life,
10 health, and property;

11 (3) Each county shall have the power to enforce all claims
12 on behalf of the county and approve all lawful claims
13 against the county, but shall be prohibited from
14 entering into, granting, or making in any manner any
15 contract, authorization, allowance payment, or
16 liability contrary to the provisions of any county
17 charter or general law;

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



- 1 (5) Each county shall have the power to:
- 2 (A) Maintain channels, whether natural or artificial,
- 3 including their exits to the ocean, in suitable
- 4 condition to carry off storm waters;
- 5 (B) Remove from the channels, and from the shores and
- 6 beaches, any debris that is likely to create an
- 7 unsanitary condition or become a public nuisance;
- 8 provided that, to the extent any of the foregoing
- 9 work is a private responsibility, the
- 10 responsibility may be enforced by the county in
- 11 lieu of the work being done at public expense;
- 12 (C) Construct, acquire by gift, purchase, or by the
- 13 exercise of eminent domain, reconstruct, improve,
- 14 better, extend, and maintain projects or
- 15 undertakings for the control of and protection
- 16 against floods and flood waters, including the
- 17 power to drain and rehabilitate lands already
- 18 flooded;
- 19 (D) Enact zoning ordinances providing that lands
- 20 deemed subject to seasonable, periodic, or
- 21 occasional flooding shall not be used for



1 residence or other purposes in a manner as to
2 endanger the health or safety of the occupants
3 thereof, as required by the Federal Flood
4 Insurance Act of 1956 (chapter 1025, Public Law
5 1016); and

6 (E) Establish and charge user fees to create and
7 maintain any stormwater management system or
8 infrastructure;

9 (6) Each county shall have the power to exercise the power
10 of condemnation by eminent domain when it is in the
11 public interest to do so;

12 (7) Each county shall have the power to exercise
13 regulatory powers over business activity as are
14 assigned to them by chapter 445 or other general law;

15 (8) Each county shall have the power to fix the fees and
16 charges for all official services not otherwise
17 provided for;

18 (9) Each county shall have the power to provide by
19 ordinance assessments for the improvement or
20 maintenance of districts within the county;



- 1 (10) Except as otherwise provided, no county shall have the
2 power to give or loan credit to, or in aid of, any
3 person or corporation, directly or indirectly, except
4 for a public purpose;
- 5 (11) Where not within the jurisdiction of the public
6 utilities commission, each county shall have the power
7 to regulate by ordinance the operation of motor
8 vehicle common carriers transporting passengers within
9 the county and adopt and amend rules the county deems
10 necessary for the public convenience and necessity;
- 11 (12) Each county shall have the power to enact and enforce
12 ordinances necessary to prevent or summarily remove
13 public nuisances and to compel the clearing or removal
14 of any public nuisance, refuse, and uncultivated
15 undergrowth from streets, sidewalks, public places,
16 and unoccupied lots. In connection with these powers,
17 each county may impose and enforce liens upon the
18 property for the cost to the county of removing and
19 completing the necessary work where the property
20 owners fail, after reasonable notice, to comply with
21 the ordinances. The authority provided by this



1 paragraph shall not be self-executing, but shall
2 become fully effective within a county only upon the
3 enactment or adoption by the county of appropriate and
4 particular laws, ordinances, or rules defining "public
5 nuisances" with respect to each county's respective
6 circumstances. The counties shall provide the
7 property owner with the opportunity to contest the
8 summary action and to recover the owner's property;

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

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

- 19 (A) Make and enforce within the limits of the county
20 all necessary ordinances covering all:
21 (i) Local police matters;



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



1 law; provided that any violation of a county
2 transient accommodations ordinance shall result
3 in, at a minimum, a civil penalty of not less
4 than \$25,000 to be levied by the county planning
5 director;

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

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

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

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



- 1 (C) All proceeds from the sale of park lands shall be
- 2 expended only for the acquisition of property for
- 3 park or recreational purposes;
- 4 (17) Each county shall have the power to provide by charter
- 5 for the prosecution of all offenses and to prosecute
- 6 for offenses against the laws of the State under the
- 7 authority of the attorney general of the State;
- 8 (18) Each county shall have the power to make
- 9 appropriations in amounts deemed appropriate from any
- 10 moneys in the treasury, for the purpose of:
- 11 (A) Community promotion and public celebrations;
- 12 (B) The entertainment of distinguished persons as may
- 13 from time to time visit the county;
- 14 (C) The entertainment of other distinguished persons,
- 15 as well as, public officials when deemed to be in
- 16 the best interest of the community; and
- 17 (D) The rendering of civic tribute to individuals
- 18 who, by virtue of their accomplishments and
- 19 community service, merit civic commendations,
- 20 recognition, or remembrance;
- 21 (19) Each county shall have the power to:



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



1 charge shall be used for the construction or
2 maintenance of county highways;

3 (20) Each county shall have the power to regulate the
4 renting, subletting, and rental conditions of property
5 for places of abode by ordinance;

6 (21) Unless otherwise provided by law, each county shall
7 have the power to establish by ordinance the order of
8 succession of county officials in the event of a
9 military or civil disaster;

10 (22) Each county shall have the power to sue and be sued in
11 its corporate name;

12 (23) Each county shall have the power to establish and
13 maintain waterworks and sewer works; to collect rates
14 for water supplied to consumers and for the use of
15 sewers; to install water meters whenever deemed
16 expedient; provided that owners of premises having
17 vested water rights under existing laws appurtenant to
18 the premises shall not be charged for the installation
19 or use of the water meters on the premises; to take
20 over from the State existing waterworks systems,
21 including water rights, pipelines, and other



1 appurtenances belonging thereto, and sewer systems,
 2 and to enlarge, develop, and improve the same;

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

15 (i) A hearing under chapter 91[-]; or
 16 (ii) Judicial review by the circuit court, as
 17 prescribed by ordinance for specific
 18 violations,
 19 has been afforded. Any appeal shall be filed
 20 within thirty days from the date of the final
 21 written decision. These proceedings may not be



1 stayed pending disposition of any criminal
2 proceeding for a related offense. These
3 proceedings shall not be a prerequisite for any
4 civil fine or injunctive relief ordered by the
5 circuit court [7]. Where a county seeks
6 injunctive relief for violations of an ordinance
7 related to transient vacation rental units, the
8 county need not show irreparable injury;

9 (B) Each county by ordinance may provide for the
10 addition of any unpaid civil fines, ordered by
11 any court of competent jurisdiction, to any
12 taxes, fees, or charges, with the exception of
13 fees or charges for water for residential use and
14 sewer charges, collected by the county. Each
15 county by ordinance may also provide for the
16 addition of any unpaid administratively imposed
17 civil fines, which remain due after all judicial
18 review rights under section 91-14 are exhausted,
19 to any taxes, fees, or charges, with the
20 exception of water for residential use and sewer
21 charges, collected by the county. The ordinance



1 shall specify the administrative procedures for
2 the addition of the unpaid civil fines to the
3 eligible taxes, fees, or charges and may require
4 hearings or other proceedings. After addition of
5 the unpaid civil fines to the taxes, fees, or
6 charges, the unpaid civil fines shall not become
7 a part of any taxes, fees, or charges. The
8 county by ordinance may condition the issuance or
9 renewal of a license, approval, or permit for
10 which a fee or charge is assessed, except for
11 water for residential use and sewer charges, on
12 payment of the unpaid civil fines. Upon
13 recordation of a notice of unpaid civil fines in
14 the bureau of conveyances, the amount of the
15 civil fines, including any increase in the amount
16 of the fine [~~which~~] that the county may assess,
17 shall constitute a lien upon all real property or
18 rights to real property belonging to any person
19 liable for the unpaid civil fines. The lien in
20 favor of the county shall be subordinate to any
21 lien in favor of any person recorded or



1 registered prior to the recordation of the notice
2 of unpaid civil fines and senior to any lien
3 recorded or registered after the recordation of
4 the notice. The lien shall continue until the
5 unpaid civil fines are paid in full or until a
6 certificate of release or partial release of the
7 lien, prepared by the county at the owner's
8 expense, is recorded. The notice of unpaid civil
9 fines shall state the amount of the fine as of
10 the date of the notice and maximum permissible
11 daily increase of the fine. The county shall not
12 be required to include a social security number,
13 state general excise taxpayer identification
14 number, or federal employer identification number
15 on the notice. Recordation of the notice in the
16 bureau of conveyances shall be deemed, at [~~such~~]
17 that time, for all purposes and without any
18 further action, to procure a lien on land
19 registered in land court under chapter 501.
20 After the unpaid civil fines are added to the
21 taxes, fees, or charges as specified by county



1 ordinance, the unpaid civil fines shall be deemed
2 immediately due, owing, and delinquent and may be
3 collected in any lawful manner. The procedure
4 for collection of unpaid civil fines authorized
5 in this paragraph shall be in addition to any
6 other procedures for collection available to the
7 State and county by law or rules of the courts;

8 (C) Each county may impose civil fines upon any
9 person who places graffiti on any real or
10 personal property owned, managed, or maintained
11 by the county. The fine may be up to \$1,000 or
12 may be equal to the actual cost of having the
13 damaged property repaired or replaced. The
14 parent or guardian having custody of a minor who
15 places graffiti on any real or personal property
16 owned, managed, or maintained by the county shall
17 be jointly and severally liable with the minor
18 for any civil fines imposed hereunder. Any
19 [such] fine under this paragraph may be
20 administratively imposed after an opportunity for
21 a hearing under chapter 91, but [such] a



1 [~~proceeding~~] hearing shall not be a prerequisite
2 for any civil fine ordered by any court. As used
3 in this subparagraph, "graffiti" means any
4 unauthorized drawing, inscription, figure, or
5 mark of any type intentionally created by paint,
6 ink, chalk, dye, or similar substances;

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

17 (i) The nature and egregiousness of the
18 violation;

19 (ii) The duration of the violation;

20 (iii) The number of recurring and other similar
21 violations;



- 1 (iv) Any effort taken by the violator to correct
- 2 the violation;
- 3 (v) The degree of involvement in causing or
- 4 continuing the violation;
- 5 (vi) Reasons for any delay in the completion of
- 6 the appeal; and
- 7 (vii) Other extenuating circumstances.

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

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



1 to exceed the total accrual of civil fine prior
2 to correcting the violation, shall immediately
3 become due and collectible following reasonable
4 notice to the violator, at the completion of all
5 appeal proceedings;

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

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



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

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

5 SECTION 5. Section 46-4, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

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

11 Zoning in all counties shall be accomplished within the
12 framework of a long-range, comprehensive general plan prepared
13 or being prepared to guide the overall future development of the
14 county. Zoning shall be one of the tools available to the
15 county to put the general plan into effect in an orderly manner.
16 Zoning in the counties of Hawaii, Maui, and Kauai means the
17 establishment of districts of [~~such~~] a number, shape, and area,
18 and the adoption of regulations for each district, to carry out
19 the purposes of this section. In establishing or regulating the
20 districts, full consideration shall be given to all available
21 data as to soil classification and physical use capabilities of

1 the land to allow and encourage the most beneficial use of the
2 land consonant with good zoning practices. The zoning power
3 granted herein shall be exercised by ordinance which may relate
4 to:

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



- 1 (9) The density and distribution of population;
- 2 (10) The percentage of a lot that may be occupied, size of
- 3 yards, courts, and other open spaces;
- 4 (11) Minimum and maximum lot sizes; and
- 5 (12) Other regulations the boards or city council find
- 6 necessary and proper to permit and encourage the
- 7 orderly development of land resources within their
- 8 jurisdictions.

9 The council of any county shall prescribe rules,

10 regulations, and administrative procedures and provide personnel

11 it finds necessary to enforce this section and any ordinance

12 enacted in accordance with this section. The ordinances may be

13 enforced by appropriate fines [~~and~~], penalties, and remedies for

14 disgorgement of all profits and restitution of any money, real

15 property, or personal property that was obtained through unfair

16 or unlawful business acts and practices, civil or criminal, or

17 by court order at the suit of the county or the owner or owners

18 of real estate directly affected by the ordinances. In any

19 action brought under an ordinance adopted pursuant to this

20 section, the court or zoning agency, in addition to any fine

21 imposed upon the ordinance violator, may allow costs of action,



1 including costs and fees of any nature and reasonable attorney's
2 fees, to be paid by the ordinance violator.

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

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

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

20 Nothing in this section shall invalidate any zoning
21 ordinance or regulation adopted by any county or other agency of



1 government pursuant to the statutes in effect prior to July 1,
2 1957.

3 The powers granted herein shall be liberally construed in
4 favor of the county exercising them, and in such a manner as to
5 promote the orderly development of each county or city and
6 county in accordance with a long-range, comprehensive general
7 plan to ensure the greatest benefit for the State as a whole.

8 This section shall not be construed to limit or repeal any
9 powers of any county to achieve these ends through zoning and
10 building regulations, except insofar as forest and water reserve
11 zones are concerned and as provided in subsections (c) and (d).

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



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

11 SECTION 6. The director of taxation shall make available
 12 to transient accommodations brokers a form of application for
 13 registration as a tax collection agent under the new section of
 14 chapter 237, Hawaii Revised Statutes, added by section 8 of this
 15 Act, and under the new section of chapter 237D, Hawaii Revised
 16 Statutes, added by section 9 of this Act.

17 SECTION 7. Upon the establishment by a county of a process
 18 for providing verification of compliance by an operator or plan
 19 manager with that county's land use ordinances, the State shall
 20 transfer, from the transient accommodations tax revenues, up to



1 \$1,000,000 to each county for implementation or enforcement of
2 those land use ordinances.

3 PART II

4 SECTION 8. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER
8 TRANSIENT ACCOMMODATIONS

9 § -1 Definitions. As used in this chapter:

10 "Activity provider" has the same meaning as in section
11 468M-1.

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

20 "County" means the city and county of Honolulu and the
21 counties of Hawaii, Kauai, and Maui; provided that the county of



1 Maui shall include the county of Kalawao for the purposes of
2 this chapter.

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

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

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

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

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



1 "Transient vacation rental" means "transient vacation
2 rental", "transient vacation unit", or transient vacation use",
3 as defined by county ordinance.

4 "Transient vacation rental operator" means any person
5 operating a transient vacation rental, whether as owner or
6 proprietor, or as lessee, sublessee, mortgagee in possession,
7 licensee, or other, or engaging or continuing in any service
8 business that involves the actual furnishing of a transient
9 vacation rental.

10 § -2 **Transient accommodations brokers.** (a) It shall be
11 unlawful for a person acting as, or on behalf of, a transient
12 accommodations broker to engage in business with an operator or
13 plan manager, including any person or entity employed,
14 contracted, or otherwise engaged by the operator or plan manager
15 for property management or as an activity provider, who is not
16 in compliance with all state laws and county ordinances,
17 including any laws and ordinances regarding land use, taxes, and
18 professional licenses.

19 (b) It shall be unlawful for a person acting as, or on
20 behalf of, a transient accommodations broker, to act on behalf
21 of an operator or plan manager, to employ, contract, or



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

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect upon its approval.



Report Title:

Taxation; Transient Accommodations Tax; Vacation Rentals;
Brokers; Tax Collection Agents; General Excise Tax

Description:

Allows a transient accommodations broker to register as a tax collection agent for its operators and plan managers. Requires operators and plan managers to provide a statement to the transient accommodations broker confirming compliance with all applicable land use and tax laws. Requires the operator or plan manager to provide verification of compliance with state and county land use laws. Requires an operator or plan manager to remove a transient accommodation advertisement upon notice that the property is not in compliance with state law or county ordinance. Authorizes counties to disgorge profits obtained through unfair or unlawful business practices. Authorizes counties to adopt ordinances to amortize or phase out transient vacation rental units. Allocates up to \$1,000,000 of TAT tax revenues to each county, contingent upon the county establishing a process to provide verification of compliance by an operator or plan manager with county land use laws. Makes it unlawful for transient accommodations brokers to engage in business with operators or plan managers or property managers or activity providers that are not in compliance with all state laws and county ordinances. Makes it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient vacation rentals that are not lawfully certified, registered, or permitted under applicable county ordinance.
(SD1)

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