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## A BILL FOR AN ACT

RELATING TO HOUSING.

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

1       SECTION 1. The use and popularity of online vacation  
2 rental platforms has been on the rise for the last several  
3 years. As a result, many visitors to Hawaii are turning to  
4 alternative lodging options, such as short-term vacation  
5 rentals, when visiting the State. While short-term vacation  
6 rentals provide additional options for the visitor experience in  
7 Hawaii, it also has had consequences for the State's primary  
8 industry, tourism, and in turn the State's overall economy. As  
9 more and more visitors turn to alternative lodging, there is the  
10 increased potential of decreased occupancy in more traditional  
11 forms of lodging such as hotels, not only negatively impacting  
12 the hotel and lodging industry but also adversely impacting  
13 their employees' livelihood. Moreover, lack of oversight of the  
14 growing short-term vacation rental market makes it difficult for  
15 the State to ensure proper collection of various taxes paid by  
16 more traditional forms of visitor accommodations, such as the  
17 transient accommodations tax or general excise tax, resulting in



1 a loss of state revenue. Counties are also losing revenue when  
2 an owner of a vacation rental receives "home owner's discounts"  
3 on property taxes paid for a residential home that is used for  
4 commercial purposes without paying a commercial property rate.

5 Additionally, the increase in the use of short-term  
6 vacation rentals has had an impact on Hawaii's highly  
7 competitive housing market. Some properties that are being  
8 leased out as vacation rentals are properties that could have  
9 been added to the stock of affordable housing available for  
10 lease or sale to Hawaii's residents, thereby ameliorating the  
11 State's affordable housing crisis.

12 From a consumer protection perspective, visitors who stay  
13 in vacation rentals may not be getting what is advertised, as  
14 some vacation rentals are falsely advertised and even unsafe for  
15 group occupancy. Unsafe stays and unfavorable reviews or  
16 references of such stays can be detrimental to Hawaii's  
17 reputation as an elite tourist destination, negatively impacting  
18 Hawaii's tourism industry even further.

19 The proliferation of short-term vacation rentals has also  
20 had an impact on the character and quality of life of many  
21 neighborhoods throughout Hawaii. Numerous complaints regarding



1 noise, parking, increased traffic, and other issues related to  
2 the operation of short-term vacation rentals in neighborhoods  
3 not meant for these types of operations have been made and are  
4 on the rise.

5 The legislature finds that the regulation of short-term  
6 vacation rentals has been a contentious issue not only in  
7 Hawaii, but in other places as well. Numerous jurisdictions  
8 across the country have sought to minimize the impact short-term  
9 vacation rental platforms have on tight housing supplies, rental  
10 housing availability and prices, and the tourism industry  
11 through the passage of legislation and implementation of  
12 regulations. In turn, short-term vacation rental platforms have  
13 initiated litigation in some of these instances. For example,  
14 the city of San Francisco recently passed legislation that  
15 subjects hosting platforms, including online vacation rental  
16 platforms, to criminal penalties and fines if they provide a  
17 booking service for residential units to be used for tourist or  
18 transient use without registering with the appropriate  
19 government entity. As a result, online vacation rental  
20 platforms filed suit against the City of San Francisco in  
21 federal court. This suit was recently settled with short-term



1 vacation rental platforms agreeing to, in part, create a  
2 registration system requiring owners of short-term vacation  
3 rentals who use the particular short-term vacation rental  
4 platform to provide certain information prior to being allowed  
5 to list their short-term vacation rental on the platform.  
6 However, legal challenges continue to be an issue in other  
7 jurisdictions as they attempt to impose or tighten regulations  
8 on this fairly new and ever evolving industry.

9       Because online vacation rental platforms affect state and  
10 county interests in many ways, it is critical that the  
11 collection of information and data on this industry in Hawaii be  
12 accurate, timely, and informative. While the collection of the  
13 transient accommodations tax and general excise tax is the  
14 responsibility of the State, the counties receive a large  
15 portion of the transient accommodations tax and the city and  
16 county of Honolulu additionally receives most of the surcharge  
17 on the general excise tax for a rail transit system. As such,  
18 the State has a vested interest in effectively and independently  
19 monitoring whether persons engaging in online short-term  
20 vacation rentals are paying taxes owed. Additionally, the State  
21 and counties share an interest in identifying and tracking the



1 number of housing units that are dedicated to short-term  
2 vacation rentals and calculating the projected short- and long-  
3 term impacts that these rentals have on existing housing for  
4 Hawaii residents. Lastly, better data collection on online  
5 short-term vacation rentals will ensure adherence to laws and  
6 codes that protect the safety of occupants and help perpetuate  
7 Hawaii's brand as a high-quality and safe vacation destination.

8       Nevertheless, the short-term vacation rental industry does  
9 provide additional economic opportunities for the people of  
10 Hawaii, particularly those in need of supplemental income, and  
11 has the potential to generate additional revenue for the State  
12 and the counties. According to one of the most prominent short-  
13 term vacation rental platforms, collection of taxes from owners  
14 of short-term vacation rentals in Hawaii will generate more than  
15 thirty million dollars annually.

16       While the potential for greater positive economic impact  
17 for short-term vacation rentals does exist, this must be  
18 balanced with any adverse effects the growth of the short-term  
19 vacation rental industry has on Hawaii's tourism industry and  
20 overall economy, as well as the character and quality of life of  
21 Hawaii's neighborhoods. Although the outright prohibition of



1 the use of short-term vacation rental platforms is not a  
2 sensible option, increasing regulations for short-term vacation  
3 rentals, particularly those in residential areas, can be a win-  
4 win compromise for the State, the counties, the short-term  
5 vacation rental platforms, and owners of short-term vacation  
6 rentals.

7 The purpose of this Act is to strike a balance between the  
8 positive economic opportunities and impacts of the short-term  
9 vacation rental industry and any negative impacts this industry  
10 may have by establishing licensing requirements, penalties, and  
11 enforcement provisions for transient vacation rentals under the  
12 department of commerce and consumer affairs.

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

16 "CHAPTER

17 TRANSIENT VACATION RENTALS

18 § -1 Definitions. As used in this chapter:

19 "Application" or "app" means a type of software that allows  
20 access to an online rental service provider.



1 "Bed and breakfast establishment" or "bed and breakfast  
2 home" means a single-family dwelling occupied by an owner or a  
3 guest house let for consideration for less than thirty days.

4 "Department" means the department of commerce and consumer  
5 affairs.

6 "Director" means the director of commerce and consumer  
7 affairs.

8 "Dwelling" means:

- 9 (1) A single-family dwelling unit;  
10 (2) A multi-family dwelling unit;  
11 (3) A bed and breakfast establishment or bed and breakfast  
12 home; or  
13 (4) A "unit" defined in section 514B-3 that is not part of  
14 a hotel-condominium defined in section 486K-1.

15 "Let" means to rent a transient vacation rental for  
16 compensation or fees.

17 "Local contact" means the owner or an operator, lessee, or  
18 any individual or company contracted by the owner, operator, or  
19 lessee, residing on or having a principal place of business on  
20 the same island where the transient vacation rental property is



1 located who shall be available on a twenty-four-hour, seven-  
2 days-per-week basis.

3 "Lodging" means temporary sleeping accommodations in a  
4 dwelling or portion of a dwelling.

5 "Nongovernmental entity" includes an association of  
6 homeowners, a community association, and board or board of  
7 directors as defined in section 514B-3.

8 "Online rental service provider" means any company,  
9 organization, club, group, or application that offers a  
10 transient vacation rental service via the Internet.

11 "Owner" means the grantee in the deed and instrument for  
12 the transient vacation rental recorded in the bureau of  
13 conveyances.

14 "Transient vacation rental" means a dwelling or lodging  
15 located in the State let by an owner, operator, or lessee for  
16 compensation or fees, including club fees, for one hundred  
17 eighty days or less per rental. Transient vacation rental does  
18 not include any facility owned or used by a government agency or  
19 a tenement home, group home, group residence, group living  
20 arrangement, boarding house, or rooming house certified pursuant  
21 to section 445-94.





1           §   -2 Powers and duties of the director. In addition to  
2 any other powers and duties authorized by law, the director may:

3           (1) Grant licenses to transient vacation rental owners  
4               pursuant to this chapter;

5           (2) Adopt, amend, or repeal rules as the director deems  
6               proper to fully effectuate this chapter;

7           (3) Fine, suspend, terminate, or revoke any license for  
8               any cause prescribed by this chapter, or for any  
9               violation of the rules, and refuse to grant any  
10              license for any cause which would be grounds for  
11              revocation, termination, or suspension of a license;  
12              and

13          (4) Investigate the actions of any unlicensed person  
14               acting or alleged to be acting in the capacity of a  
15               licensee under this chapter.

16          §   -3 License; requirements; renewal.- (a) No transient  
17 vacation rental shall operate or do business in this State  
18 unless the owner first obtains a license under this chapter.  
19 The application for a license shall be submitted on forms  
20 prescribed by the director and with the appropriate fees,



1 prescribed by the director, which shall be deposited into the  
2 compliance resolution fund under section 26-9(o).

3 (b) The application shall include:

4 (1) The address and tax map key number of the transient  
5 vacation rental;

6 (2) The name, address, and contact information of the  
7 owner of the transient vacation rental;

8 (3) The name, phone number, and address of the local  
9 contact for the transient vacation rental;

10 (4) The name, address, and contact information of any  
11 nongovernmental entity with authority over the  
12 property on which the transient vacation rental is  
13 located, along with a copy of the covenants, by-laws,  
14 and administrative provisions with which compliance of  
15 the transient vacation rental is required;

16 (5) Proof of compliance with county ordinances relating to  
17 the regulation of transient vacation rentals,  
18 including any registration number, license, permit,  
19 special use permit, or non-conforming use permit that  
20 may be required by the county;



(6) The account number and the name of the financial institution at which the client trust account required by section -6 is held;

(7) Submission of:

(A) The general excise tax license number issued pursuant to chapter 237;

(B) The transient accommodations tax registration number issued pursuant to chapter 237D; and

(C) The general excise tax and transient accommodations tax filings for the previous two years, for any transient vacation rental existing on the effective date of Act , Session Laws of Hawaii 2018, of which the applicant is the owner; and

(8) The name of the application or app, name of the online rental service provider or providers, address of any website on the Internet, or other means of mass communications being utilized for advertisements or solicitations of the transient vacation rental.

The owner shall notify the department within sixty days of any change in the information required by this subsection.



1 (c) The owner of a transient vacation rental shall renew  
2 its license each year on or before December 31 on a form  
3 provided by the department, which shall provide the owner an  
4 opportunity to verify or update the information required in  
5 subsection (b).

6 (d) No license may be assigned, sold, leased, encumbered,  
7 or otherwise transferred, except upon the written application to  
8 and approval by the director.

9 § -4 Issuance of license and seal; provision of  
10 information to the county. (a) Each license shall be in a form  
11 prescribed and signed by the director, and issued in the name of  
12 the department with an official seal as evidence of the validity  
13 of the license.

14 (b) The department shall maintain and annually update a  
15 list of the licensed transient vacation rentals, and shall  
16 provide each county agency charged with the administration of  
17 county zoning laws all the information required by section -3  
18 regarding the transient vacation rentals licensed in the county.

19 (c) The director shall provide each county agency charged  
20 with the administration of county zoning laws regarding  
21 transient vacation rentals licensed in the county any



1 information obtained from an online rental service provider  
2 under section -10, as deemed necessary by the director.

3 § -5 Transient vacation rentals; requirements. (a) The  
4 owner or lessor of a transient vacation rental shall:

- 5 (1) Prominently post the name and phone number of the  
6 local contact in the transient vacation rental, and  
7 include the information in any transient vacation  
8 rental contract or rental agreement; and  
9 (2) Include the license number and official seal of the  
10 transient vacation rental in any advertisements or  
11 solicitations of the transient vacation rental through  
12 an online rental service provider, an application or  
13 app, or other means of mass communication.

14 (b) The owner shall submit to the applicable  
15 nongovernmental entity all covenants, bylaws, and administrative  
16 provisions with which the owner's compliance is required for the  
17 property on which the transient vacation rental is located,  
18 along with the following:

- 19 (1) The address of the transient vacation rental;



(2) The name, address, and contact information of the owner of the transient vacation rental, and license number of the transient vacation rental; and

(3) The name, phone number, and address of the local contact, who shall be available on a twenty-four-hour, seven-days-per-week basis.

The owner shall notify and provide updated information to the nongovernmental entity within sixty calendar days of any change in the required information.

(c) The owner shall comply with all county ordinances relating to the posting of information in the transient vacation rental, posting of signs, provision of safety information, parking, notification of neighbors, and other requirements established by the county.

**§ -6 Client trust account.** (a) Each owner of a transient vacation rental licensed under this chapter shall establish a client trust account in a federally insured financial institution located in Hawaii into which shall be deposited all sums received from a consumer for transient vacation rental services. The trust account shall be established and maintained for the protection of the consumers



1 paying the money to the owner of the transient vacation rental.

2 The moneys in the account shall not be encumbered except for  
3 partial or full payment for the provision of the transient  
4 vacation rental purchased or to make refunds for services not  
5 performed, less any amounts for cancellation fees that were  
6 previously disclosed to the consumer.

7 (b) The owner of a transient vacation rental shall  
8 maintain all books and records necessary to comply with this  
9 chapter and the rules adopted by the department. The owner shall  
10 keep and maintain for a period of at least two years copies of all  
11 bank statements, deposit slips, canceled checks, drafts, and wire  
12 or electronic transaction documents relating to client trust  
13 accounts. The owner shall make such records available for  
14 inspection and audit within three business days of a written  
15 request by the director or any county officer or agency charged  
16 with the administration of county zoning laws or the licensing  
17 of transient vacation rentals.

18 § -7 Prohibited acts. (a) No owner of a transient  
19 vacation rental shall:

20 (1) Sell or advertise a transient vacation rental located  
21 in the State of Hawaii without first being licensed by



1 the director under this chapter and including the  
2 license number and official seal in any advertisement  
3 or solicitation of the transient vacation rental;

4 (2) Conduct business as a licensed transient vacation  
5 rental without establishing and maintaining a client  
6 trust account, as required in section -6; or

7 (3) Otherwise violate any of the provisions of this  
8 chapter or rules adopted pursuant to this chapter.

9 (b) Any advertisement or written, graphic, or oral  
10 statement in connection with the solicitation of business for a  
11 transient vacation rental through an online rental service  
12 provider, an application or app, or other means of mass  
13 communication is prima facie evidence of the selling,  
14 advertising, or conducting of business of a transient vacation  
15 rental.

16 § -8 Enforcement; inspection. (a) The director may  
17 contract with qualified persons, including investigators, who  
18 shall be exempt from chapter 76, or delegate to the agency  
19 charged with the administration of county zoning laws to enforce  
20 this chapter.





1           (b) The officer or agent of the department or officer or  
2 agent of the agency charged with the administration of county  
3 zoning laws delegated by the department to enforce this chapter  
4 shall have the power to serve and execute warrants or issue  
5 citations to enforce this chapter.

6           (c) Any employee or agent of the department or officer or  
7 agent of the county charged with the administration of county  
8 zoning laws delegated by the department to enforce this chapter  
9 or the terms and conditions for licensing of transient vacation  
10 rentals under this chapter, upon written notification to the  
11 owner or local contact for the transient vacation rental, may  
12 enter upon, cross over, be upon, or remain upon privately owned  
13 land for the purpose of:

14           (1) Investigating and enforcing the compliance of the  
15               transient vacation rental with this chapter; and

16           (2) Investigating and enforcing the compliance of the  
17               vacation rental with the ordinances of the county in  
18               which the transient vacation rental is located.

19           (d) The employee or agent of the department or officer or  
20 agent of the county charged with the administration of county  
21 zoning laws delegated by the department to enforce this chapter



1 shall have the powers and duties deemed necessary for the  
2 efficient and effective enforcement of this chapter. Whenever  
3 the employee or agent of the department or officer or agent of  
4 the county is refused entry upon land or to a building for the  
5 purpose of inspection under this section, the department or  
6 county may file a complaint in the district court of the circuit  
7 in which the land or building is located. The court may issue a  
8 warrant, directed to any police officer of the circuit,  
9 commanding the police officer to render sufficient assistance to  
10 the employee or agent.

11 (e) Whenever an illegal operation is discovered by an  
12 inspection under this section:

13 (1) The court of the circuit in which the land or building  
14 is located may issue a writ of injunction to abate and  
15 prevent the continuance of the illegal operation; and

16 (2) The owner shall be required to pay an amount estimated  
17 to be necessary to cover the actual expenses of the  
18 inspection.

19 (f) The department or the county agency delegated to  
20 enforce this chapter shall establish by rule a fee schedule of  
21 reasonable expenses, which may include expenses for travel time



1 and costs, time for the inspection of transient vacation  
2 rentals, and administrative costs for the enforcement of  
3 compliance with applicable state and county laws and ordinances.

4 (g) The penalties and fees for expenses collected by a  
5 county agency delegated by the department to enforce this  
6 chapter shall be realizations of the county enforcing this  
7 chapter to be deposited into a fund established by the county  
8 agency delegated by the department to enforce this chapter for  
9 the purpose of enforcing this chapter. The revenues from the  
10 penalties and fees collected by the county enforcing this  
11 chapter shall be deemed to satisfy article VIII, section 5, of  
12 the state constitution.

13 § -9 Penalty. Any owner of a transient vacation rental  
14 who fails to comply with this chapter shall be issued a warning  
15 by the director or an agent of the county agency charged with  
16 the enforcement of this chapter and subject to a civil penalty  
17 of \$2,000 for each separate offense; provided that any owner who  
18 fails to comply with this chapter after:

19 (1) An initial warning has been issued shall be issued a  
20 second warning, assessed a civil penalty of \$5,000 for



1 each separate offense, and subject to the suspension  
2 of a license issued under section -3; and

- 3 (2) A second or subsequent warning has been issued shall  
4 be subject to revocation of a license issued under  
5 section -3, assessed a civil penalty of \$10,000 for  
6 each separate offense, and subject to a lien being  
7 placed on the property used as a transient vacation  
8 rental.

9 **§ -10 Online rental service provider; requirements. (a)**

10 Any online rental service provider currently operating or doing  
11 business in this State, or wishing to operate or do business in  
12 this State, shall be required to sign a memorandum of agreement  
13 with the State regarding the requirements of this chapter. The  
14 memorandum of agreement shall include:

- 15 (1) A requirement for the online rental service provider  
16 to provide the director with the name of the owner of  
17 a transient vacation rental, or the name of the  
18 business if the owner is a business, and the address  
19 of the transient vacation rental;

- 20 (2) A mechanism for the director to contact the online  
21 rental service provider to request further information



1 on any advertisement in connection with the  
2 solicitation of business for a transient vacation  
3 rental through the online rental service provider that  
4 is suspected of violating the requirements of this  
5 chapter; and

6 (3) Provisions allowing for the director to share  
7 information the director deems necessary with the  
8 county agency charged with the enforcement of this  
9 chapter in the county in which the transient vacation  
10 rental is located.

11 (b) The director shall notify, in writing, any online  
12 rental service provider currently operating or doing business in  
13 this State, or wishing to operate or do business in this State,  
14 of the licensure requirements contained in this chapter and  
15 shall provide a copy of any rules adopted to fully effectuate  
16 this chapter to the online rental service provider."

17 SECTION 3. Section 237D-1, Hawaii Revised Statutes, is  
18 amended by amending the definition of "transient accommodations"  
19 to read as follows:

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



1 transient for less than one hundred eighty consecutive days for  
2 each letting in a hotel, apartment hotel, motel, condominium or  
3 unit as defined in chapter 514B, cooperative apartment, dwelling  
4 unit, or rooming house that provides living quarters, sleeping,  
5 or housekeeping accommodations, condominium hotel as defined in  
6 section 467-30, transient vacation rental as defined in section  
7 -1, or other place in which lodgings are regularly furnished  
8 to transients."

9 SECTION 4. Section 237D-16, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) The director of taxation shall administer and enforce  
12 this chapter. In respect of:

13 (1) The examinations of books and records and of taxpayers  
14 and other persons,

15 (2) Procedure and powers upon failure or refusal by a  
16 taxpayer to make a return or proper return, and

17 (3) The general administration of this chapter,  
18 the director of taxation shall have all rights and powers  
19 conferred by chapter 237 with respect to taxes thereby or  
20 thereunder imposed; and, without restriction upon these rights  
21 and powers, sections 237-8 and 237-36 to ~~[237-41]~~ 237-41.5 are



1 made applicable to and with respect to the taxes, taxpayers, tax  
2 officers, and other persons, and the matters and things affected  
3 or covered by this chapter, insofar as not inconsistent with  
4 this chapter, in the same manner, as nearly as may be, as in  
5 similar cases covered by chapter 237."

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2020.

9

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to read "John A. Papp", is written over a horizontal line.

JAN 24 2018



# H.B. NO. 2730

**Report Title:**

Department of Commerce and Consumer Affairs; Transient Vacation Rentals

**Description:**

Establishes licensing requirements and enforcement provisions for transient vacation rentals to be administered by the Department of Commerce and Consumer Affairs.

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

