

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

4 "Taxpayer" means any individual, partnership, joint
5 venture, association, corporation, receiver, trustee, guardian,
6 executor, administrator, fiduciary, or any other entity of any
7 kind subject to any tax in title 14, Hawaii Revised Statutes, or
8 any person required to collect any tax under title 14, Hawaii
9 Revised Statutes.

10 SECTION 2. Tax amnesty program; applicable time period.

11 (a) The director shall develop and administer a one-time tax
12 amnesty program as provided in this part. The director, upon
13 the voluntary return and remission of taxes and interest owed by
14 any taxpayer, shall waive all penalties that are assessed or
15 subject to being assessed for outstanding liabilities for
16 taxable periods ending or transactions occurring on or before
17 December 31, 2017. The director shall adopt rules, pursuant to
18 chapter 91, Hawaii Revised Statutes, necessary for the
19 administration of this amnesty program and shall further provide
20 for necessary forms for the filing of amnesty applications and
21 returns.



1 (b) Notwithstanding any other law to the contrary, the tax
2 amnesty program shall begin no later than October 31, 2018, and
3 shall be completed before January 1, 2019, and shall apply to
4 all taxpayers owing taxes, penalties, or interest administered
5 by the director under title 14, Hawaii Revised Statutes, except
6 that the tax amnesty shall not apply to any real property tax or
7 any tax levied pursuant to chapter 249, Hawaii Revised Statutes.

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

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

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

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

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

18 (2) Pays in full the taxes due for the years and tax
19 reporting periods stated on the application, at the
20 time the application is made or amnesty tax returns



1 are filed within the designated amnesty program
2 period.

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

9 (b) An eligible taxpayer may participate in the amnesty
10 program regardless of whether the taxpayer is under audit,
11 notwithstanding the fact that the amount due is included in a
12 proposed assessment or an assessment, bill, notice, or demand
13 for payment issued by the director and without regard to whether
14 the amount due is subject to a pending administrative or
15 judicial proceeding. An eligible taxpayer may participate in
16 the amnesty program to the extent of the uncontested portion of
17 any assessed liability. However, participation in the program
18 shall be conditioned upon the taxpayer's agreement that the
19 right to protest or initiate an administrative or judicial
20 proceeding or to claim any refund of moneys paid under the



1 program is barred with respect to the amounts paid with the
2 application or amnesty return.

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

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

16 (1) For taxes that are owed as a result of the
17 nonreporting or underreporting of tax liabilities or
18 the nonpayment of any accounts receivable owed by an
19 eligible taxpayer, the State shall waive criminal
20 prosecution and all civil penalties that may be
21 assessed under title 14, Hawaii Revised Statutes, for



1 the taxable years or periods for which the tax amnesty
2 is requested; and

3 (2) With the exception of instances in which the taxpayer
4 and director enter into an installment payment
5 agreement authorized under section 4(c) of this Act,
6 the failure to pay all taxes as shown on the
7 taxpayer's amnesty tax return shall invalidate any
8 amnesty granted pursuant to this part.

9 (b) This part shall not apply to any taxpayer who is on
10 notice, written or otherwise, that the taxpayer is the subject
11 of any criminal investigation or criminal prosecution for
12 nonpayment, delinquency, evasion, or fraud in relation to any
13 federal taxes or to any of the taxes to which this amnesty
14 program is applicable.

15 (c) No refund or credit shall be granted for any interest
16 or penalty paid prior to the time the taxpayer requests amnesty
17 pursuant to section 4 of this Act.

18 (d) Unless the director, in the director's discretion,
19 redetermines the amount of taxes and interest due, no refund or
20 credit shall be granted for any taxes or interest paid under the
21 amnesty program.



1 behalf of its direct sellers. The legislature finds that
2 similarly allowing a transient accommodations broker to act as a
3 tax collection agent on behalf of providers of transient
4 accommodations that utilize the services of the transient
5 accommodations broker may facilitate the collection of transient
6 accommodations taxes and general excise taxes.

7 The legislature further finds that, to increase
8 transparency and ensure the veracity of the taxes being
9 collected, transient accommodations brokers acting as tax
10 collection agents must provide pertinent information to the
11 department of taxation regarding the operators and plan managers
12 on whose behalf they collect taxes.

13 The purpose of this part is to allow a transient
14 accommodations broker to register to act as a tax collection
15 agent with respect to transient accommodations taxes and general
16 excise taxes for its operators and plan managers in a manner
17 that recognizes the dynamic changes that are occurring in the
18 transient accommodations business.

19 This part is not intended to preempt or otherwise limit the
20 authority of the counties to adopt, monitor, and enforce local
21 land use regulations, nor is this part intended to transfer the



1 authority to monitor and enforce the regulations away from the
2 counties.

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

6 "§237- Transient accommodations broker as tax
7 collection agent. (a) The director may permit a transient
8 accommodations broker to register as a tax collection agent on
9 behalf of all of its operators and plan managers by entering
10 into a tax collection agreement with the director or by
11 submitting a tax collection agent registration statement to the
12 director. Any tax collection agreement entered into pursuant to
13 this section shall be subject to and in accordance with all
14 applicable provisions of state law and county ordinances and
15 shall not permit a tax collection agent, nor any operator or
16 plan manager conducting business through the tax collection
17 agent, to opt out of any requirements or obligations under state
18 law or county ordinance.

19 The director may deny an application for registration as a
20 tax collection agent under this section for any cause authorized
21 by law, including but not limited to any violation of this



1 chapter or rules adopted pursuant thereto, violation of any
2 prior tax collection agreement, or failure to meet minimum
3 criteria that may be set forth by the department in rules
4 adopted pursuant to chapter 91.

5 The director shall issue a certificate of registration or
6 letter of denial within thirty days after a transient
7 accommodations broker submits to the director a completed and
8 signed tax collection agent registration statement, in a form
9 prescribed by the department.

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

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



1 transient accommodations in the State arranged or booked
2 directly through the registered tax collection agent.

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

17 A registered tax collection agent shall be issued separate
18 licenses under this chapter with respect to taxes payable on
19 behalf of its operators and plan managers in its capacity as a
20 registered tax collection agent and, if applicable, with respect



1 to any taxes payable under this chapter for its own business
2 activities.

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

13 (e) A tax collection agent shall be personally liable for
14 the taxes imposed by this chapter that are due and collected on
15 behalf of operators and plan managers, if taxes are collected,
16 but not reported or paid, together with penalties and interest
17 as provided by law. If the tax collection agent is an entity,
18 the personal liability under this subsection shall apply to any
19 officer, member, manager, or other person who has control or
20 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 237-34.

9 (g) A registered tax collection agent shall file periodic
10 returns in accordance with section 237-30 and annual returns in
11 accordance with section 237-33. Each periodic return required
12 under section 237-30 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 license identification number; and

20 (2) For each transient accommodation, rented through the
21 registered tax collection agent or the website or



1 platform designated in the certificate of registration
2 issued pursuant to chapter 237D, for which taxes are
3 being remitted pursuant to this chapter:

4 (A) The address of the transient accommodation;

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

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

13 Upon request by the planning director or mayor of the
14 applicable county, a registered tax collection agent shall
15 disclose any of the information contained in the returns or
16 cover sheets required by this subsection to the planning
17 director or any county official designated by the mayor to
18 receive the information. Notwithstanding any law to the
19 contrary, including section 237-34, the planning director and
20 county official designated to receive the information pursuant
21 to this subsection may examine and copy the returns and cover



1 sheets to ensure compliance with this section, state tax laws
2 and county tax ordinances, and any applicable land use laws and
3 ordinances.

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

6 A registered tax collection agent may cancel its
7 registration under this section by delivering written notice of
8 cancellation to the director and each of its operators and plan
9 managers furnishing transient accommodations in the State not
10 later than ninety days prior to the effective date of
11 cancellation.

12 The director may cancel a tax collection agent's
13 registration under this section for any cause, including but not
14 limited to any violation of this chapter or rules adopted
15 pursuant thereto, or for violation of any applicable tax
16 collection agreement, by delivering written notice of
17 cancellation to the tax collection agent not later than ninety
18 days prior to the effective date of cancellation.

19 (i) All registered tax collection agents, prior to
20 publishing an advertisement, including an online advertisement,



1 on the availability of a property for lease or rent on behalf of
2 an operator or plan manager:

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

8 (2) Shall require the operator or plan manager to provide
9 the transient accommodations broker with the operator
10 or plan manager's transient accommodations number and
11 local contact information required under section 237D-
12 4, and include this information in the advertisement,
13 in compliance with section 237D-4;

14 (3) Shall require the operator or plan manager to provide
15 the transient accommodations broker with verification
16 of compliance with state and county land use laws in
17 the form of a written certification, verification, or
18 permit, as applicable, issued by the appropriate
19 county agency; and

20 (4) Shall require the operator or plan manager to provide
21 a statement to the transient accommodations broker



1 confirming compliance with all applicable land use
2 laws and ordinances.

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

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

18 (k) For the purposes of this section:

19 "Director" means the director of taxation.

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

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



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

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

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

8 "§237D- Transient accommodations broker as tax
9 collection agent. (a) The director may permit a transient
10 accommodations broker to register as a tax collection agent on
11 behalf of all of its operators and plan managers by entering
12 into a tax collection agreement with the director or by
13 submitting a tax collection agent registration statement to the
14 director. Any tax collection agreement entered into pursuant to
15 this section shall be subject to and in accordance with all
16 applicable provisions of state law and county ordinances and
17 shall not permit a tax collection agent, nor any operator or
18 plan manager conducting business through the tax collection
19 agent, to opt out of any requirements or obligations under state
20 law or county ordinance.



1 The director may deny an application for registration as a
2 tax collection agent under this section for any cause authorized
3 by law, including but not limited to any violation of this
4 chapter or rules adopted pursuant thereto, violation of any
5 prior tax collection agreement, or failure to meet minimum
6 criteria that may be set forth by the department in rules
7 adopted pursuant to chapter 91.

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

16 A registered tax collection agent shall be issued separate
17 certificates of registration under this chapter with respect to
18 taxes payable on behalf of its operators and plan managers in
19 its capacity as a registered tax collection agent and, if
20 applicable, with respect to any taxes payable under this chapter
21 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 are
21 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 not
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 but not
16 limited to any violation of this chapter or rules adopted
17 pursuant thereto, or for violation of any applicable tax
18 collection agreement, by delivering written notice of
19 cancellation to the tax collection agent not later than ninety
20 days prior to the effective date of cancellation.



1 (i) All registered tax collection agents, 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 required under section 237D-
14 4, and include this information in the advertisement,
15 in compliance with section 237D-4;

16 (3) Shall require the operator or plan manager to provide
17 the transient accommodations broker with verification
18 of compliance with state land use laws and county land
19 use ordinances in the form of a written certification,
20 verification, or permit, as applicable, issued by the
21 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 A transient accommodations broker shall remove any
6 advertisement published through the transient accommodations
7 broker, including an online advertisement, for a transient
8 accommodation located in the State for which the operator or
9 plan manager fails to comply with paragraph (2), (3), or (4) or
10 for which the transient accommodations broker has received
11 written notice from a state or local governmental authority that
12 the property is not in compliance with state law or county
13 ordinance, as applicable.

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

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



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

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

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



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

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

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

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

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

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



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



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



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

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



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

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

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

6 (i) Local police matters;

7 (ii) Matters of sanitation;

8 (iii) Matters of inspection of buildings;

9 (iv) Matters of condemnation of unsafe

10 structures, plumbing, sewers, dairies, milk,
11 fish, and morgues; and

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

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

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



1 the department of health, subject only to
2 limitations placed on them by the terms and
3 conditions of their appointments; and

4 (D) Fix a penalty for the violation of any ordinance,
5 which penalty may be a misdemeanor, petty
6 misdemeanor, or violation as defined by general
7 law;

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

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

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



- 1 (B) No property bordering the ocean shall be sold or
2 otherwise disposed of; and
- 3 (C) All proceeds from the sale of park lands shall be
4 expended only for the acquisition of property for
5 park or recreational purposes;
- 6 (17) Each county shall have the power to provide by charter
7 for the prosecution of all offenses and to prosecute
8 for offenses against the laws of the State under the
9 authority of the attorney general of the State;
- 10 (18) Each county shall have the power to make
11 appropriations in amounts deemed appropriate from any
12 moneys in the treasury, for the purpose of:
- 13 (A) Community promotion and public celebrations;
- 14 (B) The entertainment of distinguished persons as may
15 from time to time visit the county;
- 16 (C) The entertainment of other distinguished persons,
17 as well as, public officials when deemed to be in
18 the best interest of the community; and
- 19 (D) The rendering of civic tribute to individuals
20 who, by virtue of their accomplishments and



1 community service, merit civic commendations,
2 recognition, or remembrance;

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

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

14 (B) Regulate and control the location and quality of
15 all appliances necessary to the furnishing of
16 water, heat, light, power, telephone, and
17 telecommunications service to the county;

18 (C) Acquire, regulate, and control any and all
19 appliances for the sprinkling and cleaning of the
20 streets and the public ways, and for flushing the
21 sewers; and



- 1 (D) Open, close, construct, or maintain county
2 highways or charge toll on county highways;
3 provided that all revenues received from a toll
4 charge shall be used for the construction or
5 maintenance of county highways;
- 6 (20) Each county shall have the power to regulate the
7 renting, subletting, and rental conditions of property
8 for places of abode by ordinance;
- 9 (21) Unless otherwise provided by law, each county shall
10 have the power to establish by ordinance the order of
11 succession of county officials in the event of a
12 military or civil disaster;
- 13 (22) Each county shall have the power to sue and be sued in
14 its corporate name;
- 15 (23) Each county shall have the power to establish and
16 maintain waterworks and sewer works; to collect rates
17 for water supplied to consumers and for the use of
18 sewers; to install water meters whenever deemed
19 expedient; provided that owners of premises having
20 vested water rights under existing laws appurtenant to
21 the premises shall not be charged for the installation



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1 or use of the water meters on the premises; to take
 2 over from the State existing waterworks systems,
 3 including water rights, pipelines, and other
 4 appurtenances belonging thereto, and sewer systems,
 5 and to enlarge, develop, and improve the same;

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

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

19 (ii) Judicial review by the circuit court, as
 20 prescribed by ordinance for specific
 21 violations,



1 has been afforded. Any appeal shall be filed
2 within thirty days from the date of the final
3 written decision. These proceedings shall not be
4 stayed pending disposition of any criminal
5 proceeding for a related offense. These
6 proceedings shall not be a prerequisite for any
7 civil fine or injunctive relief ordered by the
8 circuit court[+]. Where a county seeks
9 injunctive relief for violations related to
10 single-family transient vacation rental units as
11 provided by ordinance, the county need not show
12 irreparable injury;

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



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



1 rights to real property belonging to any person
2 liable for the unpaid civil fines. The lien in
3 favor of the county shall be subordinate to any
4 lien in favor of any person recorded or
5 registered prior to the recordation of the notice
6 of unpaid civil fines and senior to any lien
7 recorded or registered after the recordation of
8 the notice. The lien shall continue until the
9 unpaid civil fines are paid in full or until a
10 certificate of release or partial release of the
11 lien, prepared by the county at the owner's
12 expense, is recorded. The notice of unpaid civil
13 fines shall state the amount of the fine as of
14 the date of the notice and maximum permissible
15 daily increase of the fine. The county shall not
16 be required to include a social security number,
17 state general excise taxpayer identification
18 number, or federal employer identification number
19 on the notice. Recordation of the notice in the
20 bureau of conveyances shall be deemed, at such
21 time, for all purposes and without any further



1 action, to procure a lien on land registered in
2 land court under chapter 501. After the unpaid
3 civil fines are added to the taxes, fees, or
4 charges as specified by county ordinance, the
5 unpaid civil fines shall be deemed immediately
6 due, owing, and delinquent and may be collected
7 in any lawful manner. The procedure for
8 collection of unpaid civil fines authorized in
9 this paragraph shall be in addition to any other
10 procedures for collection available to the State
11 and county by law or rules of the courts;

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



1 for any civil fines imposed hereunder. Any such
2 fine may be administratively imposed after an
3 opportunity for a hearing under chapter 91, but
4 such a proceeding shall not be a prerequisite for
5 any civil fine ordered by any court. As used in
6 this subparagraph, "graffiti" means any
7 unauthorized drawing, inscription, figure, or
8 mark of any type intentionally created by paint,
9 ink, chalk, dye, or similar substances;

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

20 (i) The nature and egregiousness of the
21 violation;



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

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

16 (E) After completion of a review of the amount of
17 accrued civil fine by the county agency that
18 imposed the fine, the amount of the civil fine
19 determined appropriate, including both the
20 initial civil fine and any accrued daily civil
21 fine, shall immediately become due and



1 collectible following reasonable notice to the
2 violator. If no review of the accrued civil fine
3 is requested, the amount of the civil fine, not
4 to exceed the total accrual of civil fine prior
5 to correcting the violation, shall immediately
6 become due and collectible following reasonable
7 notice to the violator, at the completion of all
8 appeal proceedings;

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

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



1 ordinances to regulate and grant the exemptions
2 granted by this paragraph;

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

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

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

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

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



1 districts, full consideration shall be given to all available
2 data as to soil classification and physical use capabilities of
3 the land to allow and encourage the most beneficial use of the
4 land consonant with good zoning practices. The zoning power
5 granted herein shall be exercised by ordinance which may relate
6 to:

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



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

11 The council of any county shall prescribe rules,
12 regulations, and administrative procedures and provide personnel
13 it finds necessary to enforce this section and any ordinance
14 enacted in accordance with this section. The ordinances may be
15 enforced by appropriate fines [~~and~~], penalties, and remedies for
16 disgorgement of all profits and restitution of any money, real
17 property, or personal property that was obtained through unfair
18 or unlawful business acts and practices, civil or criminal, or
19 by court order at the suit of the county or the owner or owners
20 of real estate directly affected by the ordinances. In any
21 action brought under this part, the court or zoning agency, in



1 addition to any fine imposed upon the ordinance violator, shall
2 allow costs of action, including costs and fees of any nature
3 and reasonable attorney's fees, to be paid by the ordinance
4 violator.

5 A transient accommodations broker who fails to remove an
6 advertisement within seven days of receiving a notice of
7 noncompliance under section 237- (i) or 237D- (i) shall be
8 considered to be in violation of this section and applicable
9 county land use ordinances and shall be subject to civil fines,
10 ranging from \$25,000 to \$100,000, to be levied by the county
11 planning director of the county where the subject property is
12 located.

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

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



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

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



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

9 SECTION 12. Section 237-34, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) All tax returns and return information required to be
12 filed under this chapter, and the report of any investigation of
13 the return or of the subject matter of the return, shall be
14 confidential. It shall be unlawful for any person or any
15 officer or employee of the State, including the auditor or the
16 auditor's agent with regard to tax return information obtained
17 pursuant to section 23-5(a), to intentionally make known
18 information imparted by any tax return or return information
19 filed pursuant to this chapter, or any report of any
20 investigation of the return or of the subject matter of the
21 return, or to wilfully permit any return, return information, or



1 report so made, or any copy thereof, to be seen or examined by
2 any person; provided that for tax purposes only, the taxpayer,
3 the taxpayer's authorized agent, or persons with a material
4 interest in the return, return information, or report may
5 examine them. Unless otherwise provided by law, persons with a
6 material interest in the return, return information, or report
7 shall include:

- 8 (1) Trustees;
- 9 (2) Partners;
- 10 (3) Persons named in a board resolution or a one per cent
11 shareholder in the case of a corporate return;
- 12 (4) The person authorized to act for a corporation in
13 dissolution;
- 14 (5) The shareholder of an S corporation;
- 15 (6) The personal representative, trustee, heir, or
16 beneficiary of an estate or trust in the case of the
17 estate's or decedent's return;
- 18 (7) The committee, trustee, or guardian of any person in
19 paragraphs (1) through (6) who is incompetent;



- 1 (8) The trustee in bankruptcy or receiver, and the
- 2 attorney-in-fact of any person in paragraphs (1)
- 3 through (7);
- 4 (9) Persons duly authorized by the State or any county of
- 5 the State in connection with their official duties;
- 6 (10) Any duly accredited tax official of the United States
- 7 or of any state or territory[~~r~~], or of any county of
- 8 this State;
- 9 (11) The Multistate Tax Commission or its authorized
- 10 representative;
- 11 (12) Members of a limited liability company; and
- 12 (13) A person contractually obligated to pay the taxes
- 13 assessed against another when the latter person is
- 14 under audit by the department.

15 Any violation of this subsection shall be a class C
16 felony."

17 SECTION 13. Section 237D-13, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) All tax returns and return information required to be
20 filed under this chapter, and the report of any investigation of
21 the return or of the subject matter of the return, shall be



1 confidential. It shall be unlawful for any person or any
2 officer or employee of the State, including the auditor or the
3 auditor's agent with regard to tax return information obtained
4 pursuant to section 23-5(a), to intentionally make known
5 information imparted by any tax return or return information
6 filed pursuant to this chapter, or any report of any
7 investigation of the return or of the subject matter of the
8 return, or to wilfully permit any return, return information, or
9 report so made, or any copy thereof, to be seen or examined by
10 any person; provided that for tax purposes only the taxpayer,
11 the taxpayer's authorized agent, or persons with a material
12 interest in the return, return information, or report may
13 examine them. Unless otherwise provided by law, persons with a
14 material interest in the return, return information, or report
15 shall include:

- 16 (1) Trustees;
- 17 (2) Partners;
- 18 (3) Persons named in a board resolution or a one per cent
19 shareholder in the case of a corporate return;
- 20 (4) The person authorized to act for a corporation in
21 dissolution;



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- 1 (5) The shareholder of an S corporation;
- 2 (6) The personal representative, trustee, heir, or
3 beneficiary of an estate or trust in the case of the
4 estate's or decedent's return;
- 5 (7) The committee, trustee, or guardian of any person in
6 paragraphs (1) through (6) who is incompetent;
- 7 (8) The trustee in bankruptcy or receiver, and the
8 attorney-in-fact of any person in paragraphs (1)
9 through (7);
- 10 (9) Persons duly authorized by the State or any county of
11 the State in connection with their official duties;
- 12 (10) Any duly accredited tax official of the United States,
13 or of any state or territory, or of any county of this
14 State;
- 15 (11) The Multistate Tax Commission or its authorized
16 representative; and
- 17 (12) Members of a limited liability company.

18 Any violation of this subsection shall be a class C felony.

19 Nothing in this subsection shall prohibit the publication of
20 statistics that are classified to prevent the identification of



1 particular reports or returns and the items of the reports or
2 returns."

3 SECTION 14. By January 1, 2019, the director of taxation
4 shall make available to transient accommodations brokers a form
5 of application for registration as a tax collection agent under
6 the new section of chapter 237, Hawaii Revised Statutes, added
7 by section 9 of this Act, and under the new section of chapter
8 237D, Hawaii Revised Statutes, added by section 10 of this Act.

9 SECTION 15. Upon the establishment by a county of a
10 process for providing verification of compliance by an operator
11 or plan manager with that county's land use ordinances, the
12 director of taxation shall transfer to that county per
13 cent of the transient accommodations tax and general excise tax
14 revenues collected pursuant to this part in that county for that
15 fiscal year.

16 PART III

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



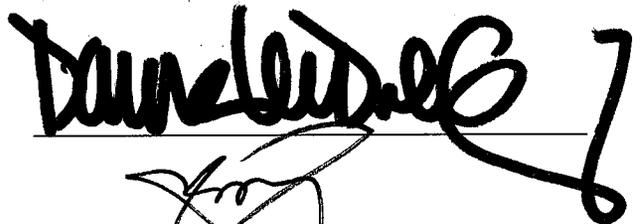
1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

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

5 SECTION 18. This Act shall take effect on July 1, 2018.

6

INTRODUCED BY:



Randy H Baker



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Report Title:

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

Description:

Establishes a 1-time amnesty program for certain delinquent tax obligations. Allows transient accommodations brokers to register as a tax collection agent on behalf of all of its operators and plan managers. Requires registered tax collection agent's operators and plan managers to obtain a GET license and TAT registration. Requires registered tax collection agents to file periodic and annual GET and TAT returns. Requires that each periodic return be accompanied by an electronic cover sheet containing required information. Requires all registered tax collection agents to inquire with their operators and plan managers whether the transient accommodation is in compliance with all pertinent state and county land use and tax laws. Requires the operator or plan manager to provide verification of and a statement confirming compliance with state and county land use laws in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency. Requires a transient accommodations broker to remove an advertisement for a transient accommodation 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. Authorizes disclosure of GET and TAT returns to authorized county officials. Allocates an unspecified percentage of GET and TAT tax revenues to the counties, contingent upon establishment of a process to provide verification of compliance by an operator or plan manager with county land use laws.

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

