

JAN 20 2017

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

1 SECTION 1. Section 237D-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§237D-4 Certificate of registration[-]; public database.**

4 (a) Each operator or plan manager as a condition precedent to
5 engaging or continuing in the business of furnishing transient
6 accommodations or in business as a resort time share vacation
7 plan shall register with the director the name and address of
8 each place of business within the State subject to this chapter.
9 The operator or plan manager shall make a one-time payment as
10 follows:

- 11 (1) \$5 for each registration for transient accommodations
12 consisting of one to five units;
- 13 (2) \$15 for each registration for transient accommodations
14 consisting of six or more units; and
- 15 (3) \$15 for each resort time share vacation plan within
16 the State;



1 upon receipt of which the director shall issue a certificate of
2 registration in such form as the director determines, attesting
3 that the registration has been made. The registration shall not
4 be transferable and shall be valid only for the operator or plan
5 manager in whose name it is issued and for the transaction of
6 business at the place designated therein. Acquisition of
7 additional transient accommodation units after payment of the
8 one-time fee shall not result in additional fees.

9 (b) The registration, or in lieu thereof a notice stating
10 where the registration may be inspected and examined, shall at
11 all times be conspicuously displayed at the place for which it
12 is issued. The name, phone number, and electronic mail address
13 of the local contact shall at all times be conspicuously
14 displayed in the same place as the registration or the same
15 place as the notice stating where the registration may be
16 inspected and examined. Failure to meet the requirements of
17 this subsection shall be unlawful. The department may issue
18 citations to any person who fails to conspicuously display the
19 registration or notice, or the local contact's name, phone
20 number, or electronic mail address as required by this
21 subsection. A citation issued pursuant to this subsection for



1 each transient accommodation or resort time share vacation
2 interest, plan, or unit in violation of this subsection shall
3 include a monetary fine of not less than:

4 (1) \$500 per day, for a first violation for which a
5 citation is issued;

6 (2) \$1,000 per day, for a second violation for which a
7 citation is issued; and

8 (3) \$5,000 per day, for a third and any subsequent
9 violation for which a citation is issued.

10 (c) Any advertisement, including an online advertisement,
11 for any transient accommodation or resort time share vacation
12 interest, plan, or unit shall conspicuously provide:

13 (1) The registration identification number or an
14 electronic link to the registration identification
15 number of the operator or plan manager issued pursuant
16 to this section; and

17 (2) The local contact's name, phone number, and electronic
18 mail address, provided that this paragraph shall be
19 considered satisfied if this information is provided
20 to the transient or occupant prior to the furnishing



1 of the transient accommodation or resort time share
2 vacation unit.

3 (d) Failure to meet the requirements of subsection (c)
4 shall be unlawful. The department may issue citations to any
5 person, including operators, plan managers, and transient
6 accommodations brokers, who violates subsection (c). A citation
7 issued pursuant to this subsection for each transient
8 accommodation or resort time share vacation interest, plan, or
9 unit in violation of subsection (c) shall include a monetary
10 fine of not less than:

- 11 (1) \$500 per day, for a first violation for which a
12 citation is issued;
- 13 (2) \$1,000 per day, for a second violation for which a
14 citation is issued; and
- 15 (3) \$5,000 per day, for a third and any subsequent
16 violation for which a citation is issued.

17 (e) The registration provided for by this section shall be
18 effective until canceled in writing. Any application for the
19 reissuance of a previously canceled registration identification
20 number shall be regarded as a new registration application and
21 shall be subject to the payment of the one-time registration



1 fee. The director may revoke or cancel any license issued under
2 this chapter for cause as provided by rule under chapter 91.

3 (f) If the license fee is paid, the department shall not
4 refuse to issue a registration or revoke or cancel a
5 registration for the exercise of a privilege protected by the
6 First Amendment of the Constitution of the United States, or for
7 the carrying on of interstate or foreign commerce, or for any
8 privilege the exercise of which, under the Constitution and laws
9 of the United States, cannot be restrained on account of
10 nonpayment of taxes, nor shall section 237D-14 be invoked to
11 restrain the exercise of such a privilege, or the carrying on of
12 such commerce.

13 (g) The department shall create and manage a public,
14 online database of all operators and plan managers that receive
15 a certificate of registration pursuant to subsection (a). The
16 database shall enable a user to:

17 (1) Search the database by property address to determine
18 whether that property is managed by an operator or
19 plan manager who has received a certificate of
20 registration;



- 1 (2) Enter the name of an operator or plan manager to
2 determine whether the operator or plan manager has
3 received a certificate of registration;
- 4 (3) Enter the name of an operator to determine the address
5 of every transient accommodation managed by that
6 operator; and
- 7 (4) Enter the name of a plan manager to determine the
8 address of every resort time share vacation unit
9 subject to a resort time share vacation plan managed
10 by the plan manager.

11 [~~g~~] (h) Any person who may lawfully be required by the
12 State, and who is required by this chapter, to register as a
13 condition precedent to engaging or continuing in the business of
14 furnishing transient accommodations or as a plan manager subject
15 to taxation under this chapter, who engages or continues in the
16 business without registering in conformity with this chapter,
17 shall be guilty of a [~~misdemeanor~~] class C felony, subject to
18 penalties under section 231-34. Any director, president,
19 secretary, or treasurer of a corporation who permits, aids, or
20 abets such corporation to engage or continue in business without
21 registering in conformity with this chapter, shall likewise be



1 guilty of a [~~misdemeanor~~] class C felony. The penalty for the
2 [~~misdemeanors~~] class C felonies shall be the same as that
3 prescribed by section 231-35 for individuals, corporations, or
4 officers of corporations, as the case may be, for violation of
5 that section.

6 [~~(h)~~] (i) Any monetary fine assessed under this section
7 shall be due and payable thirty days after issuance of the
8 citation, subject to appeal rights provided under this
9 subsection. Citations may be appealed to the director of
10 taxation or the director's designee."

11 SECTION 2. Section 237D-6, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) On or before the twentieth day of each calendar
14 month, every operator taxable, or plan manager liable under this
15 chapter during the preceding calendar month shall file a sworn
16 return with the director in such form as the director shall
17 prescribe together with a remittance for the amount of the tax
18 in the form required by section 237D-6.5~~[-]~~; provided that such
19 form shall require the filer to indicate the amount of transient
20 accommodations tax revenues collected, aggregated by zip codes
21 of transient accommodations from which the revenues were



1 derived. Sections 237-30 and 237-32 shall apply to returns and
2 penalties made under this chapter to the same extent as if the
3 sections were set forth specifically in this section."

4 SECTION 3. Section 237D-7, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§237D-7 **Annual return.** On or before the twentieth day of
7 the fourth month following the close of the taxable year, every
8 person who has become liable for the payment of the taxes under
9 this chapter during the preceding tax year shall file a return
10 summarizing that person's liability under this chapter for the
11 year, in such form as the director prescribes[-]; provided that
12 such form shall require each filer to include the number of the
13 filer's certificate of registration issued pursuant to section
14 237D-4. The operator or plan manager shall transmit with the
15 return a remittance covering the residue of the tax chargeable
16 to the operator or plan manager, if any, to the office of the
17 appropriate state district tax assessor designated in section
18 237D-8. The return shall be signed by the taxpayer, if made by
19 an individual, or by the president, vice-president, secretary,
20 or treasurer of a corporation, if made on behalf of a
21 corporation. If made on behalf of a partnership, firm, society,



1 unincorporated association, group, hui, joint adventure, joint
 2 stock company, corporation, trust estate, decedent's estate,
 3 trust, or other entity, any individual delegated by the entity
 4 shall sign the same on behalf of the taxpayer. If for any
 5 reason it is not practicable for the individual taxpayer to sign
 6 the return, it may be done by any duly authorized agent. The
 7 department, for good cause shown, may extend the time for making
 8 the return on the application of any taxpayer and grant such
 9 reasonable additional time within which to make the return as
 10 the department may deem advisable.

11 Section 232-2 applies to the annual return, but not to a
 12 monthly return."

13 SECTION 4. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2017;
 16 provided that sections 2 and 3 of this Act shall apply to
 17 taxable years beginning after December 31, 2016.

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Report Title:

Transient Accommodations; Registration; Public Database;
Department of Taxation

Description:

Requires the department of taxation to manage a public database of all registered transient accommodation and resort time share vacation plan businesses. Makes failure to register as a business of furnishing transient accommodations a class C felony rather than a misdemeanor. Requires filers of transient accommodations tax to include the amount of transient accommodations tax revenues collected by zip code on tax return form. Requires filers of transient accommodations tax to include certificate of registration number on annual tax return. Applies to taxable years beginning after 12/31/16.

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