

**ACT 35**

H.B. NO. 1173

A Bill for an Act Relating to Lodging or Tenement Houses, Hotels, and Boardinghouses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to eliminate the requirement of a county business license to operate lodging or tenement houses, hotels, and boardinghouses, and repeal the \$10 annual license fee.

SECTION 2. Section 46-15.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The respective counties may conduct inspections to enforce sections ~~[445-92]~~ 445-94 to 445-96. Each county may conduct its inspections without a warrant if the conditions enumerated in subsection (c) exist. A county shall conduct

its inspection with a warrant in accordance with this section if the circumstances enumerated in subsection (c) do not exist or if specific buildings or premises to be inspected can be identified through citizen complaint or by information obtained from state agencies under section 46-15.5. The issuance and execution of an administrative inspection warrant shall be as follows:

- (1) A judge of the circuit court, or any district judge within the judge's jurisdiction, may issue warrants for the purpose of conducting administrative inspections. The warrants shall be issued upon proper oath or affirmation showing probable cause that:
  - (A) The conditions of [~~a license~~] operation under section 445-95 have been violated; or
  - (B) A person is operating a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, [~~or restaurant~~] without [a license;] the certificates required under section 445-94;
- (2) A warrant shall [issue] be issued only upon an affidavit of an individual having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that there is probable cause to believe the grounds for issuing a warrant exist, the judge shall issue a warrant identifying the area, premises, building, or records to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
  - (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
  - (B) Be directed to a person authorized by the county to execute it;
  - (C) Command the person to whom it is directed to inspect the area, premises, building, or records identified for the purpose specified and, if appropriate, use reasonable force in conducting the inspection authorized by the warrant and direct the seizure of the property specified;
  - (D) Identify the item or types of property to be seized, if any; and
  - (E) Direct that it be served during the daylight business hours between 8:00 a.m. and 5:00 p.m. and designate the judge to whom it shall be returned;
- (3) A warrant issued pursuant to this section shall be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and
- (4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the issuing court."

SECTION 3. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

“§237-24.7 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means employees directly engaged in the day-to-day operation of the hotel and employed by the operator.

“Hotel” means an operation [~~licensed under~~] as defined in section [445-92.] 445-90.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

“Owner” means the fee owner or lessee under a recorded lease of a hotel;

- (2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

“County transportation system” means a mass transit system of motorized buses providing regularly scheduled transportation within a county.

“Operating contract” or “contract” means a contract to operate and manage a political subdivision’s county transportation system, which provides that:

- (A) The political subdivision shall exercise substantial control over all aspects of the operator’s operation;
- (B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and
- (C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

“Operator” means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

“Owner” means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.), and that owns all revenues derived therefrom;

- (3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;
- (4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means an employee directly engaged in the day-to-day operations of the orchard properties and employed by the operator.

“Operator” means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property for the owner where the property contains an area sufficient to make the undertaking economically feasible.

“Orchard property” means any real property that is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial planting to the first commercially saleable harvest of not less than three years.

“Owner” means a fee owner or lessee under a recorded lease of orchard property;

- (5) Taxes on nursing facility income imposed by chapter 346E and passed on and collected by operators of nursing facilities;
- (6) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2;
- (7) Amounts received as compensation by community organizations, school booster clubs, and nonprofit organizations under a contract with the chief election officer for the provision and compensation of precinct officials and other election-related personnel, services, and activities, pursuant to section 11-5;
- (8) Interest received by a person domiciled outside the State from a trust company (as defined in section 412:8-101) acting as payment agent or trustee on behalf of the issuer or payees of an interest bearing instrument or obligation, if the interest would not have been subject to tax under this chapter if paid directly to the person domiciled outside the State without the use of a paying agent or trustee; provided that if the interest would otherwise be taxable under this chapter if paid directly to the person domiciled outside the State, it shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee;
- (9) Amounts received by a management company from related entities engaged in the business of selling interstate or foreign common carrier telecommunications services in amounts equal to and which are disbursed by the management company for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means employees directly engaged in the day-to-day operation of related entities engaged in the business of selling interstate or foreign common carrier telecommunications services and employed by the management company.

“Management company” means any person who, pursuant to a written contract with a related entity engaged in the business of selling interstate or foreign common carrier telecommunications services, provides managerial or operational services to that entity.

“Related entities” means:

- (A) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

- (B) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended;
- (C) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and
- (D) Any group or combination of the entities described in paragraph (C) constituting a unitary business for income tax purposes;

whether or not the entity is located within or without the State or licensed under this chapter; and

- (10) Amounts received as grants under section 206M-15.’’

SECTION 4. Section 445-94, Hawaii Revised Statutes, is amended to read as follows:

“**§445-94 Certificates.** (a) No ~~[license shall be issued for a]~~ person shall operate a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, until the [applicant] person secures from the department of health [and presents to the treasurer] a certificate setting forth that an agent of the department has examined the building or buildings, with a description sufficient to identify and locate the same, and that the same are in good sanitary condition.

(b) No ~~[initial license shall be issued for a]~~ person shall operate a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, until the [applicant] person secures a clearance from the appropriate county agency responsible for ensuring compliance with county building and zoning codes [and presents to the treasurer a certificate] setting forth that an agent of the agency has examined the building or buildings, proposed to be used for such purposes, with a description sufficient to identify and locate the same; and that the same are in compliance with the building and zoning codes.’’

SECTION 5. Section 445-95, Hawaii Revised Statutes, is amended to read as follows:

“**§445-95 Conditions ~~[of license.] for conditional operation.~~** ~~[A] The owner or operator of a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse[; license shall be issued upon the following express conditions, which shall be incorporated in the license:] shall:~~

- (1) ~~[The licensee shall not]~~ Not permit noisy or disorderly conduct in the building or buildings;
- (2) ~~[No]~~ Not allow any person engaging in acts of prostitution ~~[shall be allowed]~~ to reside therein or resort thereto;
- (3) ~~[No]~~ Not allow intoxicating liquor or other intoxicating substance ~~[shall]~~ to be furnished or sold therein, except as authorized by law;
- (4) ~~[The]~~ Keep the building or buildings and premises ~~[licensed shall be kept]~~ in good sanitary condition, in accordance with law and with the orders of the agent of the department of health;
- (5) ~~[The]~~ At all times allow the police[; agents of the licensing department;] and agents of the state department of health and agents of the appropriate county agencies responsible for compliance with the county’s building and zoning codes ~~[shall at all times have]~~ access for

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purposes of inspection to enforce or administer this chapter and other applicable laws or rules;

- (6) ~~[No]~~ Not allow any gaming ~~[shall be allowed];~~
- (7) ~~[The licensee, if]~~ If a lodging or tenement house, group home, group residence, group living arrangement, or boardinghouse ~~[shall]~~, keep records identifying its tenants, lodgers, or boarders; and
- (8) ~~[No facility shall]~~ Not deliver or purport to deliver health care services or treatment unless it is licensed, certified, or contracted for by the State or other governmental agencies to do so.”

SECTION 6. Section 445-96, Hawaii Revised Statutes, is amended to read as follows:

~~“§445-96 Penalty. (a) [Any person who keeps a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, without a license shall be fined in accordance with section 445-12.~~

~~(b)] Any person [holding a license under this chapter] who violates or fails to observe any of the requirements or conditions of this chapter [or of the license,] shall be fined not less than \$100 nor more than \$1,000 per day of violation for each violation [and the court may cancel the license].~~

~~[(e)] (b) Any person who intentionally or knowingly obstructs or interferes with the progress of any authorized inspection pursuant to this chapter shall be guilty of a misdemeanor.”~~

SECTION 7. Section 445-92, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

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

(Approved April 26, 2001.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.