

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that section 521-43(f), Hawaii Revised Statutes, as part of the landlord-tenant code, requires an owner or landlord who

lives out of state or on a different island than the island on which the rental unit is located to designate an agent who resides on the same island to act on the owner's or landlord's behalf. Section 521-7, Hawaii Revised Statutes, also clearly states that the only exemption from the landlord-tenant code for transient rentals is transient occupancy on a day-to-day basis in a hotel or motel.

The legislature also finds that the landlord-tenant code focuses on consumer protection. Requiring operators who live on a different island from their transient accommodation property or out of state to designate a local contact is an important aspect of consumer protection. A contact person located on the same island as the transient accommodation is essential in the case of an emergency or natural disaster. A local contact is also vital if any questions, concerns, or property issues arise regarding the transient accommodation. All operators of transient accommodations who live out of state or on a different island must identify a local contact.

SECTION 2. Section 235-20.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a tax administration special fund, into which shall be deposited:

- (1) Fees collected under sections 235-20, 235-110.9, and 235-110.91;
- [(2)] Revenues collected by the special enforcement section pursuant to section 231-85; provided that in each fiscal year, of the total revenues collected by the special enforcement section, all revenues in excess of [~~\$500,000~~] \$700,000 shall be deposited into the general fund[-]; and
- (3) Fines assessed pursuant to section 237D-4.”

SECTION 3. Section 237D-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Local contact” means an individual residing on the same island as the transient accommodation or resort time share vacation unit or an entity with a place of business and at least one employee, officer, partner, member, or other person working on behalf of the company who is residing on the same island as the transient accommodation or resort time share vacation unit.

“Transient accommodations broker” means any person or entity, including but not limited to persons who operate online websites, online travel agencies, or online booking agencies, that offers, lists, advertises, or accepts reservations or collects whole or partial payment for transient accommodations or resort time share vacation interests, units, or plans.”

2. By amending the definition of “transient accommodations” to read:

““Transient accommodations” means the furnishing of a room, apartment, suite, single family dwelling, or the like [which is customarily occupied by] to a transient for less than one hundred eighty consecutive days for each letting [by] in a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter 514A or unit as defined in chapter 514B, cooperative apartment, dwelling unit, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients [for consideration].”

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

“§237D-4 Certificate of registration. (a) Each operator or plan manager as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or in business as a resort time share vacation plan shall register with the director the name and address of each place of business within the State subject to this chapter. The operator or plan manager shall make a one-time payment as follows:

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

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

(b) The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued. ~~[Acquisition of additional transient accommodation units after payment of the one-time fee shall not result in additional fees.]~~ The name, phone number, and electronic mail address of the local contact shall at all times be conspicuously displayed in the same place as the registration or the same place as the notice stating where the registration may be inspected and examined. Failure to meet the requirements of this subsection shall be unlawful. The department may issue citations to any person who fails to conspicuously display the registration or notice, or the local contact's name, phone number, or electronic mail address as required by this subsection. A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation interest, plan, or unit in violation of this subsection shall include a monetary fine of not less than:

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

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

- (1) The registration identification number or an electronic link to the registration identification number of the operator or plan manager issued pursuant to this section; and
- (2) The local contact's name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit.

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

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

- (2) \$1,000 per day, for a second violation for which a citation is issued:
and
(3) \$5,000 per day, for a third and any subsequent violation for which a citation is issued.

(e) The registration provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee. The director may revoke or cancel any license issued under this chapter for cause as provided by rule under chapter 91.

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

~~(e)~~ (g) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or as a plan manager subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be the same as that prescribed by section ~~[231-34]~~ 231-35 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.

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

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

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

SECTION 7. This Act shall take effect on January 1, 2016.

(Approved July 2, 2015.)