

STAND. COM. REP. NO.

2687

Honolulu, Hawaii

MAR 02 2012

RE: S.B. No. 2089  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 2089 entitled:

"A BILL FOR AN ACT RELATING TO TRANSIENT ACCOMMODATIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to require any nonresident owner who operates a transient accommodation located in the nonresident owner's private residence, including an apartment, unit, or townhouse, to employ a property manager approved by the Real Estate Commission.

Your Committee received testimony in support of this measure from the City and County of Honolulu Department of Planning and Permitting; Maui Hotel & Lodging Association; Condominium Rentals Hawaii; Poipu Beach Resort Association; West Hawaii Property Services, Inc.; Waikoloa Vacation Rental Management; and four individuals. Your Committee received testimony in opposition to this measure from the Hawaii Vacation Rental Owners Association; The Travel Group; Trading Places International; Hanalei Bay Resort; Makana Mai Ka Lani; Hot Spot Tax Services; Sunshine & Rainbows, LLC; Humiston and Company, CPAs; and numerous individuals. Your Committee received comments on this measure from the Department of Taxation, Department of the Attorney General, Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs, Hawaii Real Estate Commission, and Starwood Vacation Ownership.



Your Committee finds that although many owners of transient accommodations operate in compliance with applicable state and county laws, there are a sizeable number of owners who do not. Failure to comply denies the State and counties of transient accommodations taxes and general excise taxes they are due. Enforcement efforts may also be hampered when the owner of a transient accommodation lives on a different island from the property or out of state.

Your Committee further finds that requiring nonresident owners to employ professionals such as real estate brokers or salespersons or condominium hotel operators is an important consumer protection measure. Consumers who use real estate companies, real estate brokers, real estate salespersons, or condominium hotel operators for their transient accommodation rental needs can do so with the knowledge that all money generated will flow through a client trust account, the appropriate federal tax Form 990s will be generated, and accurate transient accommodations taxes and general excise taxes will be paid. Real estate companies, real estate brokers, real estate salespersons, and condominium hotel operators must comply with specific licensing and bonding requirements, thus offering additional protections for consumers.

Your Committee notes that efforts to strengthen enforcement of tax laws and enhance consumer protection in the State's transient vacation rental market are taking place on both a state and county level. In February 2012, the Maui County Council Planning Committee advanced a measure to regulate short-term rentals. The Maui County measure requires a property manager to live within thirty minutes of a rental's location and be able to respond to a complaint within an hour. Your Committee concludes that this measure should be amended to reflect a similar requirement. Requiring owners who live on a different island from their transient accommodation property or out of state to provide a local contact is another important aspect of consumer protection. A local contact close to the rental property is essential in the case of an emergency or natural disaster.

Your Committee recognizes that there are numerous owners of transient accommodations in the State who are in full compliance with state and county laws. The intent of this measure is not to punish those individuals who pay applicable taxes and comply with all necessary consumer protections. Therefore, your Committee concludes that an exemption from the provisions of this measure



should be added for those property owners who obtain an annual tax clearance from the Department of Taxation and submit all necessary forms to the Real Estate Commission.

Your Committee has amended this measure by:

- (1) Clarifying that a nonresident owner who operates a transient accommodation located in the nonresident owner's private residence, including a condominium, apartment, or townhouse, shall employ a licensed real estate broker or salesperson;
- (2) Clarifying that a nonresident owner who operates a transient accommodation located in the nonresident owner's private residence in a condominium hotel shall employ a condominium hotel operator;
- (3) Prohibiting the operation of a transient accommodation located in a nonresident owner's private residence without employing a licensed real estate broker or salesperson or condominium hotel operator, and establishing fines for noncompliance;
- (4) Requiring certain nongovernmental entities to provide the Department of Taxation with relevant information related to all owners who may be leasing their property as transient accommodations by December 31 of each year, and establishing fines for noncompliance;
- (5) Requiring each county to provide the Department of Taxation with relevant owner information for every transient accommodation permitted by the respective county by December 31 of each year, and permitting the Department to provide the counties with information necessary for the enforcement of county real property tax laws;
- (6) Requiring advertisements for every transient accommodation located in the State to include the name and phone number of a local point of contact for each transient accommodation, and establishing fines for noncompliance;
- (7) Permitting nonresident owners who obtain an annual tax clearance from the Department of Taxation and submit the

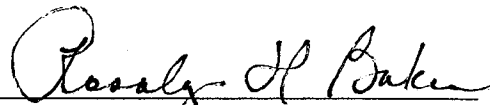


tax clearance along with the federal tax Form 990 to the Real Estate Commission to be exempt from the mandatory employment of a licensed real estate broker or salesperson or condominium hotel operator proposed by this measure;

- (8) Specifying that any fines for violations of the provisions of this measure shall be in addition to the payment of back taxes;
- (9) Deleting the definition of "property manager";
- (10) Inserting a definition of "nonresident owner";
- (11) Inserting a purpose section to reflect the amended purpose of this measure;
- (12) Changing the effective date of this measure to July 1, 2012; and
- (13) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2089, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2089, S.D. 1.

Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,



ROSALYN H. BAKER, Chair



