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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that a recent business  
2 pulse survey in the January 9, 2015, edition of the Pacific  
3 Business News found that 71.5 per cent of respondents said "yes"  
4 when asked, "Should home-based vacation rentals be subject to  
5 the same transient accommodations tax (TAT) levied on hotel  
6 rooms and time-shares?" 25.7 per cent of respondents said "no"  
7 and 2.8 per cent were undecided. Although many home-based  
8 vacation rentals are subject to the same transient  
9 accommodations tax levied on hotel rooms and time shares, many  
10 operators of transient accommodations and plan managers of  
11 resort time share vacation plans have been circumventing the  
12 law, creating an unfair advantage over their law-abiding  
13 counterparts. In line with public sentiment on this issue, the  
14 legislature finds that action is necessary to correct this  
15 situation.



- 1 The purpose of this Act is to:
- 2 (1) Extend for one additional year, the changes adopted by
- 3 Act 326, Session Laws of Hawaii 2012, which, among
- 4 other things, established local contact and
- 5 informational requirements for transient
- 6 accommodations;
- 7 (2) Require the department of taxation to submit an annual
- 8 report to the legislature on the implementation of Act
- 9 326, Session Laws of Hawaii 2012;
- 10 (3) Authorize the department of taxation to enforce civil
- 11 penalties for operators and plan managers who fail to
- 12 display certificates of registration and registration
- 13 identification numbers as required by section 437D-4,
- 14 Hawaii Revised Statutes;
- 15 (4) Authorize the deposit of monetary fines into the tax
- 16 administration special fund; and
- 17 (5) Amend the definition of "local contact" for the
- 18 purposes of transient accommodations tax.

19 SECTION 2. Section 237D-1, Hawaii Revised Statutes, is

20 amended as follows:



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

3 "Transient" means any occupant of a room, apartment,  
4 suite, single family dwelling, or the like in a hotel, apartment  
5 hotel, motel, condominium property regime, or apartment, as  
6 defined in chapter 514A or unit as defined in chapter 514B,  
7 cooperative apartment, dwelling unit, or rooming house that  
8 provides living quarters, sleeping, or housekeeping  
9 accommodations, or other place in which lodgings are furnished  
10 to other than residents and pursuant to an agreement, written or  
11 oral, for such lodging and consideration, other than a rental  
12 agreement as defined in section 521-8.

13 "Transient accommodations broker" means any person or  
14 entity, including online websites, online travel agencies,  
15 online booking agents, that offers, lists, advertises, or  
16 accepts reservations or collects whole or partial payment for  
17 transient accommodations."

18 2. By amending the definition of "transient  
19 accommodations" to read:

20 "Transient accommodations" means the furnishing of a room,  
21 apartment, suite, single family dwelling or the like [~~which is~~



1 ~~customarily occupied by]~~ to a transient for less than one  
2 hundred eighty consecutive days for each letting [~~by]~~ in a  
3 hotel, apartment hotel, motel, condominium property regime or  
4 apartment as defined in chapter 514A or unit as defined in  
5 chapter 514B, cooperative apartment, dwelling unit, or rooming  
6 house that provides living quarters, sleeping, or housekeeping  
7 accommodations, or other place in which lodgings are regularly  
8 furnished to transients [~~for consideration]~~."

9 SECTION 3. Section 235-20.5, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

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

13 (1) Fees collected under sections 235-20, 235-110.9, and  
14 235-110.91;

15 [+](2)[+] Revenues collected by the special enforcement section  
16 pursuant to section 231-85; provided that in each  
17 fiscal year, of the total revenues collected by the  
18 special enforcement section, all revenues in excess of  
19 \$500,000 shall be deposited into the general fund[-];  
20 and

21 (3) Fines assessed pursuant to section 237D-4."



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

3 "§237D-4 Certificate of registration. (a) Each operator  
4 or plan manager as a condition precedent to engaging or  
5 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;

17 upon receipt of which the director shall issue a certificate of  
18 registration in such form as the director determines, attesting  
19 that the registration has been made. The registration shall not  
20 be transferable and shall be valid only for the operator or plan  
21 manager in whose name it is issued and for the transaction of



1 business at the place designated therein. Acquisition of  
2 additional transient accommodation units after payment of the  
3 one-time fee shall not result in additional fees.

4 (b) The registration, or in lieu thereof a notice stating  
5 where the registration may be inspected and examined, shall at  
6 all times be conspicuously displayed at the place for which it  
7 is issued. [~~Acquisition of additional transient accommodation~~  
8 ~~units after payment of the one time fee shall not result in~~  
9 ~~additional fees.] Failure to meet the requirements of this  
10 subsection shall be unlawful. The department may issue cease  
11 and desist citations to any person who fails to conspicuously  
12 display the registration or notice as required by this  
13 subsection. A cease and desist citation issued pursuant to this  
14 subsection shall include a monetary fine of \$1,000 and may be  
15 issued once per day, per place for which the registration or  
16 notice was issued.~~

17 (c) The registration identification number issued pursuant  
18 to this section together with the disclosure set forth in the  
19 sentence immediately following, shall be provided on a website  
20 or by online link and displayed in all advertisements,  
21 solicitations, and notices on websites or through other online



1 communication media regarding the transient accommodations for  
2 which the registration identification number is issued, and  
3 confirmation of compliance with this requirement shall be a  
4 condition to the listing or posting by any transient  
5 accommodations broker of any such advertising, solicitation, or  
6 other notice. The required disclosure shall be: "THIS IS A  
7 HAWAII TRANSIENT ACCOMMODATIONS GOVERNED BY HAWAII LAW. HAWAII  
8 TRANSIENT ACCOMMODATIONS TAXES MUST BE PAID ON THE GROSS RENTS  
9 COLLECTED BY AN OPERATOR FROM ANY PERSON RENTING HAWAII  
10 TRANSIENT ACCOMMODATIONS. HAWAII LAW ALSO PROVIDES FURTHER  
11 REQUIREMENTS OF A TRANSIENT ACCOMMODATIONS OPERATOR."

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

19       [~~(b)~~] (e) If the license fee is paid, the department shall  
20 not refuse to issue a registration or revoke or cancel a  
21 registration for the exercise of a privilege protected by the



1 First Amendment of the Constitution of the United States, or for  
2 the carrying on of interstate or foreign commerce, or for any  
3 privilege the exercise of which, under the Constitution and laws  
4 of the United States, cannot be restrained on account of  
5 nonpayment of taxes, nor shall section 237D-14 be invoked to  
6 restrain the exercise of such a privilege, or the carrying on of  
7 such commerce.

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



1 SECTION 5. Act 326, Session Laws of Hawaii 2012, is  
2 amended as follows:

3 1. By adding a new section to read:

4 "SECTION 2A. Commencing with the regular session of 2016,  
5 the department of taxation shall submit a report of its findings  
6 and recommendations regarding the implementation of this Act,  
7 including any proposed legislation to improve the enforcement of  
8 this Act, to the legislature no later than twenty days prior to  
9 the convening of each regular session."

10 2. By amending subsection (h) of section 2 to read:

11 "(h) For the purposes of this section:

12 "Local contact" means ~~[an individual or company contracted~~  
13 ~~by the operator of the transient accommodation to provide~~  
14 ~~services required by this section. Nothing in this section~~  
15 ~~shall be deemed to create an employer-employee relationship~~  
16 ~~between an operator and its local contact.]~~ either:

17 (1) Any individual, who for compensation or valuable  
18 consideration, is employed as an employee by the  
19 operator of a transient accommodation to provide  
20 services required by this section, and this individual



1           may provide these required services for a single  
2           operator only;

3           (2) A real estate broker, real estate salesperson, or  
4           condominium hotel operator pursuant to chapter 467; or

5           (3) A person authorized to manage the premises or a person  
6           who is an owner of the premises or who is authorized  
7           to act for or on behalf of the owner for the purposes  
8           of service of process and receiving and receipting for  
9           rents, notices, and demands.

10           "Relevant information" means the operator's name, address,  
11           contact information, registration identification number issued  
12           pursuant to section 237D-4, and website address if advertising  
13           or soliciting the transient accommodation on the Internet."

14           3. By amending section 4 to read:

15           "SECTION 4. This Act shall take effect on July 1, 2012;  
16           provided that this Act shall be repealed on December 31, [~~2015-~~  
17           2016."]

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

20           SECTION 7. This Act shall take effect on July 1, 2112.



**Report Title:**

Vacation Rentals; Transient Accommodations Tax; Registration; Advertisements

**Description:**

Extends Act 326, SLH 2012, for one year. Requires DOTAX to submit an annual report to the legislature on the implementation of Act 326, SLH 2012. Authorizes DOTAX to enforce civil penalties for operators and plan managers who fail to display the certificate of registration and registration ID numbers for transient accommodations. Authorizes fines to be deposited into the Tax Administration Special Fund. Amends the definitions of "local contact" and "transient accommodations". (SB519 HD2)

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

