

HB1471 HD3 SD1

Measure Title: RELATING TO TAXATION.

Report Title: Taxation; Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax; Transient Accommodations Tax

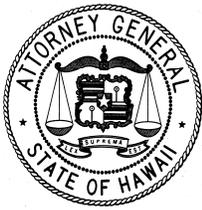
Description: Allows transient accommodations brokers to register as a tax collection agent on behalf of all of its operators and plan managers. Requires registered transient accommodations broker tax collection agent's operators and plan managers to obtain a GET license and TAT registration. Requires registered transient accommodations broker tax collection agents to file periodic and annual GET and TAT returns. Requires that each periodic return be accompanied by an electronic cover sheet containing required information. Requires all registered transient accommodations broker tax collection agents to inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws and remove advertisements for transient accommodations for which operators and plan managers failed to comply with land use or tax requirements. Requires the operator or plan manager to provide verification of and a statement confirming compliance with state and county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency. Allocates a per cent of GET and TAT taxes to the counties contingent upon establishment of a process to provide verification of compliance by an operator or plan manager with county land use laws. Applies to taxable years beginning after December 31, 2017. Effective date 5/22/2050. (SD1)

Companion:

Package: None

Current Referral: ETT/PSM, CPH/WAM

Introducer(s): ONISHI, EVANS, SAY, TODD, TOKIOKA, YAMASHITA, Brower, Creagan, DeCoite, Nakashima



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1471, H.D. 3, S.D. 1, RELATING TO TAXATION.

BEFORE THE:

SENATE COMMITTEES ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH AND ON
WAYS AND MEANS

DATE: Thursday, March 30, 2017 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Mary Bahng Yokota,
Deputy Attorney General, at 586-1470)

Chairs Baker and Tokuda and Members of the Committees:

The Department of the Attorney General appreciates the intent of this bill and provides the following comments.

This bill (i) provides that the Director of Taxation may permit a transient accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers for general excise tax and transient accommodations tax purposes and (ii) requires the Director of Taxation to transfer to the counties an unspecified percentage of the transient accommodations tax and general excise tax collected upon the counties' establishment of a process for providing verification of compliance by an operator or plan manager with the applicable county land use laws.

1. This bill provides that the transient accommodations broker tax collection agent's (Agent) operators and plan managers shall obtain licenses under chapter 237 (General Excise Tax Law), Hawaii Revised Statutes (HRS), and registrations under chapter 237D (Transient Accommodations Tax), HRS, and "remain subject to the requirements under title 14; provided that the registered transient accommodations broker tax collection agent shall comply with all requirements of title 14 on behalf of the operators and plan managers for business activity conducted directly through the

agent ...” (emphases added). Page 4, line 17, through page 5, line 3, and page 13, lines 13-20. Title 14, HRS, relates to taxation and the reference to this title in this provision of the bill may be broader than what was intended. For example, under this bill, it may be argued that the Agent is required to comply with all requirements of title 14, HRS, for business activity conducted directly through the Agent, including but not limited to requirements to pay income tax (and any other applicable taxes) and to file the appropriate returns on behalf of the operators or plan managers. If the intent of the bill is to require the Agent to collect, report, and pay the general excise taxes and transient accommodations taxes on behalf of the operators or plan managers as set forth in the new statutory sections in sections 2 and 3 of the bill, we recommend that the bill be clarified. For example, the phrase on page 4, line 20, through page 5, line 3, and page 13, lines 16-20, may be amended as follows:

provided that the registered transient accommodations broker tax collection agent shall ~~comply with all requirements of title 14~~ report, collect, and pay the taxes under this chapter on behalf of the operators and plan managers for business activity conducted directly through the agent as set forth in this section ...

2. The federal Communications Decency Act (CDA) states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹ 47 U.S.C. § 230(c)(1). The CDA also states in relevant part that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” 47 U.S.C. § 230(e)(3). The following provisions of the bill may be subject to challenge as being preempted by the CDA to the extent that the Agent may be held liable as a publisher or speaker of information provided by the operator or plan manager and posted on an interactive computer service:

¹ The CDA defines the term “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer service, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” 47 U.S.C. § 230(f)(2).

The CDA defines the term “information content provider” as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” 47 U.S.C. § 230(f)(3).

a. This bill provides that the Agent, operators, and plan managers “shall jointly assume all obligations, rights, and responsibilities imposed by this chapter upon the operators and plan managers with respect to their business activities conducted directly through the” Agent. Page 5, lines 11-19, and page 14, lines 7-15.² If the intent of the bill is to make the Agent and operator or plan manager jointly and severally liable for the general excise taxes and transient accommodations taxes due by the operator or plan manager, including penalties and interest as provided by law, in the event the Agent fails to report or pay the taxes due on behalf of the operator or plan manager, we recommend that the bill be clarified. For example, the wording on page 5, lines 11-19, and page 14, lines 7-15, may be amended to read as follows:

(d) If the registered transient accommodations broker tax collection agent fails to report or pay the taxes under this chapter on behalf of the operators and plan managers as set forth in this section, the registered transient accommodations broker tax collection agent and the operator or plan manager shall be jointly and severally liable for the taxes due under this chapter including penalties and interest as provided by law with respect to their business activities conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h).

b. This bill provides that “[a]ll registered transient accommodations broker tax collection agents shall inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws, including but not limited to ... ” (emphasis added). Page 9, lines 9-12, and page 18, lines 1-4. The definition of the word “ensure” includes “to make (one) sure (as by pledging, guaranteeing, convincing, or declaring)” and “to make sure, certain, ... GUARANTEE.” Webster’s Third New International Dictionary (1993). We recommend that the Agent not be required to “ensure” representations made by “another information content provider” on an interactive computer service. If it is the intent of the bill to require the Agent to ask the operators and plan managers whether they are in compliance with all pertinent state and county land use and tax laws, including particular laws, we

² In addition to the concern relating to the CDA, the roles of the Agent and the operator or plan manager are unclear.

recommend that the bill list the particular laws. For example, the list may be preceded by the following amended wording on page 9, lines 9-12, and page 18, lines 1-4:

All registered transient accommodations broker tax collection agents shall inquire ~~and ensure that~~ with their operators and plan managers whether the transient accommodation is in compliance with all pertinent state and county land use and tax laws, including but not limited to:

c. One of the ways the Agent is required to “inquire and ensure” compliance with applicable laws is by requiring the operator or plan manager to display its transient accommodation registration number and transient accommodations number with other information required in any advertisement under section 237D-4, HRS.³ Page 10, lines 1-6, and page 18, lines 13-18. If it is the intent of the bill to require the Agent to “inquire” about compliance with section 237D-4, HRS, we recommend that this statute be included in the list suggested in paragraph b above. If it is the intent of the bill to provide that the operator and plan manager remain subject to section 237D-4, HRS, this provision does not appear to be necessary as page 4, lines 17-20, and page 13, lines 13-16, of the bill already provides that the operators and plan managers remain subject to title 14, HRS, of which section 237D-4, HRS, is a part.

d. Another way the Agent is required to “inquire and ensure” compliance with applicable laws is to require the operator or plan manager to provide verification of compliance with state and county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency. Page 10, lines 7-11, and page 18, line 19, through page 19, line 2. If the intent of the bill is to require the Agent to “inquire” about existing laws relating to the compliance of applicable laws, we recommend that such laws be included in the list suggested in paragraph b above. If the intent of the bill is to require the operator or plan manager to obtain the verification of compliance, which is not otherwise required by law, we recommend that the bill expressly state that intent in a separate statutory section.

³ Other information required in advertisements under section 237D-4(c), HRS, includes local contact’s name, phone number, and electronic mail address.

e. The bill provides that the transient accommodations broker shall remove any advertisement for a transient accommodation located in the State for which the operator or plan manager fails to comply with the requirement to display certain information in any advertisement or the requirement to provide verification of compliance with state and county land use laws in the appropriate form. Page 10, lines 15-19, and page 19, lines 6-10. We recommend that this provision of the bill be deleted.

3. This bill provides that the Agent shall be “personally liable” for general excise taxes and transient accommodations taxes that are due and collected on behalf of the operators and plan managers, if the taxes are collected, but not reported or paid, together with penalties and interest as provided by law. Page 5, line 20, through page 6, line 3, and page 14, lines 16-20. The bill, however, does not appear to identify the person(s) who shall be personally liable in the event the Agent is an entity. We recommend that the bill identify the person(s) who shall be personally liable. For example, page 5, line 20, through page 6, line 3, and page 14, lines 16-20, may be amended as follows:

A transient accommodations broker tax collection agent shall be personally liable for the taxes imposed by this chapter that are due and collected on behalf of operators and plan managers, if taxes are collected, but not reported or paid, together with penalties and interest as provided by law. If the transient accommodations broker tax collection agent is an entity, the personal liability under this subsection applies to any officer, member, manager, or other person having control or supervision over amounts collected to pay the taxes, or who is charged with the responsibility for the filing of returns or the payment of the taxes.

4. This bill provides that, upon request of the Director of Taxation or Mayor of the applicable county, a registered transient accommodations broker tax collection agent “may” disclose any of the information contained in the required returns or cover sheets to the Director of Taxation or any county official designated by the Mayor. Page 7, line 17, through page 8, line 1, and page 16, lines 15-20. It may be argued that this bill gives the Agent the discretion to disclose or not disclose such information when requested. If it is the intent of the bill to require the Agent to disclose the information

when the proper request is made, we recommend that the word “may” on page 7, line 19, and on page 16, line 17, be replaced with the word “shall.”

5. This bill provides that for the purposes of the confidentiality nondisclosure statutes in chapters 237 and 237D, HRS, relating to general excise tax and transient accommodations tax, the Director of Taxation and the County official designated to receive information contained in the returns and cover sheets under the new statutory sections in sections 2 and 3 of the bill shall be "deemed to be persons with a material interest in the return and return information and may examine the returns and cover sheets to ensure compliance with this section, state and local tax laws and ordinances, and any applicable land use laws and ordinances" (emphasis added). Page 8, lines 1-7, and page 16, line 20, through page 17, line 5. The confidentiality nondisclosure statutes (sections 237-34 and 237D-13, HRS) provide that return and return information may be “examined” by persons with a material interest "for tax purposes only." If it is the intent of the bill is to provide broader disclosure than “for tax purposes only” permitted under sections 237-34 and 237D-13, HRS, we recommend clarification. If it is the intent of the bill to permit the copying as well as the examination of the information, we recommend clarification. For example, page 8, lines 1-7, and page 16, line 20, through page 17, line 5, may be amended as follows:

~~For the purposes of section 237-34~~ Notwithstanding any law to the contrary, the director and county official designated to receive the information pursuant to this subsection ~~shall be deemed to be persons with a material interest in the return and return information and may examine~~ and copy the returns and cover sheets to ensure compliance with this section, state and local tax laws and ordinances, and any applicable land use laws and ordinances.

If the intent of the bill is to be consistent with sections 237-34 and 237D-13, HRS, and limit the disclosure to examination and for tax purposes only, we recommend that sections 237-34 and 237D-13, HRS, be amended to expressly include the Director of Taxation and the County official designated to receive information among the list of persons with a material interest.

We thank the Committees for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON COMMERCE, CONSUMER
PROTECTION, AND HEALTH AND WAYS AND MEANS
ON
HOUSE BILL NO. 1471, H.D. 3, S.D. 1

March 30, 2017
9:30 a.m.
Room 211

RELATING TO TAXATION

House Bill. No. 1471, H.D. 3, S.D. 1, allows transient accommodations brokers to register as tax collection agents on behalf of all of its operators and plan managers. In Section 5, the bill proposes that a yet to be determined percentage of all transient accommodations taxes (TAT) and general excise tax (GET) collected for each fiscal year be transferred to the counties that establish a process to provide verification of compliance by an operator or plan manager with county land use laws.

The Department of Budget and Finance has concerns with the ambiguous language in Section 5, as it could be construed as requiring the transfer of a percentage of all TAT and GET revenues collected by the State to the counties, which will be significant. If it is the intent of the bill that only a percentage of the TAT and GET derived from the licensing of transient accommodations brokers under the bill shall be subject to transfer to the counties, the language should be clear and unambiguous to reflect the intent.

Thank you for your consideration of our comments.



HB1471 HD3 SD1
RELATING TO TAXATION
Senate Committee on Ways and Means

March 30, 2017

9:30 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1471 HD3 SD1, which seeks to capture additional tax revenue on transient accommodations by allowing online brokers to remit transient accommodation taxes on behalf of their operators. OHA believes that amendments included in the SD1 would assist the counties in meaningfully enforcing pre-existing regulations on short-term vacation rentals. **Specifically, requiring brokers who do business in our state to ensure that their operators are in compliance with local land use laws would significantly enhance land use enforcement, and mitigate the impacts of unlawful transient vacation rentals on housing opportunities for local residents.**

Unfortunately, notwithstanding county land use ordinances that prohibit their operation in certain areas, illegal short term vacation rentals have proliferated throughout the state. Such vacation rentals may have removed much-needed units from the residential rental market, and exacerbated the rise in housing costs that now exceed what many state residents are able to afford.ⁱ **Without meaningful enforcement of county land use laws, the potential impacts of illegal short term vacation rental operations on the long-term housing market will remain unaddressed. OHA notes that Native Hawaiians are particularly disadvantaged by these land uses that contribute to increased housing costs and rental housing shortages.**ⁱⁱ

As drafted, HB1471 HD3 SD1 may provide substantial assistance to the counties in meaningfully enforcing county land use laws relating to vacation rentals, thereby mitigating the impacts transient vacation rentals may have on our housing market. HB1471 HD3 SD1 includes important provisions that would require brokers to obtain and ensure proof of compliance from all operators that use their listing services. Previous drafts of this measure only required that a broker notify vacation rental operators of applicable county land use laws, as part of their acceptance of the terms of service of the broker. OHA believes that it is critical to place a greater responsibility on brokers, who realize significant profits from transient vacation rentals, to ensure that their operators comply with county land-use laws. HB1471 HD3 SD1 also includes important enforcement provisions that can assist the state and the counties in identifying those who post illegal listings, or listings that commercialize public land and resources.

To further facilitate enforcement and compliance with land use laws, the Committee may wish to further amend this measure, to include fines or penalties for brokers who repeatedly allow and profit from illegal transient vacation rental listings.

Mahalo for the opportunity to testify on this measure.

ⁱ For example, a recent study by the Department of Business, Economic Development & Tourism (DBEDT) indicates that the recent increase in demand for single family vacation rentals has already contributed to the overall increase in demand for housing units in our islands.ⁱ An increase in short term vacation rental activity has also correlated with major drops in available residential rental listings, including those for increasingly rare single family units. Notably, the Hawai'i Tourism Authority report found 22,238 individually advertised units each day in Hawai'i for 2014—units that could otherwise provide residential housing for 117,607 individuals See INDIVIDUALLY ADVERTISED UNITS IN HAWAI'I (VACATION RENTALS) DECEMBER 2014, *available at*

[http://www.hawaiitourismauthority.org/default/assets/File/research/accommodations%20studies/Individual%20Advertised%20Units%20in%20Hawaii%20\(Vacation%20Rentals\).pdf](http://www.hawaiitourismauthority.org/default/assets/File/research/accommodations%20studies/Individual%20Advertised%20Units%20in%20Hawaii%20(Vacation%20Rentals).pdf).

ⁱⁱ Native Hawaiians in particular substantially rely on the rental market. Native Hawaiian homeownership rate is significantly lower than the state average and must rely substantially on the rental housing market. See OFFICE OF HAWAIIAN AFFAIRS, OHA DATA BOOK HOUSING TENURE BY RACE-ETHNICITY IN HAWAI'I 2014, *available at* <http://www.ohadatabook.com/T02-131-15u.pdf>. This figure includes 8,329 DHHL residential lease “owner-occupied” property units. DHHL ANNUAL REPORT 2014, p. 48, *available at* <http://dhhl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.



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David Y. Ige
Governor

George D. Szigeti
President and Chief Executive Officer

Statement of
George D. Szigeti
Chief Executive Officer
Hawai'i Tourism Authority
on
HB1471 SD1 Relating to Taxation
Senate Committees on Commerce, Consumer Protection, and Health
and Ways and Means
Thursday, March 30, 2017
9:30am
Conference Room 211

Chairs Baker and Tokuda, Vice-Chairs Nishihara and Dela Cruz, and Committee Members,

The Hawai'i Tourism Authority (HTA) offers the following **comments on** HB1471 SD1, which would permit transient accommodations brokers to register as tax collection agents to collect and remit general excise (GET) and transient accommodations taxes (TAT) on behalf of the operators and plan managers that use their services. As part of this system, each transient accommodation operator and plan manager would be required to verify that the use complies with applicable land use laws. Relatedly, the bill would allocate an unspecified amount of TAT and GET revenues to each county to establish a process for providing verification of compliance by an operator or plan manager with the county's land use laws. The bill also confirms that it would not preempt county land use laws, would require periodic tax returns be accompanied by a cover sheet containing detailed information about the operators and their rental units, would grant certain government officials authority to examine the returns and cover sheet to ensure compliance with state and local tax laws and ordinances and would clarify that all obligations, rights and responsibilities imposed by the bill apply jointly to the operators and plan managers and to the transient accommodations broker that act as tax collection agents.

As Hawai'i competes in the global tourism market, it is critical that we ensure safe and enjoyable visitor experiences, whether our guests choose to stay in traditional accommodations or the alternative accommodations that are increasingly popular with travelers from around the world. Proponents of alternative accommodations point to the importance of supporting a variety of visitor accommodations to maximize the appeal of Hawai'i as a visitor destination, respect for visitor preferences, the economic benefit to the owners and operators of transient accommodations and the additional tax revenue to the state. Others express concern over the transient accommodation operators who do not pay their fair share of taxes, the loss of rental housing stock to transient uses, respect for land use regulations that may restrict or prohibit transient accommodations in many neighborhoods, the impact on communities that host transient accommodations and the inability to ensure the quality of the experiences for, and the safety of, visitors who stay in transient accommodations. When formulating policy for the state, the Legislature must balance and consider these competing views.

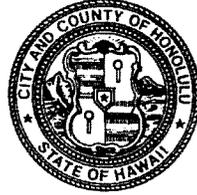
Given the various interests and concerns on both sides of the issue and the need for additional information, we recognize the importance of increased dialogue between the various stakeholders involved.

Mahalo for the opportunity to comment.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

March 30, 2017

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on
Commerce, Consumer Protection
and Health

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on
Ways and Means

Hawaii State Senate
Hawaii State Capitol
415 South King Street
Honolulu, Hawaii 96813

Dear Chairs Baker, Tokuda, and Committee Members:

Subject: House Bill No. 1471, HD 3, SD 1
Relating to Taxation

The Department of Planning and Permitting (DPP) **supports** House Bill No. 1471, HD 3, SD 1, which would allow transient accommodations brokers to register as tax collection agents on behalf of all of its operators and plan managers.

We do not take a position on the means of collecting transient accommodation and general excise taxes, but we do support the portions of this measure that will help us in our enforcement of illegal vacation rentals. We are especially pleased that this Bill reflects a partnering between State tax collections and county zoning enforcement.

With the popularity of transient accommodations websites, the number of transient vacation rental operators has ballooned. A report by the Hawaii Tourism Authority in 2014 showed that there were more than 4,400 units advertised on these online sites and we believe an overwhelming majority is operating without a valid permit. We've seen studies that report this number has increased dramatically in the past three years.

The DPP is charged with enforcing the county's transient vacation rental law, and we are finding it increasingly difficult to keep up with the number of illegal vacation rentals on the island. In 2016, we added three special inspectors just to investigate short-term rental complaints. With this support, we inspected or re-inspected 3,392

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on
Commerce, Consumer Protection
and Health

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on
Ways and Means

Hawaii State Senate

House Bill No. 1471, HD 3, SD 1

March 30, 2017

Page 2

complaints of illegal vacation rental units, but this resulted in only 91 Notices of Violation (NOV) being issued because of the difficulties we face in proving that a unit is being operated illegally.

House Bill No. 1471, HD 3, SD 1, will assist us in our enforcement efforts by requiring the operator or plan manager of a vacation rental unit to “provide verification of compliance with state and county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency.” This verification must be done prior to the placement of an advertisement for the rental unit, either online or in print. Without it, the transient accommodations broker will not be allowed to place an ad for the operator or plan manager. We would be happy to work with the State and licensed transient accommodations brokers in setting up this verification process.

This Bill also would provide the Department of Taxation with information on each vacation rental unit, such as the number of nights it was rented and price, and the address of the unit. This information may be examined by the county to ensure compliance with tax laws, as well as land use ordinances. The Bill also would require the operator or plan manager of a short-term rental unit to display or make available its transient accommodation tax registration number, along with other required information, in any advertisement. This information will help us in our enforcement efforts by contributing to the preponderance of evidence that we require to prove that the use, legal or illegal, is ongoing.

We appreciate this Bill’s provision that a certain percentage of the TAT and GET collected each year be provided to each county that establishes a process of providing verification of compliance by an operator or plan manager. We are currently looking at more innovative ways of controlling the spread of illegal uses. This funding will help us inaugurate more effective enforcement strategies.

Thank you for the opportunity to testify.

Very truly yours,



Kathy Sokugawa
Acting Director

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:50 AM
To: CPH Testimony
Cc: jgrow@truman.edu
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/28/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Janice Grow-Maienza	Hawaii Democratic Party	Comments Only	No

Comments: I support HB1471 as originally proposed. I oppose SD1 because it unfairly imposes tasks on the agents to monitor city, county, and state regulations which should be the task of city, county, and state governmental bodies.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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'ĀINA HAINA COMMUNITY ASSOCIATION

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ainahainaassoc@gmail.com; www.ainahaina.org

Jeanne Ohta, President • Melia Lane-Kanahele, Vice-President • Art Mori, Treasurer • Kathy Takemoto, Secretary • Directors At Large: Jeff Carlson, Wayson Chow, Patricia Moore, Marie Riley

March 30, 2017

To: Senator Rosalyn Baker, Chair
Senator Clarence Nishihara, Vice Chair and
Members of the Committee on Commerce, Consumer Protection, and Health

To: Senator Jill Tokuda, Chair
Senator Donovan Dela Cruz, Vice Chair and
Members of the Committee on Ways and Means

From: Jeanne Y. Ohta, President

RE: HB 1471 HD3 SD1 Relating to Taxation
Hearing: Thursday, March 30, 2017, 9:30 a.m., Room 211

Position: COMMENTS

The Board of Directors of the 'Āina Haina Community Association (AHCA) is opposed to any measure that would legitimize or permit commercial lodging facilities in residentially-zoned neighborhoods and which take units out of the long-term residential housing market. Tax collection measures do not solve problems that our communities are experiencing.

Commercial businesses simply do not belong in residentially-zoned neighborhoods. People expect their neighborhoods to be quiet and safe. Vacationers on the other hand, have no responsibility to be good neighbors; they are on vacation and expect to have a good time. They have no incentive to be quiet and to respect the rights of neighbors. Their vacations are more appropriately spent at a hotel or resort-zoned properties where proper accommodations are available for people on vacation. Honolulu has ample vacation and resort areas which are run by travel professionals specifically for the tourist market.

There are numerous illegally operating transient vacation units (TVU's) in our neighborhoods. These units contribute to our housing shortage and the escalating prices of homes. As prices escalate, owners will be forced into becoming landlords instead of homeowners. TVU's are also detrimental to our neighborhoods because owners are not required to reside on the property.

One ocean front home in our community was rented by a group of 20 people. The neighbors had complained about the home for two years before any action was taken. Since these owners show no respect for our laws, they will ignore regulations as well.

Owners are not required to reside on site, they are not affected by the excessive noise, increased traffic, the number of additional cars parked on the street, or the presence of strangers in a residential community. They are interested in one thing only: maximizing rental income on their property.

Residential use cannot compete with the high rents that owners can charge tourists for vacation rentals.

Any proposed measure must increase the enforcement capacity of the City Department of Planning and Permitting, which has been unable to enforcement current zoning laws and effectively close illegal rentals currently operating in our neighborhoods. Too much of the burden of identifying illegal businesses has been placed on neighbors.

AHCA respectfully requests that more efforts be made to enforce our current residential zoning laws. Thank you for the opportunity to provide testimony.



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB1471 HD3 SD1 Relating to Vacation Rentals
Senate Committees on Commerce, Consumer Protection , and Health and
Ways and Means

Scheduled for Hearing Thursday, March 30, 2017, Conference Room 211

Hawai'i Appleseed Center for Law and Economic Justice Hawai'i Appleseed is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

Chairs Baker and Tokuda, members of the committees, I thank you for an opportunity to testify in strong support of HB 1471 HD3 SD1. We are in support of this bill because it allows the state to collect tax on transient accommodations, while also creating necessary safeguards to protect our community and preserve our limited supply of affordable housing. We urge the Committees to continue to require internet platforms that choose to register as tax brokers, also have the responsibility to ensure their operators comply with our local laws. This is even more imperative during this time of significant affordable housing shortage.

As new information is made available regarding the impact of vacation rentals on our housing supply, Hawai'i Appleseed is increasingly concerned about the conversion of rental housing into vacation rentals. A review of AirBnB shows listings, with whole apartments in affordable housing complexes as well as recently developed for-sale work-force housing already offered in areas like Kapolei.

We acknowledge that renting a property may help a small percentage of struggling local families. Unfortunately, data does not support that these economic benefits are flowing to Hawai'i Residents. Instead, Data from the recent study by SMS for Hawaii Tourism Authority¹ indicated that a majority, or 65% of the vacation rentals advertised were listed by out-of-state residents. As such, the economic benefits of renting a vacation home here in Hawai'i disproportionately benefit out-of-state interests, rather than contributing to the economic well-being of Hawai'i homeowners.

Every unit listed as a vacation rental is potentially a unit that could house a local family, and thereby free-up additional lower income housing for other renters. We are concerned that the lucrative vacation rental market, as well as AirBnB's own aggressive marketing tactics, encourage homeowners to convert rental housing into vacation rentals to make maximum profit.

Ensuring brokers provide information on operators to the government is also critical and we appreciate the amendments that would require brokers to do so as well as assist with compliance. Data indicates that in particular, homesharing models may not be economically profitable to the broker without multi-unit or commercial host offering units for sale. The recent CBRE study² indicates that 85% of revenue from AirBnB in particular, is from hosts that have multiple units listed on the site. Thus, it is important that we ensure brokers provide information or there will be little incentive for them to remove such important revenue generating listings.

¹ See page 5, <http://www.hawaiiitourismauthority.org/default/assets/File/Housing%20and%20Tourism%20113016.pdf>

² https://www.ahla.com/sites/default/files/CBRE_AirbnbStudy_2017.pdf

*Hawaii Appleseed Center for Law and Economic
Justice*

March 28, 2017

Aloha,
Victor Geminiani
Hawaii Appleseed center for Law and Economic Justice

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, TRANSIENT ACCOMMODATIONS, Transient Accommodations Brokers as Tax Collection Agents

BILL NUMBER: HB 1471, SD-1

INTRODUCED BY: Senate Committees on Economic Development, Tourism, and Technology, and Public Safety, Intergovernmental, and Military Affairs

EXECUTIVE SUMMARY: Permits transient accommodations brokers to serve as collection agents for general excise and transient accommodations taxes. This type of arrangement would probably enhance collection of taxes because of the difficulty of policing individual owners.

SYNOPSIS: Adds a new section each to HRS chapter 237 and chapter 237D allowing the director of taxation to register transient accommodations brokers as tax collection agents on behalf of all of their respective operators and plan managers. Defines “operator,” “plan manager,” and “transient accommodations broker” the same as in the TAT law.

Upon successful registration as a tax collection agent, the broker shall report, and collect, and pay over the tax due on behalf of all of its operators and plan managers as it relates to activity booked through the broker. Registration does not relieve the broker from any of its own tax obligations, and the operators and plan managers are not protected as to any business activity other than that booked through the broker.

A registered broker shall be issued separate licenses with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities.

The broker, upon successful registration, is obligated to report, collect, and pay taxes on behalf of all of its operators and plan managers, but only as to transient accommodations in the State arranged or booked directly through the broker’s platform. The operators and plan managers (“hosts”) are still required to obtain their own tax licenses.

Requires the broker to file an “electronic cover sheet” containing information on the hosts’ transactions and tax ID numbers with each periodic general excise tax return filed on behalf of those hosts.

A broker may cancel its registration by delivering a written cancellation notice to the department and its customers; the cancellation will be effective no earlier than 90 days after delivery of the notice. The department may also cancel a registration for any cause, including violations of the tax laws or a breach of the registration agreement.

Provides that returns filed on behalf of an operator are confidential tax returns, except that they shall be disclosed to a duly authorized county tax official for the limited purpose of real property tax administration.

All brokers shall inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws, including but not limited to:

- (1) Prior to advertising on behalf of an operator or plan manager, notify the operator or plan manager that the subject property is required to be in compliance with applicable land use laws prior to retaining the services of the broker;
- (2) Requiring the operator or plan manager to display or make available its transient accommodation tax registration identification number and transient accommodations number, along with other required information in any advertisement, in compliance with section 237D-4; and
- (3) Requiring the operator or plan manager to provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency.

Requires a broker to remove any advertisement, including an online advertisement, for a transient accommodation located in the State for which the operator or plan manager fails to comply with paragraph (2) or (3) or for which the transient accommodations broker has received written notice from a state or local governmental authority that the operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements.

EFFECTIVE DATE: May 22, 2050, and applies to taxable years beginning after December 31, 2017.

STAFF COMMENTS: Act 143, SLH 1998, amended HRS section 237-9 to allow multi-level marketing companies to act as agents to collect and pay over GET on behalf of their independent entrepreneurs. At the time, it was considered beneficial for the marketing companies to collect and pay over tax as opposed to having the Department of Taxation chase down a myriad of independent owners with varying degrees of tax compliance among them.

This bill presents an opportunity for the same logic and policy considerations to apply to transient vacation rental (TVR) activity operating through transient accommodation brokers such as AirBnB, Flipkey, Homeaway, and VRBO, except that the stakes may be a little higher because TAT as well as GET is being collected. This bill would appear to be necessary or desirable to enhance the Department's collection ability given the limited resources available for all of state government including the Department.

TVR activity is a business and the dollars earned in that business are subject to Hawaii state taxes. Specifically, General Excise Tax (GET) and Transient Accommodations Tax (TAT) both apply, so those hosts that are in this business need to register appropriately and pay these taxes. But alas, not everyone does. So, the bill proposes to require (if a large broker) or permit (if any other broker) the broker to register with the Department of Taxation and to remit the GET and TAT to the State on behalf of the hosts. Once registered, any time a host earns money on the

broker's platform, the broker will pay the taxes and will pay over the balance to the host. The concept is like withholding, with which those of us who receive a paycheck are quite familiar: we work for an employer, the employer pays us our wages, but the employer deducts some taxes and pays them to the Department of Taxation and IRS.

A measure allowing voluntary registration of brokers, HB 1850 (2016), passed last year but was vetoed by Governor Ige. The principal objection concerns county-level restrictions on property use. Some TVR activity violates county zoning laws. Some counties, as well as neighboring residents, see withholding as described in this bill as enabling hosts to hide illegal activities from county law enforcement. Some people have gone further. They blame TVR hosts for wrecking the sanctity of neighborhoods with an unending stream of tourists or for yanking housing units off the market in the name of greed, resulting in stratospheric housing prices that are yet another crippling blow to hardworking families struggling to make ends meet. Then, they turn to the brokers and demand that the brokers stop encouraging and facilitating such illegal, anti-societal, and morally depraved activity.

This version of the bill appears to meet the concerns expressed by Gov. Ige in his prior veto message. The current bill language requires that advertising on the platform contain the license number of the host, rather than the platform; and it requires that the host present some documentary evidence of county level compliance.

This version of the bill also appears to meet concerns that the broker was being asked to guarantee the content of an online ad on its platform, in violation of the federal Communications Decency Act. Here, the broker is only told to obtain written documentation, and to pull the ad if notified by a governmental agency that the host has failed to comply with legal requirements.

Coalition for Equal Taxation

House Bill 1471 H.D.3 SD1
March 30, 2017 at 9:30

Dear Chairs Tokuda and Baker, Vice Chairs Dela Cruz and Nishihara and Committee Members:

On behalf of the Coalition for Equal Taxation, we **OPPOSE** House Bill 1471 H.D.3 SD1 and respectfully request that you defer this Bill.

This version of the Bill has been improved upon from past versions, however, there remains several key issues that are fundamentally inoperable.

1. While we support the concept of operators demonstrating compliance with county zoning, the method proposed is not achievable for implementation by 1/1/18. For each operator to obtain a separate written certification, verification or permit issued by the county is not a method that each county could appropriate funding and personnel to create, establish and comply with and then provide the requisite proof to an operator. This is especially compounded with a startup when ALL operators will need to seek the documenting proof.

Should this Bill pass, please consider a more realistic timeline of implementation of July 2019. We would also propose a methodology that simplifies the process for the counties and the operators.

This could be achieved by the counties mailing to property owners as an enclosure in their County Property Tax bills, a notice that states either the property is zoned for transient accommodation rental activity or is not zoned for such activity. This serves two purposes. One, it provides for the written proof that CC Honolulu seeks to have implemented, but secondly, it also puts owners on notice from the counties that they are NOT authorized to rent transient accommodations. It solves both issues at the same time in the convenient and cost effective method of enclosing the notice with the property tax. If there were an error on the part of the county it allows for the owner to contact the county and address the issue.

2. This Bill requires registered tax collection agents to provided to the Department of Taxation the following information relative to operators: name, address, license I.D. number, address of transient accommodation, number of nights rented, rate or price rented, amount of tax being remitted and income derived.

Presently TAT and GET is calculated upon gross receipts. A tax collection agent should be remitting tax based upon what is the legal requirement today. It is not the legal requirement today to monitor number of days or rates so it is therefore inappropriate to add these provisions to this Bill. Should laws change in the future, it would be appropriate at that time to make a modification, but this Bill is requesting information on operators without a basis of law. Such law does not exist today.

This Bill also requires the Agent to track on an individual operator basis "income that is derived from each transient accommodation." The terminology should not be "income" it should be gross receipts.

3. Sharing information with Counties: For the counties to enforce county zoning laws the information of name and address provides them with what they need to carry that out.

It would be a violation of State of Hawaii tax codes to require that personal tax information such as is contained on a 1099, or any other monetary information at all, be disclosed to a non Department of Taxation employee.

We respectfully request that you Defer this Bill.

John Chang
Coalition for Equal Taxation



The Senate
The Twenty-Ninth Legislature
Regular Session of 2017

To: Senator R. Baker, Chair
Senator J. Tokuda, Chair

Date: March 30, 2017

Time: 9:30 a.m.

Place: Conference Room 211
Hawaii State Capitol

RE: House Bill 1471 SD1, Relating to Taxation

Chair Baker, Chair Tokuda and Members of the Committee:

Rental By Owner Awareness Association (RBOAA) is a Hawaii non-profit corporation founded in 2011, with over 1000 members. Our mission is to provide Hawaii vacation-rental property owners with information to help them comply with the applicable State and County regulations, support the Hawaii economy by offering visitors choice in accommodation, and advocate for the rights of Hawaii vacation property owners. RBOAA members provide transient vacation rentals in full compliance with existing tax and County regulations. RBOAA fully supports enforcement of existing regulations.

RBOAA OPPOSES HB 1471 SD1 as written *pending specific amendments*.

RBOAA welcomes the very significant improvements proposed to this bill recently. We recognize legislators are working hard to address the complex issues surrounding vacation rentals and tourism. Respectfully, we request you consider the input of vacation rental operators who are currently operating legally.

There are two specific issues with **HB1471 SD1** and a few opportunities to improve the bill.

1. The clause *“Requiring the operator or plan manager to provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency”* is not viable today.
 - a. While the County of Honolulu issues permits, the counties of Maui, Kauai and Hawaii currently do not have a uniform permitting system. Those counties would require time and resource to prepare for this requirement. In the

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meantime, otherwise-legal operators will be forced off the transient accommodations broker tax collection agents sites because of this clause.

- b. Please defer this clause for 12 – 24 months to allow the counties time to prepare.
2. As you know, taxpayer information can only be shared with the IRS and the State Department of Taxation and we believe that wording in paragraph (g) (Page 7, line 17) is not in compliance with the Federal Internal Revenue Code and Hawaiian state laws, HRS §235-116 and HRS §237-34. The final language of the bill must respect all applicable privacy regulations and respect Due Process.
 - a. Please amend to exclude income tax information from the information provided to the counties.

Consumer protection

RBOAA believes the State should insert language which increases the consumer protection aspect of this bill. We believe that the State should have the right to audit entities serving as tax collection agents.

The tax-collection agent will be holding funds on behalf of vacation-rental operators, travelers and the State of Hawaii, yet they are not banks, they are not insured by the travel industry, and may not operate under regulations applicable to real-estate trust funds.

Opt-Out Provision

Many operators have been properly collecting and remitting tax to the State of Hawaii for many years. Those operators should have the ability to opt out of the tax-collection agent program and continue to deal directly with the State of Hawaii. Not only do they fear being charged high fees for the tax-collection service, they don't want the advertising platform to hold their cash for long periods of time. (In Hawaii, unlike San Francisco where AirBnb controls the market, most bookings are made a year in advance.)

The DoT knows which operators are in compliance with TAT and GET filings and could issue tax certificates to those operators. The DoT is protected by the right to request and receive 1099K and 1042S reports from the tax-collection agents.

The bill already acknowledges that not all bookings are done through the advertising platforms, so the opt-out amendment is not a significant change to the bill as there is already provision for operators to self-report.

RBOAA **OPPOSES** the bill and recommends **five amendments** be made:

1. Defer implementing the clause: “Requiring the operator or plan manager to provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county



agency” until all the counties are able to issue certifications or permits. [237D- j (3) - Defer implementation on Maui, Kauai and Hawaii until July 1, 2019.]

2. Amend the section “Upon request by the director or mayor of the applicable county, a registered transient accommodations broker tax collection agent may disclose **any of the information contained in the returns or cover sheets** required by this subsection to the director or any county official designated by the mayor to receive such information” [237D- g , page 16, line 16] to read:
 - a. “Upon request by the director or mayor of the applicable county, a registered transient accommodations broker tax collection agent may disclose any of the information contained in the returns or cover sheets, **except that information provided under clause (g) 2 (C),** required by this subsection to the director or any county official designated by the mayor to receive such information”

RBOAA believes the bill would be improved by adding wording stating:

3. “The tax-collection agent shall permit and facilitate an annual audit of its internal controls, such audit shall be designed and conducted by the Office of the Auditor of the State of Hawaii or an independent third party auditor. The tax-collection agent shall comply with all recommendations and address all deficiencies identified in the report of the Office of the Auditor as a condition of retaining the registration as a tax-collection agent.” [237D- new clause after (e)]
4. “Upon presentation of a tax certificate issued by the Hawaii Department of Taxation and a certificate from the applicable County, the advertising platform shall permit any operator to opt out of the tax collection agent program. The operator will then be solely responsible for collecting and remitting all applicable taxes and filing all required tax returns.” [237D- (j) (4)]
5. “No transient accommodation broker, acting as a tax-collection agent, may charge a fee to an operator for providing the tax-collection service when the tax collection agent is paid by the State of Hawaii for the tax-collection service.” [237D- new clause after (e)]

Thank you for the opportunity to testify on this measure.

Sincerely,

Neal Halstead
President,
Rental by Owner Awareness Association



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March 29, 2017

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COMMITTEE ON WAYS AND MEANS
Senator Jill N. Tokuda, Chair; Senator Donovan M. Dela Cruz, Vice Chair
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Thursday, March 30, 2017 9:30 a.m.
Conference Room 211 State Capitol

Re: TESTIMONY ON BEHALF OF THE INTERNET ASSOCIATION RE: H.B.
1471, HD3, SD1

Dear Senators:

I write on behalf of my client, the Internet Association. The mission of the Internet Association, whose membership includes the country's leading internet companies, is to foster innovation, promote economic growth, and empower people through the free and open internet.

I respectfully urge you not to pass H.B. 1471, HD3, SD1 in its current form because of certain problematic language which will render the bill invalid, unworkable and unenforceable. H.B. 1471, HD3, SD1 attempts to address the issue of home sharing. Unfortunately, the current language of H.B. 1471, HD3, SD1 violates two federal laws: 1) the federal Communications Decency Act, 47 U.S.C. § 230 ("Section 230") and 2) the Stored Communications Act, 18 U.S.C. Chapter 121 §§ 2701–2712 ("SCA"). H.B. 1471, HD3, SD1 is therefore pre-empted by federal law, and would thus be unenforceable if passed. Additionally, it is impractical because it is highly unlikely that any internet platform would voluntarily sign up and agree to be bound by the terms of H.B. 1471, HD3, SD1.

Violation of Section 230 of the Communications Decency Act. Although the State may regulate in various areas, it must do so in a manner that does not conflict with federal law. Section 230 is considered the cornerstone of the legal framework that has allowed the internet to thrive, and it "protects websites from liability for material posted on the website by someone

else.” *Doe v. Internet Brands, Inc.*, No. 12-56638, 2016 WL 3067995, at *3 (9th Cir. May 31, 2016). It does so through two key provisions. First, “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230 (c)(1). Second, “[n]o liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* at § 230 (e)(3). As the United States District Court for the District of Hawai‘i observed, “so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.” *Sulla v. Horowitz*, No. CIV. 12-00449 SOM, 2012 WL 4758163, at *2 (D. Haw. Oct. 4, 2012) (quoting *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003)).

Accordingly, courts across the country have regularly found that Section 230 preempts state laws that attempt to hold websites liable for third-party content. See, e.g., *Backpage.com, LLC v. McKenna*, 881 F.Supp.2d 1262, 1273 (W.D. Wash. 2012). Section 230 also protects websites from being forced to screen or otherwise verify third-party content. See, e.g., *Doe v. Friendfinder Network, Inc.*, 540 F.Supp.2d 288, 295 (D.N.H. 2008) (“§ 230 bars the plaintiff’s claims that the defendants acted wrongfully by . . . failing to verify that a profile corresponded to the submitter’s true identity.”); *Doe v. MySpace, Inc.*, 474 F.Supp.2d 843, 850 (W.D. Tex. 2007) (Section 230 barred claims that MySpace was liable for policies relating to age verification); *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1180 (9th Cir. 2008) (“webhosts are immune from liability for . . . efforts to verify the truth of” third-party statements posted on the website); *Prickett v. InfoUSA, Inc.*, 561 F.Supp.2d 646, 651 (E.D. Tex. 2006) (“The Plaintiffs are presumably alleging that . . . the Defendant is liable for failing to verify the accuracy of the content. Any such claim by the Plaintiffs necessarily treats the Defendant as ‘publisher’ of the content and is therefore barred by § 230.”); *Mazur v. eBay Inc.*, No. C 07-3967 MHP, 2008 WL 618988, at *9 (N.D. Cal. Mar. 4, 2008).

There are numerous sections in H.B. 1471, HD3, SD1, which contain problematic and invalid language and thus violate Section 230. Specifically, Section (j) of H.B. 1471, HD3, SD1 requires that an internet platform serving as a tax collection agent “shall inquire and ensure” that the transient accommodation is in compliance with all pertinent state and county land use laws, by 1) requiring an operator to display its identification and other information “in any advertisement,” and 2) requiring an operator of a transient accommodation to provide a “written certification, verification or permit issued by the appropriate county agency.”

The placement of such a burden on an internet platform would violate Section 230 because it would make the internet platform responsible for the content of all advertisements, and require the internet platform to verify the accuracy of that content. Section (j) further requires that an internet platform must remove any advertisement where the operator or plan manager fails to comply with certain land use, zoning or tax requirements. In other words, an internet platform must censor the content of all advertisements posted by users. All of these requirements clearly violate Section 230 and the case law which has interpreted Section 230.

The case law noted above interpreting Section 230 has determined that mandatory restrictions of the type set forth in H.B. 1471, HD3, SD1 are impermissible. Under Section 230, an internet platform cannot be held liable as a publisher or speaker of particular content submitted by its users, and is not responsible or liable for such content. Websites are protected from being forced to screen or otherwise verify third-party content placed on their platforms. They are not required to verify the truth of statements made by their users. However, the verification requirements of H.B. 1471, HD3, SD1 would serve to impose such restrictions by attempting to require the internet platform to “ensure” certain content in advertisements and to verify the truth of any representations made as to land use laws.

Section (j) provides that:

“(j) All registered transient accommodations broker tax collection agents shall inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws, including but not limited to:

(1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent on behalf of an operator or plan manager, notifying the operator or plan manager that the subject property is required to be in compliance with applicable state and county land use laws prior to retaining the services of the transient accommodations broker;

(2) Requiring the operator or plan manager to display or make available its transient accommodation tax registration identification number and transient accommodations number, along with other required information in any advertisement, in compliance with section 237D-4; and

(3) Requiring the operator or plan manager to provide verification of compliance with state and county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency;....

A transient accommodations broker shall remove any advertisement, including an online advertisement, for a transient accommodation located in the State for which the operator or plan manager fails to comply with paragraph (2) or (3) or for which the transient accommodations broker has received written notice from a state or local governmental authority that the operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements.” (Emphasis added.)

Furthermore, Section (d) of H.B. 1471, HD3, SD1 provides that an internet platform must assume all obligations, rights and responsibilities of operators and plan managers with respect to their business activities. Section (d) provides as follows:

“(d) Under this section, a registered transient accommodations broker tax collection agent, and the operators and plan managers, shall jointly assume all obligations, rights, and responsibilities imposed by this chapter upon the operators and plan managers with respect to their business activities conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h).”

This vague and overbroad language makes any internet platform which becomes a transient accommodations broker tax collection agent, “assume all obligations, rights, and responsibilities imposed by this chapter upon the operators and plan managers with respect to their business activities....” In other words, H.B. 1471, HD3, SD1 makes the internet platform responsible for any obligations, and the violation of any obligations, of the people and entities using the internet platform. H.B. 1471, HD3, SD1 thus penalizes internet platforms for the actions of their users. This impermissibly conflicts with and violates Section 230.

The problems that arise from the current version of H.B. 1471, HD3, SD1 are similar to the problems that have made Act 204 from the 2015 Legislative Session unworkable and ineffective. Currently, Act 204 is the only law in Hawaii which addresses the issue of regulating home sharing and the growing community of homeowners who generate supplemental income by providing their homes to transient guests. However, significant portions of Act 204 conflict with and are likely preempted by Section 230, rendering it an unenforceable and invalid law. Thus far, the State of Hawaii has not attempted to enforce Act 204, presumably because of these legal problems.

Act 204 created a strict liability regime for both websites who host third-party content, as well as all platforms on which advertisers of short-term rentals might post, including newspapers such as the Honolulu Star-Advertiser, community publications, websites like Craigslist, real estate brokers’ websites, and resort timeshares in Hawai‘i such as Disney and Hilton. Under Act 204, if a third-party user fails to post any of the required information on a listing, liability would automatically attach to the website operator. As a result, Act 204 imposes liability on both websites and newspapers by treating them as the “publisher or speaker” of the information (or lack thereof) provided by another in direct contravention of Section 230. This impermissible conflict likely makes Act 204 unenforceable and invalid.

Similar to Act 204, the above-noted language of H.B. 1471, HD3, SD1 attempts to place liability on internet platforms for the business activities of its users. As with Act 204, such a scheme violates Section 230. While Act 204 has not been explicitly challenged in court, suits have been filed over similar restrictions in other jurisdictions. If the State of Hawai‘i were to

seek to enforce Act 204 or were to pass H.B. 1471, HD3, SD1 and seek to enforce it against a platform like Airbnb, Expedia, VRBO or other similar website, such enforcement would be preempted by federal law and be invalid.

Violation of the Stored Communications Act. In 1986, Congress enacted the SCA, 18 U.S.C. Chapter 121 §§ 2701–2712, to give persons using internet platforms statutory protection, similar to the Fourth Amendment, against access by the government to stored electronic private information held by those internet platforms, without due process such as a search warrant. Orin S. Kerr, *A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It*, 72 GEO. WASH. L. REV. 1208, 1209–13 (2004). The SCA limits the government's ability to compel internet platforms to disclose information in their possession about their users, and limits the internet platform's ability to voluntarily disclose information about their users to the government, absent a subpoena. The SCA contains both criminal and civil penalties for violations. Numerous courts have held that the SCA applies to internet platforms and websites. *Brown Jordan Int'l Inc. v. Carmicle*, 846 F.3d 1167 (11th Cir. 2017), *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965 (C.D. Cal 2010), *Campbell v. Facebook, Inc.*, 315 F.R.D. 250 (N.D. Cal 2016).

Recently, in *Homeaway.com, Inc. v. City of Portland*, Civil No. 3:17-cv-00091-PK, U.S. District Court, District of Oregon at Portland, a federal judge restricted the city of Portland from enforcing some of its lodgings tax regulations against HomeAway, a vacation rental website. That case involved regulations by the city of Portland which required HomeAway to provide information to the city -- including customer names, listings and rental addresses and potentially lengths and prices of stays arranged through its websites -- without a subpoena or other legal process. U.S. District Judge Michael W. Mosman ruled that this would violate the federal Stored Communications Act. http://www.oregonlive.com/portland/index.ssf/2017/03/post_588.html.

Section (g) of H.B. 1471, HD3, SD1 provides that an internet platform must provide the state with certain privately held information regarding its users, including the operator's or plan manager's name, address and license identification number, the address of each transient accommodation, the number of nights each transient accommodation was rented and the rate or price, and the amount of tax derived from each transient accommodation. Additionally, upon request by a mayor or county official, such information must be disclosed to the county to ensure compliance with land use laws. Section (g) provides as follows:

“(g) A registered transient accommodations broker tax collection agent shall file periodic returns in accordance with section 237-30 and annual returns in accordance with section 237-33. Each periodic return required pursuant to section 237-30 shall be accompanied by an electronic cover sheet, in a form prescribed by the department, that includes the following information:

(1) For each operator and plan manager on whose behalf the transient accommodations broker tax collection agent is required to report, collect, and pay over taxes due under this chapter, the operator's or plan manager's name, address, and license identification number;

(2) For each transient accommodation rented through the registered transient accommodations broker tax collection agent or the website or platform designated in the certificate of registration issued pursuant to chapter 237D and for which taxes are being remitted:

(A) The address of the transient accommodation;

(B) The number of nights for which each transient accommodation was rented and the rate or price at which each transient accommodation was rented; and

(C) The amount of tax being remitted pursuant to this chapter and the amount of any federal form 1099 income that was derived from each transient accommodation.

Upon request by the director or mayor of the applicable county, a registered transient accommodations broker tax collection agent may disclose any of the information contained in the returns or cover sheets required by this subsection to the director or any county official designated by the mayor to receive such information. For the purposes of section 237-34, the director and county official designated to receive the information pursuant to this subsection shall be deemed to be persons with a material interest in the return and return information and may examine the returns and cover sheets to ensure compliance with this section, state and local tax laws and ordinances, and any applicable land use laws and ordinances."

Section (g) of H.B. 1471, HD3, SD1 violates the SCA and is preempted, because it requires the disclosure to the government of private information held by an internet platform, without the necessity of a warrant or any process at all. The names of the operators, the license identification numbers, the addresses of the transient accommodation, the rates and number of nights rented, are all private information held by the internet platforms and governed by the SCA. Simply put, H.B. 1471, HD3, SD1 seeks to have the internet platforms violate federal law.

Impracticality. Finally, we note that H.B. 1471, HD3, SD1 is simply impractical and would not accomplish the goals of the Legislature to address home sharing or tax collection as it would create a voluntary program for which no one would volunteer. It is highly unlikely that any reasonable internet platform would sign up to be a transient accommodations broker tax collection agent under this scheme. No reasonable internet platform would be likely to

Committees
March 29, 2017
Page 7

voluntarily assume the obligations, rights, and responsibilities imposed by Section (j) or Section (d) of this bill, or voluntarily provide information in violation of the SCA as required by Section (g). Such an assumption would make the internet platform responsible for all of the content of any advertisements and make it liable for any violations of law by third party users, regardless of the lawful conduct by the internet platform. It would also make the internet platform violate federal law by disclosing private protected information without a subpoena. No reasonable person or internet platform would willingly assume such liabilities or responsibilities. In other words, passing H.B. 1471, HD3, SD1, as written, would not lead to any solutions to the issue of home sharing and would not further the tax collection goals of the state.

For the foregoing reasons, I respectfully urge you not to pass H.B. 1471, HD3, SD1 in its current form. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "David M. Louie", with a large, stylized flourish at the end.

DAVID M. LOUIE

for

KOBAYASHI SUGITA & GODA, LLP



DEFER HB 1471 SD1 OR PASS AS IS - PLEASE DO NOT AMEND

Senator Jill Tokuda, Chair, Ways & Means Committee
Senator Rosalyn Baker, Chair, Committee on Commerce,
Consumer Protection, and Health
Committee members

March 28, 2017

Save O'ahu's Neighborhoods (SONHawaii'i) was formed in 2005 to educate people and influence the Honolulu County Government and the State of Hawai'i to preserve residential-zoned areas and eliminate the problem of illegal short-term rentals and the disastrous effect they bear on rental prices, homelessness, loss of community, and crime. Since our founding, many groups, neighborhood boards, community organizations and dedicated individuals have preserved O'ahu's 1989 ban on short-term rentals in residential-zoned areas – despite several concentrated efforts at the county and state level to overturn that ban. We are here to stay and a better-informed public is insisting on real solutions to the problems created by this so-called “\$HARING” economy.

Last week, the Senate committees on Economic Development, Tourism, and Technology and Public Safety, Intergovernmental, and Military Affairs added meaningful language to HB1471. We would rather HB1471 be deferred. But if passed, it must include bulletproof language to prevent our state government from being a willing participant in, and promoter of, widespread illegal activity.

Neighborhood vacation rentals undercut legitimate hotels by conducting hotel businesses at residential under-the-counter rates. This is an end-run approach by multi-billion dollar mainland vacation rental brokers (travel agents) to completely disregard county laws by making themselves registered agents of the State of Hawai'i while handling the income and collecting/paying the taxes on illegal operations. Allowing HB1471 to become law without **REAL** enforcement protection will put the state government into an ethical and legal mess. These “operator's” rent out anything – plastic tool sheds, public park land, beaches, vans, dedicated low-income housing, ag land – anything.

The name “Airbnb” is nowhere in HB1471. Anyone that applies for “registered agent of the State of Hawai'i” status and meets the criteria cannot be turned down. Either the Dept. of Taxation will issue “registered agent status” to those that apply, or the state will be swamped with legal challenges by anyone turned down. The Dept of Taxation's primary motivation that they will only have to deal with one tax collection agent will turn into an administrative nightmare when dozens or hundreds of entities around the USA and the world apply to become

“registered agents of the State of Hawai‘i”. HB1471 was originally riddled with language to hide or disguise the identity of illegal operators.

The primary reasons behind the vacation rental brokers pushing this bill are:

- A. To give the ‘registered transient accommodation broker tax collection agents’ (whew) the aura of legality while advertising and booking illegal short-term rentals.
- B. Attract currently-illegal operations by providing secrecy to shield their locations and identity from county zoning enforcement.
- C. Nullify Act 204 that went into effect January 1. Act 204 requires all transient accommodation advertisements to post the TAT account # of the operator of the property.
- D. Entice more homeowners to become illegal operators by providing secrecy to shield their locations and identity.
- E. Attract more operations by providing web-hosting, advertising, tax-filing, and booking services

The result of this legislation (unless bulletproof language is included) will be to:

- 1) Hide and obfuscate the names and addresses of county-illegal short-term rentals
- 2) Provide an aura of legitimacy to illegal operations that will increase their number beyond the ability of county zoning enforcement to ever provide effective enforcement.
- 3) Encourage vacation-rental operators to cheat on their TAT and GET.
- 4) Encourage many more residential homeowners to convert long-term rentals to vacation rentals. **Many, many new illegal vacation rentals will open**, which in turn will cause all the following negative results....
- 5) Increase rents for long-term rental homes and apartments
- 6) Increase homelessness
- 7) Increase spending for social services with marginal-income that cannot pay higher rents
- 8) Introduce a constant stream of overnight strangers into residential-zoned neighborhoods, destabilizing the neighborhoods
- 9) Raise tourism resentment to new highs
- 10) Undermine the high-overhead legitimate hotel industry by promoting low overhead competition that does not have insurance, security, high property taxes, living-wage labor, FICA, Medicare, and on and on.
- 11) Undermine the job security of labor and management in the legitimate hotel industry
- 12) Undermine the service industry and suppliers to the legitimate hotel industry. Vacation rental operators buy at Costco, WalMart, etc. instead of traditional hotel suppliers.

With county governments, especially Honolulu and Maui, cracking down on illegal short-term rentals, many would-be illegal operators are waiting in the wings to see what happens. If this identity-shielding law passes, they will jump in the game right away. This will remove many more long-term rentals from the housing market.

Please don't be swayed by the new ‘good neighbor complaint line’ recently set up by Airbnb to supposedly handle complaints that Airbnb guests are noisy or causing disturbances, etc. The

“registered agents” will have no enforcement arm. The best they can do will be after-the-fact and will be no help to the suffering neighbors.

If HB1471 becomes law without strong legality requirements, it will haunt us for decades. Please don't be remembered as one who had the opportunity to step up and do the right thing for our housing needs and the sanctity of our residential neighborhoods, but chose the other path.

The false promise of a few more dollars in the state's coffers is nowhere near the costs to the people and the state government in dealing with the resulting greater housing crisis.

Sincerely, **Larry Bartley**
Executive Director
sonhawaii@hawaii.rr.com



Condominium Rentals Hawaii

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

I am writing in strong opposition to HB1471 HD3 SD1

While I agree, there is a problem with individual property owners who are renting out to visitors and not paying their share of the GET and TAT, this bill is not the solution.

In the opening sentence of this bill it states this will likely "ease the burden of collecting taxes". I ask, for whom?

I see this bill adding a huge burden to all of those who are currently playing by the rules and paying their taxes but who use companies that choose to become tax collection agents. While filing the GET and TAT statements are already a burden, now having to determine which income comes from sources where the taxes need to be paid from income coming from one of these "registered transient accommodations broker tax collection agents" will make this chore even more burdensome.

I assume on the short run this will also add to the work load of the Tax department trying to come up with new forms and redesign software. I know from my licensed management company perspective this will likely add thousands to my costs in redesigning or creating new software to handle this exception to when we must account for or not the taxes due to the state. The only other option is to forgo doing business with companies that opt to collect the taxes. This will likely result in a decrease in business but given the complexity of dealing with this it may be our only option.

I have no idea how it will be handled when a guest has to shorten their reservation or for any other number of reasons is due a refund. As we have not received the tax portion of their stay the consumer will then have to go back to the original source to receive this part of their refund.

While in theory there may be some situations where this proposed bill works smoothly, I know from the stand point of professionally managed licensed companies in Hawaii this will just be one big headache. Once again, those that abide by the law will be penalized with additional work load while doing little to address the goal of collecting unpaid taxes.

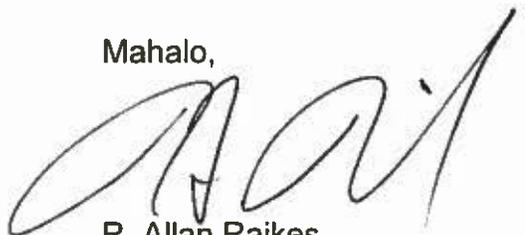
There are three distinct segments to the vacation rental business and due to the State's lack of understanding of this industry we are all thrown in the same basket.

You have the Hawaii based, licensed real estate companies managing properties. Income is reported to the state and federal governments via form 1099 giving the State the necessary tools to determine if all taxes are being paid. Being based in Hawaii with a State license we are the easiest to monitor, control and penalize should things be not done by the book.

You also have individuals renting on their own with or without the use of a licensed real estate company. Those not using a licensee are using housekeepers, neighbors or handymen as their local contact. The state has little control over this group and no way of determining if all income is reported and taxes are paid. This bill, while possibly catching some of the unreported income, is more likely to have individuals already skirting the law to move to platforms that opt not to be tax collection agents. For those that currently comply, this bill does nothing to increase tax collections and just causes unnecessary additional challenges for these individuals.

Lastly you have individual property owners operating without license and are not in compliance with zoning laws. The bill states they must attest to being in compliance or the platform cannot list them. If they are already violating county zoning laws they will not be able to be listed on these sites and will likely just go further underground.

Mahalo,

A handwritten signature in black ink, appearing to read 'R. Allan Raikes', written in a cursive style.

R. Allan Raikes
President
Condominium Rentals Hawaii



DEFER HB 1471 SD1 OR PASS AS IS - PLEASE DO NOT AMEND

Senator Jill Tokuda, Chair, Ways & Means Committee
Senator Rosalyn Baker, Chair, Committee on Commerce,
Consumer Protection, and Health
Committee members

March 28, 2017

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Sincerely, **Larry Bartley**
Executive Director
sonhawaii@hawaii.rr.com



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON COMMERCE,
CONSUMER PROTECTION, & HEALTH AND THE COMMITTEE ON WAYS AND MEANS
HAWAII STATE CAPITOL, SEMATE CONFERENCE ROOM 211
THURSDAY, MARCH 30, 2017 AT 9:30 A.M.**

To The Honorable Rosalyn H. Baker, Chair;
The Honorable Clarence K. Nishihara, Vice Chair; and
Members of the Committee on Commerce, Consumer Protection, & Health

To The Honorable Jill Tokuda, Chair;
The Honorable Donovan M. Dela Cruz, Vice Chair; and
Members of the Committee on Ways and Means

TESTIMONY IN SUPPORT FOR HB 1471 RELATING TO TAXATION

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce representing approximately 600 businesses and 16,000 employees. I am writing share our support of HB1471.

We support a level playing field and a fair and equitable marketplace. All accommodations should be required to pay the transient accommodations tax and general excise tax like everyone else. In our previous testimony, we noted that we supported the bill without the added surcharge on tax collection agents. It appears the surcharge has been removed so we will continue to support this bill without the added surcharge.

We appreciate the opportunity to testify on this matter and therefore ask that this bill be passed.

Mahalo for your consideration of our testimony and we hope you will move this bill forward.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

From: [Kekoa McClellan](#)
To: [CPH Testimony](#)
Subject: HB1471, HD3, SD1: Testimony in support – offering comments
Date: Tuesday, March 28, 2017 12:23:52 PM
Attachments: [image006.png](#)



Aloha Chair Baker and Chair Tokuda,

On behalf of the lodging industry and the members of the American Hotel and Lodging Association, we stand united behind responsible and appropriate regulation of short-term rentals (STR) in Hawaii. We appreciate the valuable work you are doing to ensure short-term rental companies and the unregulated commercial businesses they facilitate operate by a standard set of rules that ensure a level playing field and protect our neighborhoods.

In its current form, we offer our strong support for HB1471, HD3, SD1.

Our communities are at stake

Earlier this month, CBRE released a report that examined the rise of commercial activity taking place on Airbnb nationwide. The report focused on 13 of the nation's largest Airbnb markets, which includes Oahu. The results confirmed what many in Hawaii already know—most vacation rental units here are owned by part-time residents or commercial operators, not small home-owners renting a room out to supplement their income. In fact, **85% of Oahu Airbnb revenue comes from entire-home rentals**. More alarming is the explosion of multi-unit whole-home vacation rentals springing up in neighborhoods across Oahu. Airbnb's revenue from multi-unit home vacations jumped an astonishing 227% in the last year.

This proliferation of illegal STRs degrades the quality of life for our residents and exacerbates the problem of inadequate affordable housing supply in Hawaii.

We're not opposed to Oahu visitors having alternative lodging options like vacation rentals, but it shouldn't be at the expense of kama'aina communities. We should be concerned that companies want us to turn a blind eye to the fact that many multi-unit hosts are in fact illegal hotel operators. For these reasons, we urge your strong consideration for the passage of HB1471, HD3, SD1 which provides for:

- Mandatory state registration for short-term rentals.
- Transparency of data reported by STR platforms to ensure maximum collection of taxes from STR activity.
- Penalties sufficient to encourage compliance by hosts, and penalties for platforms listing non-compliant units.
- No Preemption of County authority to regulate STR's.

The Hotel industry is one of the most competitive industries in the world, and we welcome anyone willing to play by the rules. Our stake in this fight is about the communities where our 109,000 member employees live in Hawaii. Our members pay \$3.8billion a year in Federal, State, and Local taxes in Hawaii, and are actively engaged in countless activities supporting the needs of Hawaii residents. We are voicing our strong support for parity and common sense solutions which will ensure the protection of our communities because Hawaii is who are, and Hawaii is who care about.

Mahalo,

Kekoa McClellan

Spokesman - American Hotel and Lodging Association

THREE REASONS
TO JOIN NOW!

ACTIVE
ADVOCACY

CLEAR
COMMUNICATION

EMPOWERING
EDUCATION



CPH Testimony

From: Troy Flanagan <tflanagan@ahla.com>
Sent: Wednesday, March 29, 2017 4:38 AM
To: CPH Testimony
Subject: Testimony: HB1471, HD3, SD1 - SUPPORT



Aloha Chair Baker and Chair Tokuda,

On behalf of the American Hotel & Lodging Association and the 110,000 lodging industry employees in Hawaii, please accept this testimony in strong support of HB1471, HD3, SD1.

We appreciate the Senate's efforts to modify this legislation to ensure short-term rental companies and the unregulated commercial businesses they facilitate operate by a standard set of rules. In its current form, this bill will provide for a level playing field for the tourism industry, protect the residential nature of our neighborhoods, and maximize STR compliance and tax collection.

AHLA is on the ground working every day with Outrigger, Kyoya, Hilton, Marriott, Hyatt, Local 5, Aqua, Save Oahu's Neighborhoods, and dozens of other local unions, hotels, community associations, and residents to provide support for legislation which will ensure:

- Mandatory state registration for short-term rentals;
- Transparency of data reported by STR platforms to ensure equitable collection of taxes from STR activity;
- Penalties sufficient to encourage compliance by hosts, and penalties for platforms listing non-compliant units, and;
- No preemption of county authority to regulate STR's.

AHLA and many of our members will be present at Thursday's decision making hearing supporting the passage of this bill in its current form. We urge you to consider the adoption of this common-sense legislation to guarantee short-term rental companies are compliant with State and County regulation, to protect the quality of our tourism product and to preserve the residential nature of our communities.

Thank you for your consideration.

Troy Flanagan | Vice President, State & Local Government Affairs | American Hotel & Lodging Association | 1250 I Street, NW, Suite 1100, Washington, DC 20005
Direct: 202-289-3125 | Cell: 202-285-4371 | tflanagan@ahla.com





Eric W. Gill, Financial Secretary-Treasurer

Gemma G. Weinstein, President

Godfrey Maeshiro, Senior Vice-President

Tuesday, March 29, 2017

Senate Committees on Commerce, Consumer Protection and Health and
Ways and Means

Hawaii State Legislature
State Capitol
415 South Beretania Street

Re: HB 1471, HD 3, SD 1

Aloha Chairs Baker, Tokuda and Committee Members,

UNITE HERE Local 5 – a local labor organization representing 11,000 hotel, health care and food service workers throughout Hawaii would like to offer comments in support of HB 1471, HD 3, SD 1.

We would like to acknowledge the efforts made by Chairs Wakai and Nishihara in passing the SD1 version of HB 1471 particularly with respect to ensuring that the current measure not pre-empt the counties ability to enforce local land use laws.

As you know, there are today an estimated 33,000 homes throughout Hawaii being used as vacation rentals, and at the current rate, in two years that number will grow to 40,000.

In sum, we believe that there are four key elements that at a minimum need to be included in whatever measure gets passed:

- It must not preempt the counties' ability to enact good regulations;
- Rental operators should be required to certify to the tax collection broker that they are operating legally, and provide documentation to back that up;
- We should ensure that it complements – and does not nullify – Act 204 in allowing the state to hold operators accountable; and
- Tax collection brokers should be required to operate transparently by providing lists of names and addresses of operators to the State so the State can verify that the money it is collecting reflects reality.

We believe this measure achieves the State's purpose of collecting the appropriate amount of taxes while regulating vacation rentals and platforms like AirBnb and addressing the four points above.

Thank you.



Testimony of

Chris Tatum
Area General Manager
Marriott Resorts Hawaii
March 30, 2017

Testimony in Support of HB1471, HD3, SD1

Aloha Chair Baker and Chair Tokuda,

We are submitting testimony strongly supporting in its current form HB1471, HD3, SD1 and the responsible and appropriate regulation of short-term rentals (STR) in Hawaii that will ensure STR companies and the unregulated commercial businesses they facilitate operate by a set of rules that ensure a level playing field and protect our neighborhoods.

For these reasons, we urge your strong consideration for the passage of HB1471, HD3, SD1, in its current form which provides:

- Mandatory state registration for short-term rentals.
- Transparency of data reported by STR platforms to ensure maximum collection of taxes from STR activity.
- Penalties sufficient to encourage compliance by hosts, and penalties for platforms listing non-compliant units.
- No Preemption of County authority to regulate STR's.

We should be concerned that many multi-unit hosts are in fact illegal hotel operators. The Hotel industry is one of the most competitive industries in the world, and we welcome anyone willing to play by the rules. But it should not be at the expense of our kamaaina communities where our employees live. We are voicing our strong support for parity and common sense solutions that will ensure the protection of our communities.

Mahalo for the opportunity to offer this testimony.



March 30, 2017

TO: Senate Committee on Commerce, Consumer Protection and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair

Senate Committee on Ways and Means
The Honorable Jill N. Tokuda, Chair
The Honorable Donovan M. Dela Cruz, Vice Chair

FROM: Bob Dzielak, Executive Vice President and General Counsel, Expedia, Inc.

RE: HB 1471, HD3, SD1 Relating to Taxation: OPPOSE

While Expedia recognizes the Legislature's desire to find a reasonable way to collect taxes that are due to the State and to ensure that owners and operators of vacation rentals comply with County Zoning and Permitting requirements, we, unfortunately, cannot support HB 1471, HD3, SD1 as it will do more harm than good to the State and its economy. Our specific concerns are as follows.

- ❖ As drafted, the obligation to take down listings that don't have registration and tax ID numbers, etc., applies to all transient accommodations brokers (page 10, line 15 and page 19, line 6). We believe it is not your intent to apply these sections to ALL transient accommodations brokers and, therefore, we recommend this language should be amended to apply only to transient accommodations broker tax collection agents.
- ❖ The display obligations placed on a platform violate the Communications Decency Act. Therefore, the obligations may be placed on transient accommodations brokers who **voluntarily** register as tax collection agents, but cannot apply to all transient accommodations brokers.
- ❖ The requirements to provide personal information and booking data without a subpoena and to allow the sharing of this information with the counties violates the Stored Communications Act.
- ❖ The provisions which allow sharing of tax data with the counties for non-tax reasons violate the intent and purpose of the taxpayer confidentiality provisions in the Hawaii tax code and would, in a discriminatory manner, negate protections granted every other Hawaii taxpayer.

- ❖ The requirement to provide a copy of the form 1099 essentially mandates the reporting of federal taxes that are not subject to state jurisdiction.
- ❖ Act 204, SLH 2015 is still in place and subject to legal challenge. It is unclear how the provisions of Act 204 and its subsequent Rules interact with the intent and specifics of this proposal.

Additionally, it is worth noting, that the definition of “Transient Accommodations Broker” contained in HRS 237D is very broad and captures more than the traditional on-line vacation rental sites. “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.¹ Under this definition, any online site that accepts advertising for an operator who offers accommodations for less than 180 consecutive days must also verify compliance with state and county law use laws and would be required to pull advertisements at the request of state or local governments. Most companies cannot comply with these burdensome provisions; thereby undermining any potential this bill has to help in tax collection for the state.

We would also like to take this opportunity to debunk the misconception that all Internet vacation rental advertising platforms are the same. HomeAway and VRBO are very different than AirBnB. We work differently with our homeowners and renters, offer different types of products, and serve different types of customers.

- ❖ HomeAway/VBRO started out as a subscription service and the majority of our owners have listing subscriptions today. That means, they pay only an annual fee for posting their property on the site. For those bookings, the homeowner does not pay a fee per rental.
- ❖ Unlike AirBnB, most of our owners include taxes as a line item cost in their listing and collect taxes without HomeAway/VBRO doing so for them. We have no reason to believe that the owners—having collected taxes—do not remit them.
- ❖ The HomeAway/VBRO typical guest is a 47-year-old female renting on behalf of her family.
- ❖ The average stay for a HomeAway/VBRO guest is 6-7 days.
- ❖ The typical HomeAway/VBRO owner offers part-time use of their second home, at times when they are not in residence. There is no reason to expect these owners to make their homes available on the long-term rental market.

Finally, the preliminary results of an economic assessment we commissioned² found that the vacation rental industry in Hawaii contributes significantly to our State’s economy.

¹ HRS 237D

² Completed by Hospitality Advisors LLC, Joseph M. Toy, President and CEO, Honolulu, Hawaii

- ❖ Last year, over **608,000 visitors** spent an average of eight (8) days staying in vacation rentals.
- ❖ These visitors spent over **\$444 million** on lodging and over **\$475 million** on other expenses such as food, entertainment and souvenirs for total expenditures of nearly **\$920 million**.
- ❖ The number of visitors using a vacation rental is **expected** to continue to grow at a significant pace, as that is the trend seen in Hawai'i and elsewhere over the past ten years.
- ❖ A large number of **visitors** who prefer to stay in vacation rentals **will not stay** in traditional resort accommodations for their vacations. **They want to rent a home** that has multiple bedrooms, a kitchen, a swimming pool and a yard for their kids to play in. For that growing segment of the tourist population, a hotel is simply not a suitable substitute for a vacation rental.
- ❖ The data we derived that was most disconcerting was the fact that even if the number of vacation rental visitors switched to traditional resort lodging, there would **not be enough hotel rooms** to accommodate them.
- ❖ We found that if all traditional options were at an annual 85% capacity (which is widely viewed as the maximum sustainable capacity for a hotel), there would be demand for more than **2.5 million guest nights left unmet**.
- ❖ Given the average length of stay of each vacation rental user is about eight (8) days, the result is that nearly **320,000 visitors would have no place to stay**.
- ❖ While that might mean less crowded beaches, it would also mean **over \$430 million NOT spent in Hawaii on lodging and other local goods and services, causing a loss of over \$37 million in TAT and GET**. It is undeniable that those types of economic losses would also result in lost jobs and potential loss of airlift into Hawai'i.

The transient vacation rental industry plays a vital role in our state economy. We would like to work with your state and local governments to modernize the regulations of this important economic sector in a way that protects neighborhoods and the state's economy. This legislation does not meet those goals.

Mahalo for the opportunity to present this testimony.



Bob Dzielak
Executive Vice President and General Counsel, Expedia, Inc



Committee on Commerce, Consumer Protection and Health
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Thursday, March 30, 2017 9:30am
Conference Room 211 State Capitol

TESTIMONY ON BEHALF OF AIRBNB RE: HB1471 HD 3 SD1

Statement in Support of the Intent of HB1471 HD 3 SD1

Dear Members of the Committees:

We support the intent of HB1471 HD3 SD1 to allow online platforms such as Airbnb to voluntarily collect and remit taxes to the state on behalf of our hosts. To that end, we supported HB1471 HD3, which was approved by the House before being significantly revised as SD1. We want to pay taxes and be a good partner with the State of Hawaii. If Airbnb had been allowed to collect and remit taxes it would have generated more than \$41 million in new revenue for the state over the past two years. We are hopeful that we can work together to craft a bill that works for the state, our company, our hosts, and the industry as a whole.

However, while we support the intent of HB 1471 HD3 SD1 to allow Transient Accommodations Brokers to collect and remit taxes on behalf of operators and plan managers, we must raise serious reservations about numerous provisions that have been added to the bill including the following:

1. The requirement for platforms to “ensure” that “the transient accommodation is in compliance with all pertinent state and county land use laws...” puts the platforms solely in the role of being police, judge, and jury for compliance with local land use laws. We want to work with local jurisdictions to put in place common sense laws to provide them the tools to regulate short term rentals, but putting this requirement solely on the platforms is infeasible.
2. Requiring the operator or plan manager to “provide verification of compliance with county land use laws” is placing a burden on operators to secure a form of verification that does not currently exist. We are unaware that there is a process for operators to seek out and obtain “a written certification, verification, or permit”, from their local government to meet this requirement. Until such a uniform process is created this requirement is unfair and subject to confusion. We are also concerned about the timeliness of such a process to be created, operated and maintained if none currently exists given the limited resources at the county levels overall and in this particular area. And in the absence of a uniform

document it puts the platforms in the position of having to determine if the document is adequate for such "verification."

3. The requirement for platforms to ensure that an operator displays its transient accommodation tax registration identification number requires platforms to police listings and is redundant in that Act 204 already requires operators to display this information. Perhaps more importantly, the requirement that operators display transient accommodation tax registration identification number is meant to ensure tax compliance and allowing platforms to collect the transient accommodation tax, which is the main purpose of this bill, will ensure tax compliance for operators listing on platforms that agree to collect tax.
4. The requirement for the platforms to take down listings that have not complied with the law again puts the platform in the position of being the police, judge and jury since there is no burden on the state or local government to demonstrate that the law has been broken nor any ability for the host to appeal the determination by either the local agency or the platform.

The burdens placed on the platforms listed above will likely prevent any platform, including Airbnb, from entering a voluntary agreement with the state, thus invalidating the purpose of the bill. Moreover, as spelled out in testimony previously provided by former Hawaii Attorney General David Louie on behalf of the Internet Association, many of the provisions are also likely in violation of federal laws and therefore unenforceable.

We are committed to working with the state to craft a bill that addresses the concerns of the state while being workable for both the platforms and our hosts. To address legal concerns and encourage participation from internet platforms in a tax collection and remittance program that benefits the state, we submit the attached draft language to amend HB1471, SD1 for the committees to consider. With these changes, we believe the state will be able to more effectively capture tax revenue from this industry while still establishing legally sound safeguards for compliance with state and county regulations.

Thank you for the opportunity to testify.

Respectfully,



Matt Middlebrook
Head of Public Policy, Hawaii

HOUSE OF
REPRESENTATIVES
TWENTY-NINTH
LEGISLATURE, 2017
STATE OF HAWAII

H.B. 1471
H.D. 3
NO. S.D. 1

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, under certain circumstances, allowing a private person to act as a tax collection agent is likely to ease the burden of collecting taxes. Section 237-9, Hawaii Revised Statutes, allows a person engaged in network marketing, multi-level marketing, or other similar business to enter into an agreement with the department of taxation to act as a tax collection agent on behalf of its direct sellers. The legislature finds that similarly allowing a transient accommodations broker to act as a tax collection agent on behalf of providers of transient accommodations that utilize the services of the transient accommodations broker may facilitate the collection of transient accommodations taxes and general excise taxes.

The legislature further finds that, to increase transparency and ensure the veracity of the taxes being collected, transient accommodations brokers acting as tax collectors must provide pertinent information to the department of taxation about the operators and plan managers on whose behalf they collect taxes.

The purpose of this Act is to allow a transient accommodations broker to register to act as a tax collection agent with respect to transient accommodations taxes and general excise taxes for its operators and plan managers in a manner that recognizes the dynamic changes that are occurring in the transient accommodations business.

This Act is not intended to preempt or otherwise limit the authority of the counties to adopt, monitor, and enforce local land use regulations, nor is this Act intended to transfer the authority to monitor and enforce such regulations away from the counties.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- Transient accommodations broker as tax collection agent. (a) The director of taxation may permit a transient

accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers by entering into a tax collection agreement with the director or by submitting a transient accommodations broker tax collection agent registration statement to the director.

The director may deny an application for registration as a transient accommodations broker tax collection agent under this section for any cause authorized by law, including but not limited to any violation of this chapter or rules adopted pursuant thereto, violation of any prior tax collection agreement, or failure to meet minimum criteria that may be set forth by the department in rules adopted pursuant to chapter 91.

The director shall issue a certificate of registration or letter of denial within thirty days after a transient accommodations broker submits to the director a completed and signed transient accommodations broker tax collection agent registration statement, in a form prescribed by the department.
The registration shall be valid only for the transient accommodations broker tax collection agent in whose name it is issued, and for the website or platform designated therein, and shall not be transferable.

A registered transient accommodations broker tax collection

agent shall be issued separate licenses under this chapter with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities.

(b) In addition to its own responsibilities under this chapter, a registered transient accommodations broker tax collection agent shall report, collect, and pay over the taxes due under this chapter on behalf of all of its operators and plan managers from the date of registration until the registration is canceled as provided in subsection (h); provided that the registered transient accommodations broker tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply solely to transient accommodations in the State arranged or booked directly through the registered transient accommodations broker tax collection agent.

(c) The registered transient accommodations broker tax collection agent's operators and plan managers shall obtain licensure under this chapter and remain subject to the requirements of title 14; provided that the registered transient

accommodations broker tax collection agent shall comply with all requirements of title 14 this chapter on behalf of the operators and plan managers for business activity conducted directly through the agent, from the date of registration until the registration is canceled as provided in subsection (h). For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 and all county, city, and town laws or ordinances, and rules and regulations thereunder, regulating short-term rentals, vacation rentals, or bed and breakfast lodging within their jurisdictions as if this section did not exist.

(d) Under this section, a registered transient accommodations broker tax collection agent, and the operators and plan managers, shall jointly assume all obligations, rights, and responsibilities imposed by this chapter upon the operators and plan managers with respect to their business activities conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h).

(e) A transient accommodations broker tax collection agent shall be personally liable for the taxes imposed by this chapter

that are due and collected on behalf of operators and plan managers, if taxes are collected, but not reported or paid, together with penalties and interest as provided by law.

(f) Except as provided in subsection (g), all returns and other information provided by a registered transient accommodations broker tax collection agent, including the application for registration as a transient accommodations broker tax collection agent or any tax collection agreement, shall be confidential, and disclosure thereof shall be prohibited as provided in section 237-34.

(g) A transient accommodations broker tax collection agent shall provide the names and addresses of any of its operators and plan managers to the director when such a request is made through a lawful and valid administrative process or upon waiver by the operator or plan manager. A registered transient accommodations broker tax collection agent shall file periodic returns in accordance with section 237-30 and annual returns in accordance with section 237-33. Each periodic return required pursuant to section 237-30 shall be accompanied by an electronic cover sheet, in a form prescribed by the department, that includes the following information:

(1) For each operator and plan manager on whose behalf the

~~transient accommodations broker tax collection agent is required to report, collect, and pay over taxes due under this chapter, the operator's or plan manager's name, address, and license identification number;~~

~~(2) For each transient accommodation rented through the registered transient accommodations broker tax collection agent or the website or platform designated in the certificate of registration issued pursuant to chapter 237D and for which taxes are being remitted:~~

~~(A) The address of the transient accommodation;~~

~~(B) The number of nights for which each transient accommodation was rented and the rate or price at which each transient accommodation was rented; and~~

~~(C) The amount of tax being remitted pursuant to this chapter and the amount of any federal form 1099 income that was derived from each transient accommodation.~~

~~Upon request by the director or mayor of the applicable county, a registered transient accommodations broker tax collection agent may disclose any of the information contained in the returns or cover sheets required by this subsection to the director or any county official designated by the mayor to receive such information. For the purposes of section 237-34,~~

~~the director and county official designated to receive the information pursuant to this subsection shall be deemed to be persons with a material interest in the return and return information and may examine the returns and cover sheets to ensure compliance with this section, state and local tax laws and ordinances, and any applicable land use laws and ordinances.~~

(h) The registration provided for under this section shall be effective until canceled in writing.

A registered transient accommodations broker tax collection agent may cancel its registration under this section by delivering written notice of cancellation to the director and each of its operators and plan managers furnishing transient accommodations in the State not later than ninety days prior to the effective date of cancellation.

The director may cancel a transient accommodations broker tax collection agent's registration under this section for any cause, including but not limited to any violation of this chapter or rules adopted pursuant thereto, or for violation of any applicable tax collection agreement, by delivering written notice of cancellation to the transient accommodations broker tax collection agent not later than ninety days prior to the effective date of cancellation.

(i) For the purposes of this section:

"Director" means the director of taxation.

"Operator" has the same meaning as in section 237D-1.

"Plan manager" has the same meaning as in section 237D-1.

"Transient accommodations broker" has the same meaning as in section 237D-1.

(j) All registered transient accommodations broker tax collection agents shall: ~~inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws, including but not limited to:~~

(1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent on behalf of an operator or plan manager, notifying the operator or plan manager that the subject property is required to be in compliance with applicable state and county land use laws prior to retaining the services of the transient accommodations broker;

(2) ~~Requiring~~ Allow the operator or plan manager to display or make available its transient accommodation tax registration identification number and transient accommodations number, along with other required

information in any advertisement, in compliance with section 237D-4; and

~~(3) Requiring the operator or plan manager to provide verification of compliance with state and county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency; and~~

(34) Requiring the operator or plan manager to provide a statement confirming compliance with all applicable land use laws.

~~A transient accommodations broker shall remove any advertisement, including an online advertisement, for a transient accommodation located in the State for which the operator or plan manager fails to comply with paragraph (2) or (3) or for which the transient accommodations broker has received written notice from a state or local governmental authority that the operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements.~~

(k) Nothing in this section shall be construed to preempt or prohibit the authority of a unit of local government in the State, including counties and any other political subdivisions of the State, to adopt, monitor, and enforce local land use

regulations, nor to transfer the authority to monitor and enforce such regulations away from the counties."

SECTION 3. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237D- Transient accommodations broker as tax collection agent. (a) The director may permit a transient accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers by entering into a tax collection agreement with the director or by submitting a transient accommodations broker tax collection agent registration statement to the director.

The director may deny an application for registration as a transient accommodations broker tax collection agent under this section for any cause authorized by law, including but not limited to any violation of this chapter or rules adopted pursuant thereto, violation of any prior tax collection agreement, or failure to meet minimum criteria that may be set forth by the department in rules adopted pursuant to chapter 91.

The director shall issue a certificate of registration or letter of denial within thirty days after a transient accommodations broker submits to the director a completed and

signed transient accommodations broker tax collection agent registration statement, in a form prescribed by the department. The registration shall be valid only for the transient accommodations broker tax collection agent in whose name it is issued, and for the website or platform designated therein, and shall not be transferable.

A registered transient accommodations broker tax collection agent shall be issued separate certificates of registration under this chapter with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities.

(b) In addition to its own responsibilities under this chapter, a registered transient accommodations broker tax collection agent shall report, collect, and pay over the taxes due under this chapter on behalf of all of its operators and plan managers from the date of registration until the registration is canceled as provided in subsection (h); provided that the registered transient accommodations broker tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply

solely to transient accommodations in the State arranged or booked directly through the registered transient accommodations broker tax collection agent.

(c) The registered transient accommodations broker tax collection agent's operators and plan managers shall obtain registration under this chapter and remain subject to the requirements of title 14; provided that the registered transient accommodations broker tax collection agent shall comply with all requirements of ~~title 14~~ this chapter on behalf of the operators and plan managers for business activity conducted directly through the agent, from the date of registration until the registration is canceled as provided in subsection (h). For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 and all county, city, and town laws or ordinances, and rules and regulations thereunder, regulating short-term rentals, vacation rentals, or bed and breakfast lodging within their jurisdictions as if this section did not exist.

(d) Under this section, a registered transient accommodations broker tax collection agent, and the operators and plan managers, shall ~~jointly~~ assume all obligations, rights, and responsibilities imposed by this chapter upon the operators

and plan managers with respect to their business activities conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h).

(e) A transient accommodations broker tax collection agent shall be personally liable for the taxes imposed by this chapter that are due and collected on behalf of operators and plan managers, if taxes are collected, but not reported or paid, together with penalties and interest as provided by law.

(f) ~~Except as provided in subsection (g),~~ All returns and other information provided by a registered transient accommodations broker tax collection agent, including the application for registration as a transient accommodations broker tax collection agent or any tax collection agreement, shall be confidential, and disclosure thereof shall be prohibited as provided in section 237D-13.

(g) A transient accommodations broker tax collection agent shall provide the names and addresses of any of its operators and plan managers to the director when such a request is made through a lawful and valid administrative process or upon waiver by the operator or plan manager. ~~A registered transient~~

~~accommodations broker tax collection agent shall file periodic returns in accordance with section 237D-6 and annual returns in accordance with section 237D-7. Each periodic return required pursuant to section 237D-6 shall be accompanied by a mandatory electronic cover sheet, in a form prescribed by the department, that includes the following information:~~

~~(1) For each operator and plan manager on whose behalf the transient accommodations broker tax collection agent is required to report, collect, and pay over taxes due under this chapter, the operator's or plan manager's name, address, and transient accommodations registration identification number;~~

~~(2) For each transient accommodation rented through the registered transient accommodations broker tax collection agent or the website or platform designated in the certificate of registration issued pursuant to this chapter and for which taxes are being remitted:~~

~~(A) The address of the transient accommodation;~~

~~(B) The number of nights for which each transient accommodation was rented and the rate or price at which each transient accommodation was rented; and~~

~~(C) The amount of tax being remitted pursuant to this chapter and the amount of any federal form 1099 income that was~~

~~derived from each transient accommodation.~~

~~Upon request by the director or mayor of the applicable county, a registered transient accommodations broker tax collection agent may disclose any of the information contained in the returns or cover sheets required by this subsection to the director or any county official designated by the mayor to receive such information. For the purposes of section 237D-13, the director and county official designated to receive the information pursuant to this subsection shall be deemed to be persons with a material interest in the return and return information and may examine the returns and cover sheets to ensure compliance with this section, state and local tax laws and ordinances, and any applicable land use laws and ordinances.~~

~~(h) The registration provided for under this section shall be effective until canceled in writing.~~

~~A registered transient accommodations broker tax collection agent may cancel its registration under this section by delivering written notice of cancellation to the director and each of its operators and plan managers furnishing transient accommodations in the State not later than ninety days prior to the effective date of cancellation.~~

~~The director may cancel a transient accommodations broker~~

tax collection agent's registration under this section for any cause, including but not limited to any violation of this chapter or rules adopted pursuant thereto, or for violation of any applicable tax collection agreement, by delivering written notice of cancellation to the transient accommodations broker tax collection agent not later than ninety days prior to the effective date of cancellation.

(i) All registered transient accommodations broker tax collection agents shall ~~inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws, including but not limited to:~~

- (1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent on behalf of an operator or plan manager, notifying the operator or plan manager that the subject property is required to be in compliance with applicable state and county land use laws prior to retaining the services of the transient accommodations broker;
- (2) Allow ~~Requiring~~ the operator or plan manager to display or make available its transient accommodation tax registration identification number and transient

accommodations number, along with other required information in any advertisement, in compliance with section 237D-4; and

(3) Requiring the operator or plan manager to provide verification of compliance with state and county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency; and

(34) Requiring the operator or plan manager to provide a statement confirming compliance with all land use laws.

A transient accommodations broker shall remove any advertisement, including an online advertisement, for a transient accommodation located in the State for which the operator or plan manager fails to comply with paragraph (2) or (3) or for which the transient accommodations broker has received written notice from a state or local governmental authority that the operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements.

(j) Nothing in this section shall be construed to preempt or prohibit the authority of a unit of local government in the State, including counties and any other political subdivisions

of the State, to adopt, monitor, and enforce local land use regulations, nor to transfer the authority to monitor and enforce such regulations away from the counties."

SECTION 4. By January 1, 2018, the director of taxation shall make available to transient accommodations brokers a form of application for registration as a transient accommodations broker tax collection agent under the new section of chapter 237, Hawaii Revised Statutes, added by section 2 of this Act, and under the new section of chapter 237D, Hawaii Revised Statutes, added by section 3 of this Act.

SECTION 5. Upon the establishment by a county of a process for providing verification of compliance by an operator or plan manager with that county's land use laws, the director of taxation shall transfer to that county per cent of the transient accommodations tax and general excise tax collected for that fiscal year.

SECTION 6. 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 7. New statutory material is underscored.

SECTION 8. This Act shall take effect on May 22, 2050, and shall apply to taxable years beginning after December 31, 2017.

Report Title:

Taxation; Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax; Transient Accommodations Tax

Description:

Allows transient accommodations brokers to register as a tax collection agent on behalf of all of its operators and plan managers. Requires registered transient accommodations broker tax collection agent's operators and plan managers to obtain a GET license and TAT registration. Requires registered transient accommodations broker tax collection agents to file periodic and annual GET and TAT returns. Requires that each periodic return be accompanied by an electronic cover sheet containing required information. Requires all registered transient accommodations broker tax collection agents to inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws and remove advertisements for transient accommodations for which operators and plan managers failed to comply with land use or tax requirements. Requires the operator or plan manager to provide verification of and a statement confirming compliance with state and county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency. Allocates a per cent of GET and TAT taxes to the counties contingent upon establishment of a process to provide verification of compliance by an operator or plan manager with county land use laws. Applies to taxable years beginning after December 31, 2017. Effective date 5/22/2050. (SD1)

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

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:31 AM
To: CPH Testimony
Cc: sue.leeloy@hawaiicounty.gov
Subject: *Submitted testimony for HB1471 on Mar 30, 2017 09:30AM*

HB1471

Submitted on: 3/28/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Council Woman Sue Lee Loy	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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To Committee: Commerce, Consumer Protection and Health;
Ways and Means

SUPPORT for HB 1471 as originally proposed, and not SD1

March 30, 2017 at 9:00 am

Testimony of Kathleen Dinman
(808)780-6325

To Chairperson:

My name is Kathleen Dinman. Thank you for the opportunity to testify in support of HB 1471 as originally proposed, and not SD1. Please consider allowing short term rental accommodations.

I have been a widow for over 6 years and have two children. The only way I can pay for college tuition at UH and keep paying for repairs and maintenance on my home in Kailua is to share my home with visitors for additional income.

I contribute to the community by using the services of pool cleaner, house cleaner, and airport shuttle. I encourage my guests to dine at nearby restaurants and shop for locally grown produce.

I live on the same property and make sure the visitors do not bother my neighbors, I provide a parking stall on my property, and I supervise the noise level.

Most of these visitors said they would not travel to Hawaii if they had to stay in a hotel in Waikiki. Either they have experienced that part of Hawaii on a previous trip or they prefer to be outside a major city.

How can you legalize marijuana and not legalize short term rentals? I support the idea of taxing the income on short term rentals and using part of that to help homeless families. Thank you for consideration short term rentals.

Aloha,
Kathleen Dinman
(808)780-6325

Rebecca Atkinson
hawaiibecca@gmail.co
808-225-2377

I support **HB1471 as originally proposed** and not SD1. I opposed SD1.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 9:19 AM
To: CPH Testimony
Cc: farango@gmail.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/28/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Francisco	Individual	Support	No

Comments: Let the people of Hawaii capture more of the tourism dollars so that living here can be more affordable. Long term rents are dropping substantially locally, how can STR be blamed for rising rents when they are actually dropping. I have STR all around my neighborhood and they guest are friendly people just walking the neighborhood doing nothing wrong except supporting business outside the control of the foreign owned hotels control. Give the owners of homes the right (reasonably) to do what they will inside their home. Francisco

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 9:17 PM
To: CPH Testimony
Cc: mark@postcard-cd.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/27/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Bell	Individual	Comments Only	No

Comments: Please support HB1471 as it was originally proposed. SD1 has too many problems. Our hotels are almost completely full. They are making lots of money that gets sent out of state. Please don't ignore the traveler who comes to Hawaii to spend a lot of money but who just doesn't want to stay in Waikiki. Many have visited Oahu several times before. I think President Obama and his family fall into that category. If our state does not innovate, we are going to be left behind and visitors will go elsewhere. There are so many visitors already coming so give the people what they want. Take the money AirBNB is trying to collect for the State. It is the logical thing to do.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 25, 2017 8:24 PM
To: CPH Testimony
Cc: milomcgarry@gmail.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/25/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Milo McGarry	Individual	Oppose	No

Comments: Far too onerous for service providers such as vrbo.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 25, 2017 4:05 PM
To: CPH Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1471 on Mar 30, 2017 09:30AM*

HB1471

Submitted on: 3/25/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 6:59 AM
To: CPH Testimony
Cc: ponokaic102@me.com
Subject: *Submitted testimony for HB1471 on Mar 30, 2017 09:30AM*

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Kathleen Kruszecki	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 6:10 AM
To: CPH Testimony
Cc: ronnalbo@aol.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Ronna L Olsen	Individual	Oppose	No

Comments: I oppose the following bills: SB683 SB686 HB1471 SB704

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Aloha. My name is Ron Becht and I own a legal vacation rental in Maui. I have owned my rental property since 2000 and I am writing to express my intense opposition to HB 1471.

Making it mandatory for advertising platforms to become tax collectors is a very negative attack on legal vacation rental operators. This is either the first step in making vacation rentals a regulated industry in Hawaii or an attempt to ban advertising platforms from accepting advertisements in Hawaii.

The tourist industry is dependent on legal vacation rentals to provide accommodation for the tourists who visit the islands every year.

I have been operating for seventeen years. I have always paid my GET and TAT correctly and on time since I started. I am in compliance with my county zoning requirements. I don't need a private company to police me.

The bill offers no consumer protection to owners or to travelers

The bill makes transient vacation rental owners the only taxpayers in the USA who are required to use a private company to oversee their tax compliance.

This bill puts a private company in between the tax payer and the State, putting both parties at risk.

The bill opens the door to fraudulent tax collection agents

The bill penalizes both the Dept of Taxation and vacation rental operators who are compliant.

The advertising platforms will choose to stop accepting Hawaii advertisers rather than comply with all the onerous requirements. That will lead to a drop in TAT of \$100 million per year.

The tax collection agents will increase the fees charged to vacation rental owners. Vacation rental owners are not getting rich off their investments in Hawaii.

The state will pay the tax collection agents to collect taxes the State now collects for free adding more bureaucracy and cost.

Please reconsider your stance on HB 1471 and vote against this bill.

Sincerely,

Ron Becht

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 12:16 AM
To: CPH Testimony
Cc: lorna-and-jeff@msn.com
Subject: *Submitted testimony for HB1471 on Mar 30, 2017 09:30AM*

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Lorna Griffin	Individual	Oppose	No

Comments:

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Committee on Commerce, Consumer Protection, and health
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice chair

Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Gina AK LeTourneur
808-782-4867
North Shore, Oahu

Re: HB 1471. I do not support the new language of this bill as the language has changed. I support the intent of the bill and the original language. Hearing is on 3/30/16 at 9:30 at Room 211.

I am a native of Hawaii and I am not in favor of the new language of Bill 1471.

The reasons I am not supporting this bill is because of the new language. I have been renting long term for over ten years and it has not been a good experience. I am a single mother for thirty years. I worked three jobs to get where I am at. I bought a home and rented long term for over 15 years. I have had to go to court over five times, each time the court ruled in my favor. From squatters, to home destruction, to tenants skipping out on rent and leaving my place in shambles. I have supported my two daughters and I have a disabled daughter and grandson that I support. I have switched to renting 30 days or more at this time and this has been a good experience. I pay my GE taxes on my own. I want to do the right hing and cannot SUPPORT 1471 with the new language. The original language and intent I did support. I want to be legal. I am not trying to make millions, just supplement my mortgage and pay my bills. This is a win-win situation if the bill passes in that the monies can go back to our state and counties.

Thank you for listening to my stand on not SUPPORTING BILL 1471

Gina LeTourneur

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 9:05 AM
To: CPH Testimony
Cc: karendmerchant@gmail.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Merchant	Individual	Oppose	No

Comments: As a vacation rental owner who has always collected and paid all Hawaii taxes I would like to respectfully oppose the HB1471 bill. The advertising platforms that we use to rent out our property are ill-equipped to manage the tax paperwork and filing efficiently and on a regular basis. We find that even with minor issues that arise with these platforms, they are difficult to contact and resolving minor problems with bookings can be challenging. They would likely have to pull out of the Hawaii rental markets, leading to a net loss of revenue, or have a cumbersome and less than optimum system for managing the collected taxes. Currently we ensure that all of our taxes are collected for each guest renting our property and all taxes are routinely and promptly submitted to the state of Hawaii. Adding extra regulatory burdens will have a negative impact on the vacation rental market and likely the taxes collected will be reduced. If this bill is being proposed due to some unethical owners who do not submit appropriate taxes, the answer would appear to be an increase in tax enforcement, rather than burdening the ethical owners with more onerous regulations. Please oppose this bill and re-evaluate possible solutions if unpaid taxes are an ongoing issue with some vacation rental owners. Sincerely, Karen Merchant

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 8:56 AM
To: CPH Testimony
Cc: mcohen1412@gmail.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Michal Cohen	Individual	Oppose	No

Comments: My name is Michal Cohen and I oppose SD1. I support the original language of HB1471; however, I oppose the current structure of SD1. I am currently an Air BNB host. I rent out my own bedroom and sleep in my living room so that I can afford the cost of living in Hawaii. Becoming an Air BNB host has allowed me to embark on my life long dream of opening up my own private practice as a psychotherapist and it has allowed me to share my love of Hawaii with others. I have met some beautiful people from all over the world since becoming a host. I strongly support the original intent of HB 1471 because it would make it much easier to pay both the GET and TAT taxes. I currently pay an accountant to assist me with these taxes, and it would be much easier to have the rental platform take care of this. However, I am opposed to SD1 because it places unreasonable and confusing demands on hosts. Thank for considering my testimony.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 8:38 AM
To: CPH Testimony
Cc: burgharc@gmail.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Comments Only	No

Comments: Bad idea? Good idea? We already have more things to supervise in this State than we have supervisors to do so. How does this bill help those of us who can barely afford current rents? How does this really perpetuate an understanding of Hawai'i? It seems to me it's all about GREED. Tell me how does this help our small hotels in Waikiki? It all sounds good in theory but we know how theory works here. Will the rentals be used to help educators or others who have salaries that can not pay the rent? Will this bill assist those local people who are working 2 to 3 jobs to make ends meet? I THINK NOT. Again, it will be like those affordable rentals on the islands that most of us can not afford. HOW will this help the average citizen, me? Not, I think.

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CPH Testimony

From: Brian Pumphrey <brian-reed@live.com>
Sent: Wednesday, March 29, 2017 8:24 AM
To: CPH Testimony
Subject: OPPOSE HB1471

I was originally in support of HB1471 and the addition of HD3. However, I DO NOT support the proposed addition of SD1. It adds restrictions and compliance policing on a non-government agency, which is completely unreasonable, unfair and unrealistic. I am a father of a child nearing school years. This is an opportunity to simply collect currently lost revenue that could be used for much needed education enhancement, or other areas of need. Air conditioners in all classrooms would be a great start! I urge to keep it simple, and collect the revenue. Thanks for considering my position.

Regards,

Brian Pumphrey

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 11:59 AM
To: CPH Testimony
Cc: jdgrif@cox.net
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
John Griffith	Individual	Oppose	No

Comments: We already pay \$6,500 GE & TA tax plus Hawaii Non Resident income taxes to the state for a little 700 square feet condo. Adding this tax just seems to be nothing but greedy greedy.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 11:58 AM
To: CPH Testimony
Cc: wendy.mooney@gmail.com
Subject: *Submitted testimony for HB1471 on Mar 30, 2017 09:30AM*

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Mooney	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 10:19 AM
To: CPH Testimony
Cc: bpacker@maui.net
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
SharLyn Foo	Individual	Oppose	No

Comments: Aloha, I oppose this bill for the following reasons. 1. No other booking platform is asking for this. Seems suspiciously special interest. 2. There are currently around 900 legal vacation rental certificates as of now with the county of Honolulu. ABNB boasts over 4500 places on Oahu alone. More illegal than legal. 3. The county differciates B&B (which would mean auntie renting a room)from whole homes. Which the state does not recognize.ABNB claims over 2500 whole units I appreciate the amendments that were added but it is not enough.i find it disheartening that the state would consider such a bill for possible illegal tax dollars. This is an absolute shield for illegal activity. Mahalo

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 10:04 AM
To: CPH Testimony
Cc: rgolden46@gmail.com
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Golden	Individual	Support	No

Comments: Aloha- I am writing in support of HB 1471 and in opposition to SD1, which I believe puts undue complications on AirBnB to collect taxes. I believe that the original bill, HB 1471, will be a win-win for all: 1) it will make it easier for property owners to file the correct taxes for their vacation rentals; 2) it will bring in increased revenue for the state and county; and here in Puna, it will increase the economic opportunity. I have run two vacation rentals for the past several years and have had several hundred tourists staying at our place. We have no hotels in our region and the use of vacation rentals have created a warm, intimate environment for tourists to get to know and experience this part of Hawaii. SD1 creates too many complications for AirBnB to collect taxes. We need to streamline government and make it easier to collect taxes. I trust that the Senate committee will adopt HB 1471 without SD1. Mahalo nui, Robert Golden

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 9:48 AM
To: CPH Testimony
Cc: AnnMarie@hawaiiintel.net
Subject: Submitted testimony for HB1471 on Mar 30, 2017 09:30AM

HB1471

Submitted on: 3/29/2017

Testimony for CPH/WAM on Mar 30, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
AnnMarie Chew	Individual	Oppose	No

Comments: The tourist industry depends on legal vacation rentals for the many tourists who visit Hawaii. GET and TA taxes are being paid on time and we don't need private companies to monitor us. It is illegal under US and Hawaii law for private companies to share tax information with the Counties, and this bill offers no consumer protection to owners or travelers. This will result in further expenses for the State, as the State will have to pay tax collection agents to collect taxes Hawaii currently collects for no additional charge. I strongly oppose this bill. Mahalo.

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