A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

SECTION 1. The purpose of this Act is to strike a balance between the positive economic opportunities and impacts of the short-term vacation rental industry and any negative impacts this industry may have by establishing licensing requirements, penalties, and enforcement provisions for transient vacation rentals under the department of commerce and consumer affairs.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

TRANSIENT VACATION RENTALS

§ -1 Definitions. As used in this chapter:

"Application" or "app" means a type of software that allows access to an online rental service provider.

"Bed and breakfast establishment" or "bed and breakfast home" means a single-family dwelling occupied by an owner or a guest house let for consideration for less than thirty days.
"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Dwelling" means:

1. A single-family dwelling unit;
2. A multi-family dwelling unit;
3. A bed and breakfast establishment or bed and breakfast home; or
4. A "unit" defined in section 514B-3 that is not part of a hotel-condominium defined in section 486K-1.

"Let" means to rent a transient vacation rental for compensation or fees.

"Local contact" means the owner or an operator, lessee, or any individual or company contracted by the owner, operator, or lessee, residing on or having a principal place of business on the same island where the transient vacation rental property is located who shall be available on a twenty-four-hour, seven-days-per-week basis.

"Lodging" means temporary sleeping accommodations in a dwelling or portion of a dwelling.
"Nongovernmental entity" includes an association of homeowners, a community association, and board or board of directors as defined in section 514B-3.

"Online rental service provider" means any company, organization, club, group, or application that offers a transient vacation rental service via the Internet.

"Owner" means the grantee in the deed and instrument for the transient vacation rental recorded in the bureau of conveyances.

"Transient vacation rental" means a dwelling or lodging located in the State let by an owner, operator, or lessee for compensation or fees, including club fees, for one hundred eighty days or less per rental. Transient vacation rental does not include any facility owned or used by a government agency or a tenement home, group home, group residence, group living arrangement, boarding house, or rooming house certified pursuant to section 445-94.

§ -2 Powers and duties of the director. In addition to any other powers and duties authorized by law, the director may:

(1) Grant licenses to transient vacation rental owners pursuant to this chapter;
(2) Adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter;

(3) Fine, suspend, terminate, or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause which would be grounds for revocation, termination, or suspension of a license; and

(4) Investigate the actions of any unlicensed person acting or alleged to be acting in the capacity of a licensee under this chapter.

§ -3 License; requirements; renewal. (a) No transient vacation rental shall operate or do business in this State unless the owner first obtains a license under this chapter. The application for a license shall be submitted on forms prescribed by the director and with the appropriate fees, prescribed by the director, which shall be deposited into the compliance resolution fund under section 26-9(o).

(b) The application shall include:

(1) The address and tax map key number of the transient vacation rental;
(2) The name, address, and contact information of the owner of the transient vacation rental;

(3) The name, phone number, and address of the local contact for the transient vacation rental;

(4) The name, address, and contact information of any nongovernmental entity with authority over the property on which the transient vacation rental is located, along with a copy of the covenants, by-laws, and administrative provisions with which compliance of the transient vacation rental is required;

(5) Proof of compliance with county ordinances relating to the regulation of transient vacation rentals, including any registration number, license, permit, special use permit, or non-conforming use permit that may be required by the county;

(6) The account number and the name of the financial institution at which the client trust account required by section -6 is held;

(7) Submission of:

(A) The general excise tax license number issued pursuant to chapter 237;
(B) The transient accommodations tax registration number issued pursuant to chapter 237D; and

(C) The general excise tax and transient accommodations tax filings for the previous two years, for any transient vacation rental existing on the effective date of Act   , Session Laws of Hawaii 2019, of which the applicant is the owner; and

(8) The name of the application or app, name of the online rental service provider or providers, address of any website on the Internet, or other means of mass communications being utilized for advertisements or solicitations of the transient vacation rental.

The owner shall notify the department within sixty days of any change in the information required by this subsection.

(c) The owner of a transient vacation rental shall renew its license each year on or before December 31 on a form provided by the department, which shall provide the owner an opportunity to verify or update the information required in subsection (b).
(d) No license may be assigned, sold, leased, encumbered, or otherwise transferred, except upon the written application to and approval by the director.

§ -4 Issuance of license and seal; provision of information to the county. (a) Each license shall be in a form prescribed and signed by the director, and issued in the name of the department with an official seal as evidence of the validity of the license.

(b) The department shall maintain and annually update a list of the licensed transient vacation rentals, and shall provide each county agency charged with the administration of county zoning laws all the information required by section -3 regarding the transient vacation rentals licensed in the county.

(c) The director shall provide each county agency charged with the administration of county zoning laws regarding transient vacation rentals licensed in the county any information obtained from an online rental service provider under section -10, as deemed necessary by the director.

§ -5 Transient vacation rentals; requirements. (a) The owner or lessor of a transient vacation rental shall:
(1) Prominently post the name and phone number of the
local contact in the transient vacation rental, and
include the information in any transient vacation
rental contract or rental agreement; and

(2) Include the license number and official seal of the
transient vacation rental in any advertisements or
solicitations of the transient vacation rental through
an online rental service provider, an application or
app, or other means of mass communication.

(b) The owner shall submit to the applicable
nongovernmental entity all covenants, bylaws, and administrative
provisions with which the owner's compliance is required for the
property on which the transient vacation rental is located,
along with the following:

(1) The address of the transient vacation rental;

(2) The name, address, and contact information of the
owner of the transient vacation rental, and license
number of the transient vacation rental; and

(3) The name, phone number, and address of the local
contact, who shall be available on a twenty-four-hour,
seven-days-per-week basis.
The owner shall notify and provide updated information to the nongovernmental entity within sixty calendar days of any change in the required information.

(c) The owner shall comply with all county ordinances relating to the posting of information in the transient vacation rental, posting of signs, provision of safety information, parking, notification of neighbors, and other requirements established by the county.

§ -6 Client trust account. (a) Each owner of a transient vacation rental licensed under this chapter shall establish a client trust account in a federally insured financial institution located in Hawaii into which shall be deposited all sums received from a consumer for transient vacation rental services. The trust account shall be established and maintained for the protection of the consumers paying the money to the owner of the transient vacation rental. The moneys in the account shall not be encumbered except for partial or full payment for the provision of the transient vacation rental purchased or to make refunds for services not performed, less any amounts for cancellation fees that were previously disclosed to the consumer.
(b) The owner of a transient vacation rental shall maintain all books and records necessary to comply with this chapter and the rules adopted by the department. The owner shall keep and maintain for a period of at least two years copies of all bank statements, deposit slips, canceled checks, drafts, and wire or electronic transaction documents relating to client trust accounts. The owner shall make such records available for inspection and audit within three business days of a written request by the director or any county officer or agency charged with the administration of county zoning laws or the licensing of transient vacation rentals.

§ -7 Prohibited acts. (a) No owner of a transient vacation rental shall:

(1) Sell or advertise a transient vacation rental located in the State of Hawaii without first being licensed by the director under this chapter and including the license number and official seal in any advertisement or solicitation of the transient vacation rental;

(2) Conduct business as a licensed transient vacation rental without establishing and maintaining a client trust account, as required in section -6; or
(3) Otherwise violate any of the provisions of this chapter or rules adopted pursuant to this chapter.

(b) Any advertisement or written, graphic, or oral statement in connection with the solicitation of business for a transient vacation rental through an online rental service provider, an application or app, or other means of mass communication is prima facie evidence of the selling, advertising, or conducting of business of a transient vacation rental.

§ 8 Enforcement; inspection. (a) The director may contract with qualified persons, including investigators, who shall be exempt from chapter 76, or delegate to the agency charged with the administration of county zoning laws to enforce this chapter.

(b) The officer or agent of the department or officer or agent of the agency charged with the administration of county zoning laws delegated by the department to enforce this chapter shall have the power to serve and execute warrants or issue citations to enforce this chapter.

(c) Any employee or agent of the department or officer or agent of the county charged with the administration of county
zoning laws delegated by the department to enforce this chapter or the terms and conditions for licensing of transient vacation rentals under this chapter, upon written notification to the owner or local contact for the transient vacation rental, may enter upon, cross over, be upon, or remain upon privately owned land for the purpose of:

(1) Investigating and enforcing the compliance of the transient vacation rental with this chapter; and

(2) Investigating and enforcing the compliance of the vacation rental with the ordinances of the county in which the transient vacation rental is located.

(d) The employee or agent of the department or officer or agent of the county charged with the administration of county zoning laws delegated by the department to enforce this chapter shall have the powers and duties deemed necessary for the efficient and effective enforcement of this chapter. Whenever the employee or agent of the department or officer or agent of the county is refused entry upon land or to a building for the purpose of inspection under this section, the department or county may file a complaint in the district court of the circuit in which the land or building is located. The court may issue a
warrant, directed to any police officer of the circuit,
commanding the police officer to render sufficient assistance to
the employee or agent.

(e) Whenever an illegal operation is discovered by an
inspection under this section:

(1) The court of the circuit in which the land or building
is located may issue a writ of injunction to abate and
prevent the continuance of the illegal operation; and

(2) The owner shall be required to pay an amount estimated
to be necessary to cover the actual expenses of the
inspection.

(f) The department or the county agency delegated to
enforce this chapter shall establish by rule a fee schedule of
reasonable expenses, which may include expenses for travel time
and costs, time for the inspection of transient vacation
rentals, and administrative costs for the enforcement of
compliance with applicable state and county laws and ordinances.

(g) The penalties and fees for expenses collected by a
county agency delegated by the department to enforce this
chapter shall be realizations of the county enforcing this
chapter to be deposited into a fund, established by the county
agency delegated by the department to enforce this chapter, for
the purpose of enforcing this chapter. The revenues from the
penalties and fees collected by the county enforcing this
chapter shall be deemed to satisfy article VIII, section 5, of
the state constitution.

§ 9 Penalty. Any owner of a transient vacation rental
who fails to comply with this chapter shall be issued a warning
by the director or an agent of the county agency charged with
the enforcement of this chapter and subject to a civil penalty
of $2,000 for each separate offense; provided that any owner who
fails to comply with this chapter after:

1. An initial warning has been issued shall be issued a
second warning, assessed a civil penalty of $5,000 for
each separate offense, and subject to the suspension
of a license issued under section -3; and

2. A second or subsequent warning has been issued shall
be subject to revocation of a license issued under
section -3, assessed a civil penalty of $10,000 for
each separate offense, and subject to a lien being
placed on the property used as a transient vacation
rental.
§ 10 Online rental service provider; requirements. (a) Any online rental service provider currently operating or doing business in this State, or wishing to operate or do business in this State, shall be required to sign a memorandum of agreement with the State regarding the requirements of this chapter. The memorandum of agreement shall include:

(1) A requirement for the online rental service provider to provide the director with the name of the owner of a transient vacation rental, or the name of the business if the owner is a business, and the address of the transient vacation rental;

(2) A mechanism for the director to contact the online rental service provider to request further information on any advertisement in connection with the solicitation of business for a transient vacation rental through the online rental service provider that is suspected of violating the requirements of this chapter; and

(3) Provisions allowing for the director to share information the director deems necessary with the county agency charged with the enforcement of this chapter.
chapter in the county in which the transient vacation
rental is located.
(b) The director shall notify, in writing, any online
rental service provider currently operating or doing business in
this State, or wishing to operate or do business in this State,
of the licensure requirements contained in this chapter and
shall provide a copy of any rules adopted to fully effectuate
this chapter to the online rental service provider."

SECTION 3. Section 237D-1, Hawaii Revised Statutes, is
amended by amending the definition of "transient accommodations"
to read as follows:
""Transient accommodations" means the furnishing of a room,
apartment, suite, single family dwelling, or the like to a
transient for less than one hundred eighty consecutive days for
each letting in a hotel, apartment hotel, motel, condominium or
unit as defined in chapter 514B, cooperative apartment, dwelling
unit, or rooming house that provides living quarters, sleeping,
or housekeeping accommodations, condominium hotel as defined in
section 467-30, transient vacation rental as defined in section
-1, or other place in which lodgings are regularly furnished
to transients."
SECTION 4. Section 237D-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director of taxation shall administer and enforce this chapter. In respect of:

(1) The examinations of books and records and of taxpayers and other persons,

(2) Procedure and powers upon failure or refusal by a taxpayer to make a return or proper return, and

(3) The general administration of this chapter,

the director of taxation shall have all rights and powers conferred by chapter 237 with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8 and 237-36 to [237-41] 237-41.5 are made applicable to and with respect to the taxes, taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by chapter 237."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 6. This Act shall take effect on July 1, 2019.

INTRODUCED BY:

[Signatures]

JAN 24 2019
Report Title:
DCCA; Transient Vacation Rentals

Description:
Establishes licensing requirements and enforcement provisions for transient vacation rentals to be administered by the Department of Commerce and Consumer Affairs.

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