A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

1 PART I

2 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(e), 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
collection agents must provide pertinent information to the
department of taxation regarding the operators and plan managers
on whose behalf they collect taxes.

The purpose of this part 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 part is not intended to:

(1) Preempt or otherwise limit the authority of the
counties to adopt, monitor, and enforce local land use
regulations;

(2) Transfer the authority to monitor and enforce the
regulations away from the counties; or

(3) Violate any federal laws.

This part is not intended to create, and does not create,
any rights or benefits, whether substantive or procedural, or
enforceable at law or in equity, against the State of Hawaii or
its agencies, departments, entities, employees, or any other
person.
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; transient accommodations broker; operator and plan manager. (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 tax collection agent registration statement to the director; provided that the transient accommodations broker agrees in writing:

(1) To obtain written consent from all of its operators and plan managers for the disclosure of periodic returns and information required under subsection (g);

(2) To furnish information to the counties as required in subsection (g); and

(3) That continuing to collect fees for booking services in connection with a transient accommodation, seven days after receiving written notice from a state or county governmental authority that the subject
property is not in compliance with state law or county
ordinance, is a violation of the tax collection
agreement.

Any tax collection agreement entered into pursuant to this
section shall be subject to and in accordance with all
applicable provisions of state law and county ordinances and
shall not permit a tax collection agent, nor any operator or
plan manager conducting business through the tax collection
agent, to opt out of any requirements or obligations under state
law or county ordinance.

The director shall deny an application for registration as
a tax collection agent under this section for violations of this
subsection and may deny an application for any other cause
authorized by law, including 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 tax collection agent registration statement, in a form
prescribed by the department.

The registration shall be valid only for the tax collection
agent in whose name it is issued, and for the website or
platform designated therein, and shall not be transferable.

(b) In addition to its own responsibilities under this
chapter, a registered 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 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 tax collection agent.

(c) The registered 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 tax collection agent shall 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, 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 shall be subject to all
requirements of title 14 and all county ordinances and rules
regulating transient accommodations, regardless of the terms
used by the counties to refer to transient accommodations,
within their jurisdictions as if this section did not exist.

A registered 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 tax collection agent and, if applicable, with respect
to any taxes payable under this chapter for its own business
activities.

(d) If the registered 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
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 tax collection agent from the date of
registration until the registration is canceled as provided in
subsection (h).

(e) A 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 tax collection agent is an entity,
the personal liability under this subsection shall apply to any
officer, member, manager, or other person who has 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 taxes.

(f) Except as provided in subsection (g), all returns and
other information provided by a registered tax collection agent,
including the application for registration as a 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 registered 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
under 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
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
general excise tax license number; and

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

(A) The address of the transient accommodation;

(B) The number of nights that 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 planning director or mayor of the applicable county, a registered tax collection agent shall disclose any of the information contained in the returns or cover sheets required by this subsection to the planning director or any county official designated by the mayor to receive the information. Notwithstanding any law to the contrary, including section 237-34, the planning director and county official designated to receive the information pursuant to this subsection may examine and copy the returns and cover sheets, and require the tax collection agent to disclose any other information that may be required pursuant to rules adopted by the county, to ensure compliance with this section, state tax laws and county tax 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 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 no later than ninety days prior to the effective date of cancellation.

The director may cancel a tax collection agent's registration under this section for any cause, including 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 tax collection agent no later than ninety days prior to the effective date of cancellation.

(i) When conducting business with an operator or plan manager with respect to a property for lease or rent, a transient accommodations broker:

(1) Shall notify the operator or plan manager that the subject property is required to be in compliance with applicable state and county land use laws and ordinances prior to retaining the services of the transient accommodations broker;

(2) Shall require the operator or plan manager to provide the transient accommodations broker with the operator's or plan manager's transient accommodations
registration identification number and local contact
information and shall notify the operator or plan
manager that this information is required in
advertisements for transient accommodations or resort
time share vacation interests, plans, or units under
section 237D-4;

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

(4) Shall require the operator or plan manager to provide
a statement to the transient accommodations broker
confirming compliance with all applicable land use
laws and ordinances; and

(5) Shall require the operator or plan manager to provide
any other information as may be required by
rulemaking.

An operator or plan manager shall remove any advertisement
published through the transient accommodations broker, 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), (3), (4), or (5) or for which the operator or plan manager has received written notice from a state or county governmental authority that the property is not in compliance with state law or county ordinance, as applicable. The state or county governmental authority shall provide a copy of the written notice to the transient accommodations broker.

(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 ordinances, rules, or regulations, nor to transfer the authority to monitor and enforce these ordinances, rules, or regulations away from the counties.

(k) For the purposes of this section:

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

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

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

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; transient accommodations broker; operator and
plan manager. (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 tax collection agent registration statement to the
director; provided that the transient accommodations broker
agrees in writing:

(1) To obtain written consent from all of its operators
and plan managers for the disclosure of periodic
returns and information required under subsection (g);

(2) To furnish information to the counties as required in
subsection (g); and
(3) That continuing to collect fees for booking services in connection with a transient accommodation, seven days after receiving written notice from a state or county governmental authority that the subject property is not in compliance with state law or county ordinance, is a violation of the tax collection agreement.

Any tax collection agreement entered into pursuant to this section shall be subject to and in accordance with all applicable provisions of state law and county ordinances and shall not permit a tax collection agent, nor any operator or plan manager conducting business through the tax collection agent, to opt out of any requirements or obligations under state law or county ordinance.

The director shall deny an application for registration as a tax collection agent under this section for violations of this subsection and may deny an application for any other cause authorized by law, including 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 tax collection agent registration statement, in a form
prescribed by the department. The registration shall be valid
only for the tax collection agent in whose name it is issued,
and for the website or platform designated therein, and shall
not be transferable.

A registered 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 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 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 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 tax collection agent.

(c) The registered 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 tax collection agent shall report, collect, and
pay the taxes under this chapter on behalf of the operators and
plan managers for business activity conducted directly through
the registered tax collection agent, as set forth in this
section, 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 shall
be subject to all requirements of title 14 and all applicable
ordinances and rules regulating transient accommodations,
regardless of the terms used by the counties to refer to
transient accommodations, within their jurisdictions as if this
section did not exist.
(d) If the registered 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 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 tax collection agent from the date of registration until the registration is canceled as provided in subsection (h).

(e) A 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 tax collection agent is an entity, the personal liability under this subsection shall apply to any officer, member, manager, or other person who has 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 taxes.
(f) Except as provided in subsection (g), all returns and other information provided by a registered tax collection agent, including the application for registration as a 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 registered 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 under section 237D-6 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 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; and

(2) For each transient accommodation rented through the registered tax collection agent or the website or platform designated in the certificate of registration
issued pursuant to subsection (a), for which taxes are
being remitted pursuant to this chapter:
(A) The address of the transient accommodation;
(B) The number of nights that 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 planning director or mayor of the
applicable county, a registered tax collection agent shall
disclose any of the information contained in the returns or
cover sheets required by this subsection to the planning
director or any county official designated by the mayor to
receive the information. Notwithstanding any law to the
contrary, including section 237D-13, the planning director and
county official designated to receive the information pursuant
to this subsection may examine and copy the returns and cover
sheets, and require the tax collection agent to disclose any
other information that may be required pursuant to rules adopted by the county, to ensure compliance with this section, state and county 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 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 no later than ninety days prior to the effective date of cancellation.

The director may cancel a tax collection agent's registration under this section for any cause, including 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 tax collection agent no later than ninety days prior to the effective date of cancellation.
(i) When conducting business with an operator or plan manager with respect to a property for lease or rent, a transient accommodations broker:

(1) Shall notify the operator or plan manager that the subject property is required to be in compliance with applicable state land use laws and county land use ordinances prior to retaining the services of the transient accommodations broker;

(2) Shall require the operator or plan manager to provide the transient accommodations broker with the operator's or plan manager's transient accommodations registration identification number and local contact information and shall notify the operator or plan manager that this information is required in advertisements for transient accommodations or resort time share vacation interests, plans, or units under section 237D-4;

(3) Shall require the operator or plan manager to provide the transient accommodations broker with verification of compliance with state land use laws and county land use ordinances in the form of a written certification,
verification, or permit, as applicable, issued by the
appropriate county agency;

(4) Shall require the operator or plan manager to provide
a statement to the transient accommodations broker
confirming compliance with all land use laws and
ordinances; and

(5) Shall require the operator or plan manager to provide
any other information as may be required by
rulemaking.

An operator or plan manager shall remove any advertisement
published through the transient accommodations broker, 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), (3), (4), or (5) or for which the
operator or plan manager has received written notice from a
state or local governmental authority that the property is not
in compliance with state law or county ordinance, as applicable.
The state or county governmental authority shall provide a copy
of the written notice to the transient accommodations broker.

(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 ordinances, rules, or regulations, nor to transfer the authority to monitor and enforce these ordinances, rules, or regulations away from the counties.'

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

1. By adding a new definition to be appropriately inserted and to read:

"Booking service" means any reservation or payment service provided by a person or entity that facilitates a transient accommodations transaction between an operator and a prospective transient or occupant, and for which the person or entity collects or receives, directly or indirectly, through an agent or intermediary, a fee in connection with the reservation or payment services provided for the transient accommodations transaction."

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

"Transient accommodations" means the furnishing of a room, apartment, suite, single family dwelling, or the like 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, or other place in which lodgings are regularly furnished to transients. "Transient accommodations" includes "transient vacation rental", "transient vacation unit", "transient vacation use", "bed and breakfast home", "short-term vacation rental", "short-term use of an owner's primary residence", and other similar terms as may be defined by county ordinance."

SECTION 5. The director of taxation shall make available to transient accommodations brokers a form of application for registration as a 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.

PART II

SECTION 6. Definitions. As used in this part:

"Accounts receivable" means an amount of transient accommodations tax, general excise tax, penalty, or interest
that has been recorded as due and entered in the account records or any ledger maintained in the department or that a taxpayer should reasonably expect to become due.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Final, due, and owing" means an assessment that has become final and is owed to the State, due to either the expiration of a taxpayer's appeal rights or the rendition of the final order by the director or by any court of this State. Assessments that have been appealed shall be final, due, and owing fifteen days after the last unappealed or unappealable order sustaining the assessment or any part thereof has become final. Assessments that have not been appealed shall be final, due, and owing thirty days after service of notice of assessment.

"General excise tax" means the tax imposed under chapter 237, Hawaii Revised Statutes, including revenues collected pursuant to sections 46-16.8 and 237-8.6, Hawaii Revised Statutes.

"Taxpayer" means any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or any other entity of any
kind subject to both the general excise tax and the transient accommodations tax, or any person required to collect and remit to the State the general excise tax and transient accommodations tax.

"Transient accommodations tax" means the tax imposed under chapter 237D, Hawaii Revised Statutes.

SECTION 7. Tax amnesty program; applicable time period.

(a) The director shall develop and administer a one-time tax amnesty program as provided in this part. The director, upon the voluntary return and remission of transient accommodations or general excise taxes and interest owed by any taxpayer, shall waive all penalties that are assessed or subject to being assessed for outstanding liabilities for taxable periods ending or transactions occurring on or before December 31, 2018.

The director shall:

(1) Provide any forms and instructions necessary for the filing of amnesty applications and returns; and

(2) Take all actions necessary to implement this part.

(b) Notwithstanding any other law to the contrary, the director shall accept applications for the tax amnesty program from October 31, 2019, to January 1, 2020, and the program shall
be completed by June 30, 2020, and shall apply to all eligible taxpayers owing taxes, penalties, or interest administered by the director under chapters 237 and 237D, Hawaii Revised Statutes.

(c) The director may allow the waiver of a portion of the interest due; provided that the portion waived shall not exceed fifty per cent of the interest due.

SECTION 8. Application; eligibility requirements. (a) This part shall apply to any taxpayer who files an application for amnesty within the time prescribed by the director and who:

(1) Files all returns as may be required by the director for all years or tax reporting periods as stated on the application:

(A) For which returns have not previously been filed; and

(B) For which returns were filed but the tax liability was underreported; and

(2) Pays in full the taxes due, including interest thereon, for the years and tax reporting periods stated on the application, at the time the application
is made or amnesty tax returns are filed within the designated amnesty program period.

In addition to the requirements set forth in paragraphs (1) and (2), the director may impose, by rule, the further condition that any eligible taxpayer pay in full, within the amnesty period, all taxes previously assessed by the director, including interest thereon, that are final, due, and owing at the time the application or amnesty tax returns are filed.

(b) An eligible taxpayer may participate in the amnesty program to the extent of the uncontested portion of any assessed liability. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under the program is barred with respect to the amounts paid with the application or amnesty return.

(c) The director shall allow installment payment agreements in cases of severe hardship in lieu of the complete payment required under subsection (a). In those cases, fifty per cent of the amount due shall be paid with the application or amnesty return, with the balance to be paid in monthly
installments determined by the taxpayer and the director.

Failure of the taxpayer to make timely payments shall void the terms of the amnesty. All agreements and payments shall not include interest due and accruing during the installment agreement.

SECTION 9. Amnesty provisions. (a) Amnesty shall be granted for any taxpayer who meets the requirements of section 8 of this Act in accordance with the following:

(1) For taxes that are owed as a result of the nonreporting or underreporting of transient accommodations or general excise tax liabilities or the nonpayment of any accounts receivable owed by an eligible taxpayer, the State shall waive criminal prosecution and all civil penalties that may be assessed under title 14, Hawaii Revised Statutes, for the taxable years or periods for which the tax amnesty is requested; and

(2) With the exception of instances in which the taxpayer and director enter into an installment payment agreement authorized under section 8(c) of this Act, the failure to pay all taxes as shown on the
taxpayer's amnesty tax return shall invalidate any
amnesty granted pursuant to this part.

(b) This chapter shall not apply to any taxpayer who:

(1) Is on notice, written or otherwise, that the taxpayer
is the subject of any criminal investigation or
criminal prosecution for nonpayment, delinquency,
evasion, or fraud in relation to any federal taxes,
the state general excise tax, or the state transient
accommodations tax;

(2) Has any prior conviction for a tax-related offense; or

(3) Is under an audit:

(A) In relation to the general excise tax or the
    transient accommodations tax; or

(B) For any tax for the period for which the taxpayer
    seeks amnesty.

(c) No refund or credit shall be granted for any interest
or penalty paid prior to the time the taxpayer requests amnesty
pursuant to section 7 of this Act.

(d) Unless the director, in the director's discretion,
redetermines the amount of transient accommodations or general
excise taxes and interest due, no refund or credit shall be
granted for any transient accommodations or general excise taxes
or interest paid under the amnesty program.

SECTION 10. Public awareness. The director shall
publicize the tax amnesty program in order to maximize the
public awareness of, and participation in, the program. For the
purpose of publicizing the tax amnesty program, the director may
contract with any advertising agency within or outside this
State.

SECTION 11. Separate accounting; disposition of revenues.
For purposes of accounting for the revenues received pursuant to
this part, the director shall maintain a separate accounting and
reporting of funds collected under the amnesty program. All
funds collected shall be remitted to the general fund; provided
that all revenues collected under the amnesty program pursuant
to sections 46-16.8 and 237-8.6, Hawaii Revised Statutes, shall
be disposed of pursuant to section 248-2.6, Hawaii Revised
Statutes.

PART III

SECTION 12. Section 46-1.5, Hawaii Revised Statutes, is
amended to read as follows:
"§46-1.5 General powers and limitation of the counties.

Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

1. Each county shall have the power to frame and adopt a charter for its own self-government that shall establish the county executive, administrative, and legislative structure and organization, including but not limited to the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office;

2. Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property;

3. Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any
contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law;

(4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer;

(5) Each county shall have the power to:

(A) Maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters;

(B) Remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense;

(C) Construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or
undertakings for the control of and protection
against floods and flood waters, including the
power to drain and rehabilitate lands already
flooded;

(D) Enact zoning ordinances providing that lands
deemed subject to seasonable, periodic, or
occasional flooding shall not be used for
residence or other purposes in a manner as to
endanger the health or safety of the occupants
thereof, as required by the Federal Flood
Insurance Act of 1956 (chapter 1025, Public Law
1016); and

(E) Establish and charge user fees to create and
maintain any stormwater management system or
infrastructure;

(6) Each county shall have the power to exercise the power
of condemnation by eminent domain when it is in the
public interest to do so;

(7) Each county shall have the power to exercise
regulatory powers over business activity as are
assigned to them by chapter 445 or other general law;
(8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for;

(9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance of districts within the county;

(10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose;

(11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity;

(12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places,
and unoccupied lots. In connection with these powers, each county may impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the property owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property;

(13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the
statute shall be exclusive or uniform throughout the State;

(14) Each county shall have the power to:

(A) Make and enforce within the limits of the county all necessary ordinances covering all:

(i) Local police matters;

(ii) Matters of sanitation;

(iii) Matters of inspection of buildings;

(iv) Matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; and

(v) Matters of the collection and disposition of rubbish and garbage;

(B) Provide exemptions for homeless facilities and any other program for the homeless authorized by part XVII of chapter 346, for all matters under this paragraph;

(C) Appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of
the department of health, subject only to
limitations placed on them by the terms and
conditions of their appointments; and

(D) Fix a penalty for the violation of any ordinance,
which penalty may be a misdemeanor, petty
misdemeanor, or violation as defined by general
law; provided that any violation of a county
ordinance related to transient accommodations, as
defined in section 237D-1, shall result in, at
minimum, a civil penalty of not less than $25,000
to be levied by the county planning director;

(15) Each county shall have the power to provide public
pounds; to regulate the impounding of stray animals
and fowl, and their disposition; and to provide for
the appointment, powers, duties, and fees of animal
control officers;

(16) Each county shall have the power to purchase and
otherwise acquire, lease, and hold real and personal
property within the defined boundaries of the county
and to dispose of the real and personal property as
the interests of the inhabitants of the county may require, except that:

(A) Any property held for school purposes may not be disposed of without the consent of the superintendent of education;

(B) No property bordering the ocean shall be sold or otherwise disposed of; and

(C) All proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes;

(17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State;

(18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of:

(A) Community promotion and public celebrations;

(B) The entertainment of distinguished persons as may from time to time visit the county;
(C) The entertainment of other distinguished persons, as well as, public officials when deemed to be in the best interest of the community; and

(D) The rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance;

(19) Each county shall have the power to:

(A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings, and manage, regulate, and control the same;

(B) Regulate and control the location and quality of all appliances necessary to the furnishing of
water, heat, light, power, telephone, and telecommunications service to the county;

(C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways, and for flushing the sewers; and

(D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways;

(20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance;

(21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster;

(22) Each county shall have the power to sue and be sued in its corporate name;

(23) Each county shall have the power to:
(A) Establish and maintain waterworks and sewer works;

(B) Implement a sewer monitoring program that includes the inspection of sewer laterals that connect to county sewers, when those laterals are located on public or private property, after providing a property owner not less than ten calendar days' written notice, to detect leaks from laterals, infiltration, and inflow, any other law to the contrary notwithstanding;

(C) Compel an owner of private property upon which is located any sewer lateral that connects to a county sewer to inspect that lateral for leaks, infiltration, and inflow and to perform repairs as necessary;

(D) Collect rates for water supplied to consumers and for the use of sewers;

(E) Install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the
installation or use of the water meters on the
premises; and

(F) Take over from the State existing waterworks
systems, including water rights, pipelines, and
other appurtenances belonging thereto, and sewer
systems, and to enlarge, develop, and improve the
same;

(G) For purposes of subparagraphs (B) and (C):

(i) "Infiltration" means groundwater, rainwater,
and saltwater that enters the county sewer
system through cracked, broken, or defective
sewer laterals; and

(ii) "Inflow" means non-sewage entering the
county sewer system via inappropriate or
illegal connections;

(24) (A) Each county may impose civil fines, in addition
to criminal penalties, and remedies for
disgorgement of all profits and restitution of
any money, real property, or personal property
that was obtained through unlawful actions,
including but not limited to those set forth in
chapter, for any violation of county ordinances or rules after reasonable notice and request to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine shall not be collected until either an opportunity for:

(a):

(i) A hearing under chapter 91[-]; or

(ii) Judicial review by the circuit court, as prescribed by ordinance for specific violations,

has been afforded. Any appeal shall be filed within thirty days from the date of the final written decision. These proceedings may not be stayed pending disposition of any criminal proceeding for a related offense. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court[-]. Where a county seeks injunctive relief for violations of an ordinance related to transient accommodations, as defined
in section 237D-1, the county need not show irreparable injury;

(B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges, collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or charges, the unpaid civil fines shall not become
a part of any taxes, fees, or charges. The county by ordinance may condition the issuance or renewal of a license, approval, or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines. Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fines, including any increase in the amount of the fine [which] that the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines. The lien in favor of the county shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the
lien, prepared by the county at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible daily increase of the fine. The county shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at [such] that time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any
other procedures for collection available to the
State and county by law or rules of the courts;
(C) Each county may impose civil fines upon any
person who places graffiti on any real or
personal property owned, managed, or maintained
by the county. The fine may be up to $1,000 or
may be equal to the actual cost of having the
damaged property repaired or replaced. The
parent or guardian having custody of a minor who
places graffiti on any real or personal property
owned, managed, or maintained by the county shall
be jointly and severally liable with the minor
for any civil fines imposed hereunder. Any
[such] fine under this paragraph may be
administratively imposed after an opportunity for
a hearing under chapter 91, but [such] a
[proceeding] hearing shall not be a prerequisite
for any civil fine ordered by any court. As used
in this subparagraph, "graffiti" means any
unauthorized drawing, inscription, figure, or
mark of any type intentionally created by paint, ink, chalk, dye, or similar substances;

(D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case shall be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider:

(i) The nature and egregiousness of the violation;

(ii) The duration of the violation;

(iii) The number of recurring and other similar violations;

(iv) Any effort taken by the violator to correct the violation;

(v) The degree of involvement in causing or continuing the violation;
(vi) Reasons for any delay in the completion of the appeal; and

(vii) Other extenuating circumstances.

The civil fine that is imposed by administrative order after this review is completed and the violation is corrected shall be subject to judicial review, notwithstanding any provisions for administrative review in county charters;

(E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable
notice to the violator, at the completion of all
appeal proceedings; and

(F) If no county agency exists to conduct appeal
proceedings for a particular civil fine action
taken by the county, then one shall be
established by ordinance before the county shall
impose the civil fine;

(25) Any law to the contrary notwithstanding, any county
mayor, by executive order, may exempt donors, provider
agencies, homeless facilities, and any other program
for the homeless under part XVII of chapter 346 from
real property taxes, water and sewer development fees,
rates collected for water supplied to consumers and
for use of sewers, and any other county taxes,
charges, or fees; provided that any county may enact
ordinances to regulate and grant the exemptions
granted by this paragraph;

(26) Any county may establish a captive insurance company
pursuant to article 19, chapter 431; and

(27) Each county shall have the power to enact and enforce
ordinances regulating towing operations."
SECTION 13. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This section and any ordinance, rule, or regulation adopted in accordance with this section shall apply to lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of [such] a number, shape, and area, and the adoption of regulations for each district, to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:
(1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;

(2) The areas in which residential uses may be regulated or prohibited;

(3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;

(4) The areas in which particular uses may be subjected to special restrictions;

(5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;

(6) The location, height, bulk, number of stories, and size of buildings and other structures;

(7) The location of roads, schools, and recreation areas;

(8) Building setback lines and future street lines;

(9) The density and distribution of population;

(10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;

(11) Minimum and maximum lot sizes; and
(12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines [and], penalties, and remedies for disgorgement of all profits and restitution of any money, real property, or personal property that was obtained through unlawful actions, including but not limited to those set forth in chapter [blank], civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances. In any action brought under an ordinance adopted pursuant to this section, the court or zoning agency, in addition to any fine imposed upon the ordinance violator, may allow costs of action, including costs and fees of any nature and reasonable attorney's fees, to be paid by the ordinance violator.
Each county may adopt ordinances prohibiting transient accommodations brokers from engaging in business with an operator or plan manager who is not in compliance with all state laws and county ordinances, including laws and ordinances regarding land use, taxes, and professional licenses.

Each county may adopt ordinances requiring an operator or plan manager to remove an advertisement within seven days of receiving a notice of noncompliance under section 237- (i) or 237D- (i), a violation of which shall be subject to a civil fine of not less than $25,000, to be levied by the county planning director of the county where the subject property is located.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.
The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. A zoning ordinance may provide for the amortization or phasing out of conforming or nonconforming single-family transient
accommodations over a reasonable period of time in an area of any zoning classification. In no event shall the amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses[—]other than transient accommodations, as provided in this section. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

As used in this subsection, the terms "transient accommodations", "transient accommodations broker", "operator", and "plan manager" have the same meanings as in section 237D-1."

SECTION 14. Upon the establishment by a county of a process for providing verification of compliance by an operator or plan manager, as those terms are defined in section 237D-1, Hawaii Revised Statutes, with that county's land use ordinances, the mayor of each county shall advise the governor and shall request that the State transfer, from transient accommodations tax revenues, up to $1,000,000 to each county for implementation or enforcement of those land use ordinances.

PART IV
SECTION 15. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

TRANSIENT ACCOMMODATIONS

§ 1 Definitions. As used in this chapter:

"Activity provider" has the same meaning as in section 468M-1.

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

"County" means the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui; provided that the county of Maui shall include the county of Kalawao for the purposes of this chapter.

"Hosting platform" means a person or entity that participates in the transient accommodations business by providing, and collecting or receiving a fee for, booking services through which an operator may offer a transient accommodation. Hosting platforms usually, though not necessarily, provide booking services through an online platform that allows an operator to advertise the transient accommodation
through a website provided by the hosting platform and the
hosting platform conducts a transaction by which potential
renters arrange, use, pay, whether the renter pays rent directly
to the operator or to the hosting platform.

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

§ 2 Transient accommodations brokers. (a) It shall be
unlawful for a person acting as, or on behalf of, a transient
accommodations broker to engage in business with an operator or
plan manager, including any person or entity employed,
contracted, or otherwise engaged by the operator or plan manager
for property management or as an activity provider, who is not
in compliance with all state laws and county ordinances,
including any laws and ordinances regarding land use, taxes, and
professional licenses.

(b) It shall be unlawful for a person acting as, or on
behalf of, a transient accommodations broker, to act on behalf
of an operator or plan manager, to employ, contract, or
otherwise engage in business with any person or entity to manage
any property of the operator or plan manager or to act as an
activity provider for transients served by the operator or plan
manager if the person or entity is not in compliance with all
state laws and county ordinances, including laws and ordinances
regarding land use, taxes, and professional licenses.
(c) For the purposes of this section, "operator" has the
same meaning as in section 237D-1.
§ -3 Booking services. It shall be unlawful for a
person acting as, or on behalf of, a hosting platform to
provide, and collect a fee for, booking services in connection
with transient accommodations located in the State if those
transient accommodations are not lawfully certified, registered,
or permitted as a transient accommodation under applicable
county ordinance at the time the transient accommodation is
rented.
§ -4 Penalties. A violation of this chapter may result
in a civil penalty of not less than $25,000.
§ -5 Enforcement. The appropriate county officer or
agency may enforce this chapter within each county."
PART V

SECTION 16. 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 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval.

INTRODUCED BY:

JAN 24 2019
Report Title:
Taxation; Transient Accommodations Tax; Amnesty; Vacation Rentals; Brokers; Tax Collection Agents; General Excise Tax; Hosting Platform; Booking Services

Description:
Allows a transient accommodations broker to register as a tax collection agent for its operators and plan managers. Requires operators and plan managers to provide a statement to the transient accommodations broker confirming compliance with all applicable land use and tax laws. Requires the operator or plan manager to provide verification of compliance with state and county land use laws. Requires an operator or plan manager to remove a transient accommodation advertisement upon notice that the property is not in compliance with state law or county ordinance. Establishes a 1-time amnesty program for certain delinquent transient accommodations and general excise tax obligations. Authorizes counties to require the disgorgement of profits obtained through unlawful actions. Authorizes counties to adopt ordinances to amortize or phase out transient accommodations. Allocates up to $1,000,000 of TAT revenues to each county, contingent upon the county establishing a process to provide verification of compliance by an operator or plan manager with county land use laws. Makes it unlawful for transient accommodations brokers to engage in business with operators or plan managers or property managers or activity providers that are not in compliance with all state laws and county ordinances. Makes it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient accommodations that are not lawfully certified, registered, or permitted under applicable county ordinance.

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