

STAND. COM. REP. NO.

664

Honolulu, Hawaii

FEB 15 2019

RE: S.B. No. 1292
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committees on Energy, Economic Development, and Tourism and Commerce, Consumer Protection, and Health, to which was referred S.B. No. 1292 entitled:

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

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Amend the definition of "transient accommodations" to include other forms of transient accommodations and other terms that the counties may have defined;
- (2) Make 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;
- (3) Make 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;
- (4) Require anonymous, periodic reports by operators and plan managers to the Department of Taxation of transient accommodations listings;



- (5) Require hosting platforms to maintain identifying information on all transient accommodations and to make the information available to enforcement officials upon request;
- (6) Enable a transient accommodations broker to register as a tax collection agent with respect to transient accommodations taxes and general excise taxes for its operators and plan managers; and
- (7) Require 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.

Your Committees received testimony in support of this measure from the Office of Hawaiian Affairs; Hawai'i Tourism Authority; City and County of Honolulu Department of Planning and Permitting; one member of the Maui County Council; Maui Chamber of Commerce; Hawai'i Lodging & Tourism Association; Prince Resorts Hawaii; Kohala Coast Resort Association; OLS Hotels & Resorts; Waikoloa Beach Marriott Resort and Ocean Club; Hyatt Regency Waikiki Beach Resort & Spa; Moana Surfrider, A Westin Resort & Spa; Outrigger Hospitality Group; Outrigger Enterprises Group; Trump International Hotel Waikiki; Marriott Ko Olina Beach Club; Waikiki Resort Hotel; Kyo-ya Management Co., Ltd.; Sheraton Kauai Resort; Castle Resorts & Hotels; Hampton Inn & Suites Oahu/Kapolei; Maui Hotel & Lodging Association; Marriott's Maui Ocean Club; Hyatt Resorts Hawaii; and four individuals. Your Committees received testimony in opposition to this measure from Airbnb. Your Committees received comments on this measure from the Department of the Attorney General; Department of Taxation; Office of Information Practices; Office of the Mayor of the County of Kauai; Rental By Owner Awareness Association; Tax Foundation of Hawaii; and Expedia Group.

Your Committees find 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. Your



Committees find 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.

Your Committees also find that hosting platforms, such as Airbnb, should be subject to fines if the hosting platform collects a booking service fee for posting online a transient accommodations unit rental that is not registered with its respective county and the transient accommodations broker does not post the transient accommodations' registration identification number in the rental listing.

Your Committees additionally find that transient accommodations operators or plan managers should periodically report transient accommodations listings in Hawaii to the Department of Taxation, and maintain records that should be made available upon lawful request to enforcement authorities, for greater transparency and data sharing purposes.

Your Committees have amended this measure by:

- (1) Removing language that would have made it unlawful for transient accommodations brokers to engage in business with operators or plan managers who are not in compliance with all state laws and county ordinances;
- (2) Deleting part III and replacing it with language to make it unlawful for a hosting platform to provide booking services and collect a fee for those services provided in connection with transient accommodations located in the State if the operator is not registered with the Department of Taxation;
- (3) Inserting language to establish additional options, such as judicial review, for counties to obtain relief for violations of county ordinances or rules, and to specify that where a county seeks injunctive relief for violations related to single-family transient vacation rental units, the county need not show irreparable injury;



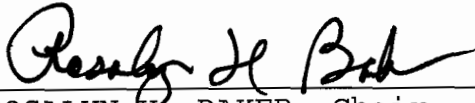
- (4) Amending the items that must be conspicuously shown on any advertisement for a transient accommodation or resort time share vacation interest, plan, or unit, and authorizing the Department of Taxation to issue citations to platform hosts and booking services who violate the advertisement requirements;
- (5) Repealing the criminal penalties for failing to register as an operator or plan manager when required to do so under the transient accommodations tax law;
- (6) Requiring transient accommodations brokers, platform hosts, and booking services, rather than operators and plan managers, to provide an anonymous, monthly report of transient accommodations listings to the Department of Taxation, specifying the form in which the data must be submitted and which data must be included, and establishing a penalty of \$100 per day for non-compliance;
- (7) Removing language that would have required hosting platforms to maintain identifying information on all transient accommodations;
- (8) Amending the confidentiality provisions relating to general excise tax and transient accommodations tax returns and other information provided by registered tax collection agents;
- (9) Amending the information required to be provided by operators and plan managers regarding compliance with state and county laws and imposing the requirements on platform hosts and booking services, in addition to transient accommodations brokers;
- (10) Amending the definition of "booking service" to include advertising services; and
- (11) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Energy, Economic Development, and Tourism and

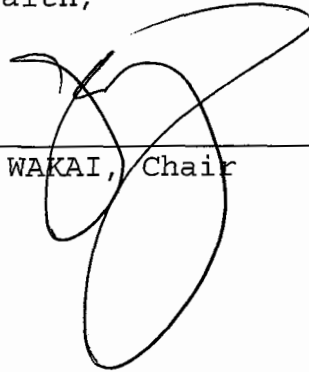


Commerce, Consumer Protection, and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1292, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1292, S.D. 1, and be referred to your Committees on Judiciary and Ways and Means.

Respectfully submitted on behalf of the members of the Committees on Energy, Economic Development, and Tourism and Commerce, Consumer Protection, and Health,



ROSALYN H. BAKER, Chair




GLENN WAKAI, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 1292	EET/CPH, JDC/WAM	2/13/19		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
CHANG, Stanley (VC)	✓			
KEOHOKALOLE, Jarrett	✓			
NISHIHARA, Clarence K.	✓			
RUDERMAN, Russell E.				✓
THIELEN, Laura H.	✓			
FEVELLA, Kurt	✓			
TOTAL	6			1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes