A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

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

PART I

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. The legislature further finds that in the transient accommodations industry there are entities that are well-placed to act as tax collection agents and ease the burden of collecting taxes.

The legislature further finds that requiring a hosting platform to collect and remit taxes on behalf of any transient accommodations operators or plan managers operating through the hosting platform will increase compliance with the transient accommodations and general excise taxes.

The legislature also finds that the penalties for doing business in violation of chapter 237D, Hawaii Revised Statutes, should be converted to monetary civil fines rather than criminal fines.
The purpose of this Act 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 any person who fails to register prior to engaging or continuing in the business of furnishing transient accommodations, which includes posting any advertisement for furnishing a transient accommodation, subject to a citation process and monetary fines, rather than a misdemeanor;

(3) Make any person who enters into an agreement to furnish transient accommodations without registering subject to a citation process and monetary fines; and

(4) Require a hosting platform that collects fees for booking services to register as a tax collection agent on behalf of its operators and plan managers for purposes of general excise taxes and transient accommodations taxes.

This Act is not intended to preempt or otherwise limit the authority of counties to adopt, monitor, and enforce local land use regulations, and this Act is not intended to transfer the
authority to monitor and enforce such regulations away from the counties.

PART II

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

1. By adding two new definitions 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 accommodation 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 accommodation transaction.

"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 accommodations through a website provided by the hosting platform and the hosting platform conducts a transaction by which potential renters arrange, use, or pay, whether the renter pays rent directly to the operator or to the hosting platform."

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 accommodations units", " transient vacation rentals", " transient vacation units", " transient vacation use", or any similar term that may be defined by county ordinance to mean a room, apartment, house, condominium, beach house, hotel room, suite, or similar living accommodation rented to a transient person for less than one
hundred eighty consecutive days in exchange for payment in cash, goods, or services."

PART III

SECTION 3. Section 237D-4, Hawaii Revised Statutes, is amended to read as follows:

"§237D-4 Certificate of registration. (a) Each operator or plan manager as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or in business as a resort time share vacation plan shall register with the director the name and address of each place of business within the State subject to this chapter. The operator or plan manager shall make a one-time payment as follows:

(1) $5 for each registration for transient accommodations consisting of one to five units;

(2) $15 for each registration for transient accommodations consisting of six or more units; and

(3) $15 for each resort time share vacation plan within the State;

upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting
that the registration has been made. The registration shall not
be transferable and shall be valid only for the operator or plan
manager in whose name it is issued and for the transaction of
business at the place designated therein. Acquisition of
additional transient accommodation units after payment of the
one-time fee shall not result in additional fees.

(b) The registration, or in lieu thereof a notice stating
where the registration may be inspected and examined, shall at
all times be conspicuously displayed at the place for which it
is issued. The name, phone number, and electronic mail address
of the local contact shall at all times be conspicuously
displayed in the same place as the registration or the same
place as the notice stating where the registration may be
inspected and examined. Failure to meet the requirements of
this subsection shall be unlawful. The department may issue
citations to any person who fails to conspicuously display the
registration or notice, or the local contact's name, phone
number, or electronic mail address as required by this
subsection. A citation issued pursuant to this subsection for
each transient accommodation or resort time share vacation
interest, plan, or unit in violation of this subsection shall include a monetary fine of not less than:

1. $500 per day, for a first violation for which a citation is issued;
2. $1,000 per day, for a second violation for which a citation is issued; and
3. $5,000 per day, for a third and any subsequent violation for which a citation is issued.

(c) Any advertisement, including an online advertisement, for any transient accommodation or resort time share vacation interest, plan, or unit shall conspicuously provide:

1. The registration identification number or an electronic link to the registration identification number of the operator or plan manager issued pursuant to this section; and
2. The local contact's name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit.
(d) Failure to meet the requirements of subsection (c) shall be unlawful. The department may issue citations to any person, including operators, plan managers, and transient accommodations brokers, who violates subsection (c). A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation interest, plan, or unit in violation of subsection (c) shall include a monetary fine of not less than:

(1) $500 per day, for a first violation for which a citation is issued;

(2) $1,000 per day, for a second violation for which a citation is issued; and

(3) $5,000 per day, for a third and any subsequent violation for which a citation is issued.

(e) The registration provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee. The director may revoke or cancel any license issued under this chapter for cause as provided by rule under chapter 91.
(f) If the license fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

[(g)] Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or as a plan manager subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall
be the same as that prescribed by section 231-35 for
individuals, corporations, or officers of corporations, as the
case may be, for violation of that section.

(g) Any monetary fine assessed under this section
shall be due and payable thirty days after issuance of the
citation, subject to appeal rights provided under this
subsection. Citations may be appealed to the director of
taxation or the director's designee.

(h) Any person who is required by this section to register
as a condition precedent to engaging or continuing in the
business of furnishing transient accommodations or as a plan
manager subject to taxation under this chapter, who engages or
continues in the business without registering in conformity with
this section, shall be subject to the citation process and
monetary fines under subsection (d).

(i) For purposes of this section, "engaging or continuing
in the business of furnishing transient accommodations" includes
posting any advertisement for the furnishing of a transient
accommodation."

SECTION 4. Section 237D-4.5, Hawaii Revised Statutes, is
amended to read as follows:
§237D-4.5 Certificate of registration for transient accommodations broker, travel agency, and tour packager. (a) Each transient accommodations broker, travel agency, or tour packager, as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director. The transient accommodations broker, travel agency, or tour packager shall make a one-time payment of $15 for each registration, upon receipt of which the director shall issue a certificate of registration in a form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the transient accommodations broker, travel agency, or tour packager in whose name it is issued.

The registration shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new application for registration and shall be subject to the payment of the one-time registration fee. The director may revoke or cancel any registration issued under this section for cause as provided by rule under chapter 91.
(b) Any person who enters into an agreement to furnish transient accommodations without registering in conformity with this section shall be subject to the citation process and monetary fines under section 237D-4(d)."

PART IV

SECTION 5. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- Hosting platforms as tax collection agent; operator and plan manager. (a) A hosting platform that collects fees for booking services shall register as a tax collection agent on behalf of all of its operators and plan managers.

A tax collection agent shall be issued a separate license under this chapter with respect to taxes due under this chapter on behalf of its operators and plan managers in its capacity as a 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 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 to or for whom booking services are provided; provided that the 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 for which booking services were provided by the tax collection agent. For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 as if this section did not exist.

(c) If a tax collection agent fails to pay the tax as required under subsection (b), the tax collection agent shall be liable to pay to the State any unpaid portion of the amount of tax that was required to be paid under subsection (b).

(d) All returns and other information provided by a tax collection agent shall be confidential, and disclosure thereof shall be prohibited as provided in section 237-34. Nothing in this subsection shall prevent public disclosure of information about tax collection agents as provided in section 92F-12(a)(13) or of aggregated information not identifiable to a specific tax collection agent.
(e) A tax collection agent shall file periodic returns in accordance with section 237-30 and annual returns in accordance with section 237-33. Each annual return required under section 237-33 shall be accompanied by a cover sheet, in a form prescribed by the department, that includes the following information 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:

1. Name;
2. Transaction address where the transient accommodations are located;
3. Transient accommodations tax identification number;
4. General excise tax identification number; and
5. Proportioned amounts of taxes paid for each transient accommodations tax and general excise tax identification number.

(f) Before collecting any fee for booking services, a tax collection agent shall notify each of its operators or plan managers that the reporting and remittance of Hawaii income tax is the responsibility of each operator and plan manager.
(g) Nothing in this section shall be construed to preempt or prohibit the authority of any county or political subdivision 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.

(h) For the purposes of this section:

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

"Director" means the director of taxation.

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

"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.

(i) The director may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.

(j) The department may require any form or document required under this section to be filed electronically."
SECTION 6. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237D- Hosting platform as tax collection agent; operator and plan manager. (a) A hosting platform that collects fees for booking services shall register as a tax collection agent on behalf of all of its operators and plan managers.

A tax collection agent shall be issued a separate certificate of registration under this chapter with respect to taxes due on behalf of its operators and plan managers in its capacity as a 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 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 or for whom booking services are provided; provided that the 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 for which booking services were provided by the tax collection agent. For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 as if this section did not exist.

(c) If a tax collection agent fails to pay the tax as required under subsection (b), the tax collection agent shall be liable to pay to the State any unpaid portion of the amount of tax that was required to be paid under subsection (b).

(d) All returns and other information provided by a tax collection agent shall be confidential, and disclosure thereof shall be prohibited as provided in section 237D-13. Nothing in this subsection shall prevent public disclosure of information about tax collection agents as provided in section 92F-12(a)(13) or of aggregated information not identifiable to a specific tax collection agent.

(e) A tax collection agent shall file periodic returns in accordance with section 237D-6 and annual returns in accordance with section 237D-7. Each annual return required under section 237D-7 shall be accompanied by a cover sheet, in a form prescribed by the department, that includes the following information 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:

(1) Name;

(2) Address where the transient accommodations are located;

(3) Transient accommodations tax identification number;

(4) General excise tax identification number; and

(5) Proportioned amounts of taxes paid for each transient accommodations tax and general excise tax identification number.

(f) Before collecting any fee for booking services, a tax collection agent shall notify each of its operators or plan managers that the reporting and remittance of Hawaii income tax is the responsibility of each operator and plan manager.

(g) Nothing in this section shall be construed to preempt or prohibit the authority of any county or political subdivision 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.
(h) The director may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.

(i) The department may require any form or document required to be submitted under this section to be filed electronically."

PART V

SECTION 7. 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.
Report Title:
Transient Accommodations; Hosting Platform; Tax Collection

Description:
Requires hosting platforms that collect fees for booking services to register as tax collection agents and collect GET and TAT for transient accommodation bookings from operators and plan managers. Converts penalties for violation of TAT requirements from misdemeanor to civil fines. Specifies that "transient accommodations" includes accommodations subject to county regulations as such. (SB1292 HD3)

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