

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Senator Glenn Wakai, Chair
Senator Clarence K. Nishihara, Chair
Committee on Economic Development, Tourism, and Technology
Committee on Public Safety, Intergovernmental, and Military Affairs
Hawaii Senate

RE: **Opposition to HB 2605 – Limited Residential Lodging and exposing Hawaiian privacy**

Dear Chairs Wakai and Nishihara and members of the joint committee,

We ask that you not move forward with HB 2605.

This bill would:

- impose unworkable state-level requirements on Short-term rental (STR) platforms in Hawaii, and
- force disclosure of private information of Hawaii residents to potentially every state employee

We do, however, agree with reasonable requirements for STR hosts and regularly advocate for such requirements.

Benefits to your constituents of short-term rentals

STR services provide necessary income to many of your constituents. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through certain short-term rental services is used to cover household expenses.

Consider, for example, families coming from across the country for graduation ceremonies at University of Hawaii. STR services allow constituents to earn income by sharing their homes.

The presence of STR services also brings new money into areas under-served by hotels. Historically, travelers are not likely to encounter businesses in these under-served parts of Hawaii. Conversely, guests who stay in under-served areas via STR services, bring income to nearby restaurants, grocery stores, and businesses.

Big hotel chains benefit most from HB 2605 passage

Big hotel chains are backing HB 2605 for entirely selfish reasons. Big hotel chains see STRs as a threat to their business model – however, it's not for the reasons you may think.

Presently, the hotel industry enjoys record setting occupancy and pricing. However, the presence of STR services is seen by some in the hotel industry as forcing hotels to keep prices at reasonable levels. For

instance, LaSalle Hotel Properties’s CEO told investors that a law curtailing short-term rental services would allow hotels to boost their prices by eliminating competition.¹

Lower hotel room prices mean that visitors to Hawaii have more money to spend with Hawaiian businesses. Likewise, when your constituents travel, STR services help them find more reasonably priced accommodations.

It’s important to keep STR services and a competitive market as a check on hotel price inflation.

HB 2605 would undermine a key benefit of the internet and would likely be unconstitutional

The internet is an open resource that enables people from all parts of Hawaii to freely communicate with one another and pursue their goals. While some nations discourage user-generated content, the United States created a fertile ground for business models that have transformed the world.

Moreover, this openness is bolstered by Section 230 of the federal Communications Decency Act, which says platforms can’t be held strictly liable for content posted *by others*.

However, HB 2605 fails to recognize Section 230. This not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of the HB 2605.

HB 2605 exposes the privacy of Hawaii residents to potentially all state employees

The 4th Amendment of the US Constitution protects Hawaii citizens from unlawful search and seizure is a core privacy protection.

Unfortunately, HB 2605 ignores this privacy protection and instead requires platforms to disclose records and information about hosts to state employees. And this disclosure does not require the state’s employees to first obtain a warrant.

This not only exposes the operating procedures and income of businesses but could also expose the privacy of Hawaiian residents using the platform.

The hotel industry has successfully defeated in court disclosure mandates like HB 2605. When the city of Los Angeles demanded that a hotels proprietary business records, the hotel industry fought back in court – ultimately winning at the US Supreme Court (*see In re Patel*, 576 U. S. ____ (2015)). To protect this court ruling, we could see the hotel industry opposing HB 2605. And if HB 2605 is passed, Hawaii would likely see a similar court outcome.

Legal arguments aside, HB 2605 grants Hawaii public employee access to private information of Hawaiians. As you can imagine, this provides an easily abused resource of information about your constituents and guests staying in the state.

Rather than advance HB 2605, which imposes all these burdens and unintended consequences, we instead encourage you to look to reasonable regulations that have proven beneficial in other jurisdictions.

¹ Gaby Del Valle, *Hotel CEO: New Airbnb Regulations Should Allow A 'Big Boost' In Hotel Room Rates*, Gothamist (Oct. 27, 2016) (Passage of a law limiting short-term rental services “should be a big boost in the arm for the business, certainly in terms of the pricing.”)

We've seen high compliance rates when localities create reasonable registration and regulation for STRs. A thoughtful approach to home-sharing by creating a registration process would benefit all Hawaiians. We welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,

Carl Szabo

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NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org