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The Los Angeles Rams arrived for football practice Friday at the University of Hawaii campus in Honolulu. The Rams will play the Dallas Cowboys in a preseason game today at Aloha Stadium.

CASE WANTS FEDERAL ROLE IN VACATION RENTALS

The Hawaii congressman pushes to end legal challenges by online vacation rental platforms

By Andrew Gomes
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Hawaii Congressman Ed Case is taking up an effort to provide state and municipal governments some federal help combating illegal vacation rentals.

Case on Thursday solicited his more than 400 colleagues in the U.S. House of Representatives to co-sponsor a bill he plans to introduce by September aimed at amending a piece of federal law that online vacation rental hosting platform companies have used to file

legal challenges against state and local government regulations on short-term rentals.

The issue of illegal vacation rentals is huge and divisive in Hawaii, where scores of residents have long complained that renting homes in residential areas to transient visitors has disrupted neighborhoods, weakened tax coffers and made housing more expensive and less available.

In June the City and County of Honolulu enacted an ordinance that cracks down on illegal operators, some of whom have argued that they need the extra

income from short-term rentals that create jobs and support tourism as an important economic contribution.

Case said home rentals under 30 days that violate zoning codes have proliferated with online platforms and need to be eliminated. But some hosting platform companies have sued to invalidate rules like Honolulu's new ordinance, so his bill aims to wipe out what he calls "abusive litigation" by firms like Airbnb.

"Their entire business model is built on advertising largely illegal vacation rentals," he said. "They don't want to have any responsibility for whether a rental is legal or not."

The city Department of

Planning and Permitting estimates there are 8,000 to 10,000 illegal vacation rentals on Oahu.

Honolulu's ordinance targets property owners but also requires platform companies to report names, addresses and transient accommodations tax numbers of the property owner or operator. It also subjects platform companies to fines if they provide booking services and earn compensation for rentals that aren't lawfully permitted.

Honolulu's new ordinance was modeled on regulations in Santa Monica, Calif., that have been embroiled in litigation since 2016. Airbnb Inc. and HomeAway.com,

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Hawaii Congressman Ed Case is proposing federal legislation allowing for greater regulation of vacation rentals.

Video is available at staradvertiser.com.



BOE passes new rules

CASE

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an affiliate of Expedia Group, sued the city of Santa Monica on several grounds, including the notion that the federal Communications Decency Act doesn't allow internet service providers to be held liable for content provided by others.

Airbnb and HomeAway lost in federal district court, and in March the 9th Circuit Court of Appeals upheld the ruling.

The decision against Airbnb and HomeAway in part concluded that the platforms go beyond posting content from others because they facilitate business transactions, and therefore they aren't protected from liability as a publisher would be.

"Allowing internet companies to claim (Communications Decency Act) immunity under these circumstances would risk exempting them from most local regulations and would ... create a lawless no-man's-land on the Internet," the decision said.

Still, Case said there's no assurance that a higher court won't overturn the ruling or that other district courts won't come to different

conclusions.

"Airbnb hasn't said, 'Oh, we accept the decision of the federal court in California,'" Case said. "They're fighting in other states. Their approach on this is a war of attrition."

Case said he expects that his bill will garner support from lawmakers representing districts where illegal vacation rentals are big problems. He also said the hotel industry, labor unions, affordable-housing advocates and social service providers should be in the bill's corner.

Case, who is a former chief legal officer for Outrigger Hotels Hawaii, also expects fierce lobbying from vacation rental platform companies.

"I think they're going to come after this with guns blazing," he said.

The proposed bill would state that Communications Decency Act immunity protecting publishers of submitted content doesn't apply to real property rentals that violate a law or contract.

Short-term home rental platforms have also cited provisions in the First Amendment, Fourth Amendment and federal Stored Communications Act as rendering some illegal vacation rental ordinances unenforceable.

Airbnb told the City Council in a letter from Honolulu

law firm Kobayashi Sugita & Goda LLP that its ordinance would be invalid and unenforceable because of these provisions. Case, however, said the Communications Decency Act has been the more plausible and active ground on which illegal vacation rental rules are being challenged.

State Sen. Laura Thielen, who has fought for measures to rein in illegal vacation rentals under state law, said clarifying the Communications Decency Act so it doesn't allow businesses to profit off illegal activity would be helpful.

"I would support that," she said.

Case has titled his proposed bill the "Protecting Local Authority and Neighborhoods Act," or PLAN Act.

"This is a narrow, targeted change to the statute to ensure short-term rental companies and internet platforms comply with state and local planning, zoning, rental, labor and tax laws and end their abusive stretching of (the Communications Decency Act's) original intent," Case said in his letter to colleagues. "Please join me in calling for increased accountability for powerful internet platforms abusing (the act) and profiting from illegal activity by supporting the PLAN Act."