LEGAL PROBLEM RELATING TO
HOMESTAY ACCOMMODATION BUSINESS
IN THAILAND

BY

MISS CHAYANAPA LAMAIWONG

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS
IN BUSINESS LAWS (ENGLISH PROGRAM)
FACULTY OF LAW
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2014
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THESIS

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ENTITLED

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was approved as partial fulfillment of the requirements for
the degree of Master of Laws in Business Laws (English Program)

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ABSTRACT

Tourism plays an important role in the economic and social development of Thailand. It is made up of many segments, the principal one being transportation, accommodation, food service, shopping, travel arrangements, and activities for tourists, such as history, culture, adventure, sports, recreation, entertainment, and other similar activities. Tourism figures among the top priorities in The Eleventh National Economic and Social Development Plan (2012-2016) that aims to restructure the economy toward quality growth and sustainability. Tourism as service sector, the management has to achieve balanced and sustainable growth by focusing on activities that are creative and environmentally friendly. Take into account the carrying capacity of tourist attractions so as to elevate the standards of service businesses. The quality and sufficiency of service should be increased.

In the promotion of tourism, accommodation sector constitutes the most important segment. Tourism is, to a great extent, dependent on the type and quality of accommodation available. Hotels have been and still are the principal form of accommodation. However, there has been a growth and development of some other forms of accommodation over the years. This is popularly known as supplementary accommodation and is, in fact, an important segment of tourism.

Homestay is specialize term referring to types of accommodation where
tourists or guests pay to stay in private homes. It can be seen as incorporating a number of other terms, including bed and breakfast, guesthouse, and farmstay. Homestay is not only accommodation service but also the alternative tourism that has been proposed to attract tourists. Currently, homestay has increased greatly to provide tourist accommodation and it is formed differently according to circumstances of each local community including the difference in physical structure of building, facilities, and type of service.

Since, homestays have been promoted as alternative tourism; this can attract more tourists to come to local community. Where there are more tourists, of course, there will be more natural and environment impact. If tourism development has no proper management plan it may have adverse effects on nature, the environment and local people. The legislation in form of anti-market or has some restrict of right is necessary in order to accomplish the goal of sustainable tourism, ecotourism and community based tourism that pay attention to nature, environment and well-being of local people.

As a part of accommodations, homestays provide service to general public. The experience from the development of accommodation, the quality standard of service and the public safety are the most important issues that have to be considered. Therefore, the definite law and regulation controlling homestay are necessary in order to propose the positive result on nature, environment, local people, general public as well as tourism development in Thailand.

Keywords: homestay, accommodation, tourism
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Miss Chayanapa Lamaiwong
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Year 2014
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CHAPTER 1
INTRODUCTION

1.1 Statement and significance of the problem

Tourism plays an important role in the economic and social development of Thailand. Tourism today is one of the world’s largest industries. It is made up of many segments, transportation, accommodation, food service, shopping, travel arrangements, and tourist activities, such as history, culture, adventure, sports, recreation, entertainment, and other similar activities. It decentralizes income and prosperity to the regions of the country. Tourism figures are among the top priorities in The Eleventh National Economic and Social Development Plan (2012-2016) that aims to restructure the economy towards quality growth and sustainability. In the service sector, management of tourism has to achieve balanced and sustainable growth by focusing on activities that are creative and environmentally friendly. Take into account the carrying capacity of tourist attractions so as to elevate the standards of service businesses. The quality and sufficiency of infrastructure should be increased. Tourism should be a reflection of Thai lifestyle, culture and natural resources.

In the promotion of tourism, of all the constituents of the tourist industry, accommodation sector thus constitutes the most important segment. Tourism is, to a great extent, dependent on the type and quality of accommodations available. Accommodation is a very important part of the tourism infrastructure and the

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expansion of tourism inevitably brings about the development of accommodation⁴. Because of the traveler or tourist left their home needed accommodation at their destination and for journeys which cannot be completed in a single day. For this they would need overnight accommodation⁵ which would offers food, safety, as well as entertainment for the night⁶. The World Tourism Organization’s definition of a tourist⁷ presupposes that the tourist must spend at least one night in the destination visited. This definition indicates a central role that accommodation plays in tourism. Tourist accommodation, which caters to both domestic and international tourists, is an important input which flows into the overall tourist system. It forms an important feature of the total tourist image of the country. A country which provides adequate accommodation facilities suitably tailored to the requirements of the tourist markets fulfils one of the basic conditions of tourism development⁸. Therefore, accommodation service business is vital to the development of the tourism industry. If there is no standard of service and quality accommodations offered to tourists, it will be an obstacle in traveling and it can cause negative affect on the development of tourism industry.

At present, lodging accommodation has been away from independently owned and operated properties toward chain and franchise affiliations, which get larger and larger ⁹. Thus, hotels have been and still are the principal form of accommodation. However, there has been a growth and development of some other forms of accommodation over the years. It can be of various types and can be classified on the basis of its location, type of construction, type of property, type of management, etc. In addition to hotel, the demand for tourist accommodation is met

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⁵ *Id*. at 236.
⁷ Tourist (or overnight visitor) means A visitor (domestic, inbound or outbound) is classified as a tourist (or overnight visitor), if his/her trip includes an overnight stay., World Tourism Organization UNWTO, Understanding Tourism: Basic Glossary, *available at* http://media.unwto.org/en/content/understanding-tourism-basic-glossary
by a variety of facilities. There are a series of other installations that are able to offer tourists lodging, food and corresponding services. This is popularly known as supplementary accommodation and is, in fact, an important segment of tourism\textsuperscript{10}.

Supplementary accommodation consists of various type of accommodation other than the conventional hotel type. It may be described as premises which offer accommodation but not the service of a hotel. The supplementary accommodation is moderately priced, informal and there is more freedom with regard to manners, dress, etc. There is also more emphasis on entertainment and sports. Some of the principal forms of supplementary accommodation are: motel, youth hostel, camping sites, pension, bed and breakfast establishments, tourist holiday villages, time share and resort condominiums\textsuperscript{11}.

Homestay is a specialised term referring to types of accommodation where tourists or guests pay to stay in private homes, where interaction takes place with a host or family usually living upon the premises, and with whom public space, is to a degree, shared. This definition can therefore be seen as incorporating a number of other terms, including bed and breakfast, guesthouse, and farmstay\textsuperscript{12}.

Homestay first appeared in Europe in case that students stay with host family to learn culture and language. In tourism study, homestay is a part of community based tourism which has 4 significant elements: community product sales, cultural shows, village based activities, and camping or homestay\textsuperscript{13}.

Definitions of homestay that were given in many resources represent the same essence concept referring to types of accommodation\textsuperscript{14} and an alternative tourism\textsuperscript{15} that tourist will stay in the same home with a local family to experience the

\textsuperscript{10} A.K. Bhatia, \textit{supra} note 8 at 181-182.
\textsuperscript{11} \textit{Id}. at 182.
\textsuperscript{13} คณาธิป ทองรวีวงศ์, กฎหมายเกี่ยวกับการท่องเที่ยว, 299 (กรุงเทพฯ: นิติธรรม, 2558) (Kanathip Tongraweewong, \textit{Tourism Law}, 299 (Bangkok: Nititham, 2558))
\textsuperscript{14} Gianna Moscardo, \textit{supra} note 12 at 26.
\textsuperscript{15} Final ASEAN Homestay Standard provides meaning of Homestay in section 4.18 that “\textit{Homestay – an alternative tourism where tourists will stay with the host’s family}
diverse regional daily life and utilize the natural resources in the local community. Therefore, homestay does not only provide accommodation and food but also a chance to exchange and share experiences between hosts and guests.

In Thailand, homestay provides tourist accommodation services, like a hotel, but on a smaller scale. Hotel business operations have to operate under strict laws. For example, the hotel operators have to comply with the laws requiring them to obtain licenses in order to obey the laws regulating the hotel business operations, crime control, and the collection of revenue. However, there are no laws to regulate homestay businesses directly. They operate without a license or permission. Although the Department of Tourism has established the Thai Homestay Standards certification which homestay establishments should conform, however, there is no compulsory registration for certification and complying with the standards is voluntary. Homestay operators can freely register and assess the standard. If a homestay operator opts-out, it is not illegal.

Since homestay is defined as an alternative tourism where tourists will stay with the host’s family in the same house and will experience the everyday way of life of the family and the local community. Homestay, then, differs significantly from hotel. However, the operators may not understand how to carry out appropriate homestay operation. There is only a guideline from the Announcement of the Department of Tourism on the Thai Homestay Standard B.E. 2554 that specifies standards for homestay establishments to comply with the concept of alternative tourism in conserving nature and providing benefits to the local community. But, it does not have a compulsory condition. It depends on operators to a voluntarily

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16 ประกาศกรมการท่องเที่ยว เรื่อง กําหนดมาตรฐานบริการท่องเที่ยวแบบที่อยู่อาศัยมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ราชกิจจานุเบกษา เล่ม 129 ตอนพิเศษ 26 ง หน้า 59 ลงวันที่ 31 มกราคม 2555 (The Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, published in royal gazette volume 129, special issue 26 ง, page 59, January 31, 2555)

17 คณาธิป ทองรวีวงศ์, อ้างแล้ว เชิงอรรถที่ 13 หน้า 301. (Kanathip Thongraweewong, supra note 13 at 301.)
participate in the official assessment and certification system. So, it does not meet the real purpose of homestay as an alternative tourism.

Currently, the number of homestay has greatly increased to provide tourist accommodation service and it is formed differently according to circumstances and environments of each local community including the difference in physical structure of building, facilities, type of service and price. These accommodations are not considered hotels under the Hotel Act B.E. 2547 because it does not comply with criteria and standard according to the hotel law and regulations. Due to there is no law governing this kind of accommodation directly, homestay, therefore, is not under control of the state. This may have a negative effect on tourists and operators as well as state revenue and expense.

As the purpose of homestay establishment is to provide temporary accommodation to tourists and to gain income from service charge, thus, homestay defined as a hotel under section 4 of the Hotel Act B.E. 2547. However, considering the other elements, such as the physical structure of residential buildings, location, security system, and sanitary system, homestay do not comply with this criteria and standard according to the related laws and regulations such as hotel law, building law, and public health laws. Due to the physical structure of homestay does not meet the requirements according to the hotel act. Although homestay can be considered as a tourist accommodation under hotel definition, homestay is different from hotel because it is actually a residential home. Then, the homestay operator cannot apply for license or permission before operating a homestay business as provided in the hotel act because it cannot meet the legal standard which is not designed for homestay. So, a large number of homestay operate practically without entering into

18 พระราชบัญญัติโรงแรม พ.ศ. 2547 มาตรา 4 ในพระราชบัญญัตินี้ “โรงแรม” หมายความว่า สถานที่พักที่จัดตั้งขึ้นโดยมีวัตถุประสงค์ในทางธุรกิจเพื่อให้บริการที่พักชั่วคราวสำหรับคนเดินทางหรือบุคคลอื่นใดโดยมีคำตอบแทน... (Hotel Act B.E. 2547 Section 4 Under this Act “hotel” means accommodation established with business purpose to provide temporary accommodation service for traveler or any other person for consideration....)

19 คณาธิป ทองรวีวงศ์, อ้างแล้ว เชิงอรรถที่ 13 หน้า 301. (Kanathip Thongraweewong, supra note 13 at 301.)
the legal system. As a result, homestay business is not in control of state. The operation of such business is not in order and tourists may get bad service or poor quality as there is no compulsory standard regulation on homestay business.

Besides, homestay as a form of alternative tourism, it is more than just stay overnight and food; it is plus an experience in culture and community daily life living. The home owners will provide accommodation for visitors to stay in their homes, eat together, exchange and share experience as well as provide program tour in local attractions. The home owners will charge for the service, as appropriate. Homestay as an alternative tourism is based on the concept of ecotourism and incorporate the principle of sustainability that community is fundamentally important in tourism development for the benefit of community.

The reasons as mentioned above, an overnight stay in a homestay is completely different from staying in a hotel while the current hotel laws and other related laws can not apply to the homestay business properly, this may cause problems later. The study noticed that homestay business is currently unregulated. The loophole of existing legislations on homestay business operation may lead to many problems as follows.

1. Problems relating to definition and scope of homestay.

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22 Peter Burns and Andrew Holden, *supra* note 20 at 221. “Ecotourism has been defined by the Ecotourism Society (1992) as: purposeful travel to natural areas to understand the cultural and national history of the environment, taking care not to alter the integrity of the ecosystem, whilst producing economic opportunities that make the conservation of natural resources financially beneficial to local citizens.”
23 *Id.* at 221-222.
The term ‘homestay’ called upon words in English, even if, there has been translated into Thai, but it still cannot identify the obvious meanings because homestay is unique and different from hotels and other types of accommodation.

Problems stemming from the unclear definition cause the misuse of the word ‘homestay’ (such as using word homestay for the place that is not the real homestay which could be a fraud) and create misunderstandings to tourists (the intention of tourist that want to stay in a real homestay may not be accomplished). Because of homestay is not only an accommodation service but also the alternative tourism that has been proposed as a distinctive alternative to hotel. Therefore, the law should recognize the specific characteristic of homestay by providing the clear definition in order to determine the scope and characteristic of homestay by realizing the concept and purpose of homestay which contain concept of ecotourism in order to provide protection for tourist and operator, to control and support the operation, to preserve nature and environment, and to define the scope to what the specific law can be applied.

2. Problems relating to quality standards of services.

Although the Department of Tourism has announced the Thai Homestay Standards, this standard does not have mandatory conditions. It depends on a
voluntary of operators to participate in the official assessment and certification system. Thus, most homestays in Thailand have no standard certification that tourists may get poor service or poor quality. This will further damage the image of Thailand including the impact on the tourism industry as a whole. Therefore, minimum standards should be set for homestay service with the mandatory condition of law in order to encourage the operators to be ready to engage the homestay business. As a result, tourists will get the standard quality of service and the countries tourism industry will benefit.

3. Problems relating to protections and remedies for tourists in terms of injury and damages (damage to life, body and property of tourists).

Due to tourists may get life threatening, physical injury and damage to property while staying in a homestay. This issue is related to the liability of the homestay operator that may be held liable to tourists who have been damaged. For remedies by using the usual process of Civil Procedure or Criminal Procedure, tourists may not get the appropriate remedy. Because such process is time consuming, complicated and cause expenses. Especially, foreign tourist who can stay in Thailand for just a period of time and have to go back his country may not be able to get the appropriate remedy. The other party, the operator, also receive the adverse effects and impacts on homestay business operation. So there should be a law giving the specifically protective measures and remedies to tourists for injury and damages.

4. Problems relating to the control and supervision by state

The Thai Hotel Act (B.E. 2547; 2004, as amended) "hotel" means specifically all lodging premises, established for commercial purposes to provide temporary accommodation to a traveler or any person for a consideration by providing temporary accommodation. Homestay as the small accommodation with no more than

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26 พระราชบัญญัติโรงแรม พ.ศ. 2547 ประกาศในราชกิจจานุเบกษา เล่ม 121 ตอนพิเศษ 70 ก หน้า 12 ลงวันที่ 12 พฤศจิกายน 2547 (Hotel Act B.E. 2547, published in royal gazette volume 121, special issue 70 ก, page 12, November 12, 2547)
four rooms on all floors in total and a total service capacity of not more than 20 guests are excluded from hotel definition and are exempted from hotel license requirement.27

At present, there is only the announcement of the Department of Tourism on Thai Homestay Standard B.E. 2554 28 addressing the assessment of standards and registration of homestay which is based on a voluntary basis.29 So there are a number of homestay establishments that are not in the system that can be monitored by the state. In the situation that there is no law requiring the notification of the homestay operation to government agency, permission and registration of homestay business including that there is no specific law giving the state agency an authority to control and inspect the operation, the homestay operation conducted disorderly and the state cannot control or monitor it. Because homestay is a business of lodging which was made available to general public, the operation will, therefore, affect society in general and the image of the country.

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27 กฎกระทรวงกำหนดประเภทและหลักเกณฑ์การประกอบธุรกิจโรงแรม พ.ศ. 2551 ประกาศในราชกิจจานุเบกษา เล่ม 125 ตอนที่ 70 หน้า 7 ลงวันที่ 23 พฤษภาคม 2551 “ข้อ 1 ให้สถานที่พักที่มีจำนวนห้องพักในอาคารเดียวกันหรือหลายอาคารรวมกันไม่เกินสี่ห้องและมีจำนวนผู้พักรวมกันทั้งหมดไม่เกินยี่สิบคน ซึ่งจัดตั้งขึ้นเพื่อให้บริการที่พักข้างต้นให้สร้างความสุข บนเดินทางหรือบุคคลอื่นใดโดยมีการตอบแทน อันมีลักษณะเป็นการประกอบธุรกิจเพื่อหารายได้เสริมและได้แจ้งให้ นายทะเบียนทราบตามแบบที่รัฐมนตรีกำหนด ไม่เป็นโรงแรมตาม (3) ของบทนิยาม ค่า “โรงแรม”ในมาตรา 4” (Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551 published in royal gazette volume 125, issue 70 page 7, May 23, 2551.

28 ประกาศกรมการท่องเที่ยวเรื่อง กําหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 อ้างแล้ว เชิงอรรถที่ 16 (The Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, supra note 16)

29 คณาธิป ทองรวีวงศ์, อ้างแล้ว เชิงอรรถที่ 13 หน้า 301. (Kanathip Thongraweeewong, supra note 13 at 301.)
The control and supervision by state will help homestay business operation run more orderly. The state will also have a database that can be useful in providing information and assistance to tourists or traveler as well as providing support and promotion for homestay operators.

In addition, if the state is unable to monitor and track the operation of the homestay it may lead to homestay fronting for illegal businesses such as drugs, prostitution, gambling, and money laundering and so on.

5. Problems relating to taxation, imposing fees and any other losses

Operating as a small for profit business, the income made is taxable. But Thailand has no laws regulating homestay business, then, it is impossible to verify the business and the income of the operators which may hide income from tax authorities. If there are laws regulating the homestay business in particular, it will be able to monitor the operations and collect more taxes.

In addition, as more and more homestay establishments increase, the number of tourists also concurrently increases. This creates adverse effects on public domain such as problems with transportation, defects of the roads and footpath, and degradations or defects of other public places where people share. Government lost expenses to repair defects and correct these issues while the homestay operator does not take any responsibility. Therefore, a specific law which regulates homestay business will enable the operators to engage in more public responsibilities.

6. Problems relating to nature and environment

Homestay as alternative tourism in concept of ecotourism is gaining the attention of tourists and bringing more tourists to local community. When there are more travelers, there is a bigger environmental impact, especially if it has not been carefully planned and managed. Furthermore, homestay operators have not reached the criteria of ecotourism; some of them do not understand how a homestay can be responsible to environment, conservative to natural areas and sustainable to well-being of local people. They operate their business under the homestay name, but do not behave as appropriate. Although the Department of Tourism has promoted homestay standards to protect the nature and allow income to the local community, however, it did not effect as expected since it offers no compulsory condition on the assessment and certification of homestay standards. Therefore, there should be the
specific law regulating homestay business which will enable operators to engage in more environmental and natural responsible.

The demand for accommodations varies according to the social class, prices, level of services, and similar considerations. Homestay as a type of accommodation may be successful in tourism. Even if it is rather simple construction of native materials and designed in conformance with the local architecture as well as located at local landscape, it often attracts tourists. Homestay as a type of accommodation must be available in the quality, standards of comfort and safety, and keep immaculately clean. In addition, homestay can be available to support concept of sustainability development, ecotourism, and community-based tourism that pay responsible to nature, environment, and well-being of local people. Therefore, the achievement for these goals of a homestay needs strong regulations that will be beneficial in controlling, monitoring, and supporting in a homestay establishment. However, Thailand has no definite law or regulation controlling the homestay accommodation business. Therefore, it is necessary to study the laws of foreign countries that have developed and established laws regulating homestay businesses and can be adopted as the model to be used in drafting the specific law in order to get homestay accommodation businesses to be more professional and more responsible to nature, environment, and well-being of local people.

1.2 Research hypothesis

The popularity of homestay in Thailand tourism industry has increased constantly. The characteristic and nature of homestay are different from hotel under the Hotel Act. However, there is no specific law regulating homestay. So, the standards of service, safety, and quality have been neglected. In addition, the avoidance of the application of Hotel Act by using ‘homestay’ banner has increased. These cause a negative effect on tourism industry, taxation and the country. Furthermore, homestay is not only accommodation service but also the alternative tourism that has been proposed to attract tourists with the concepts of sustainability,

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ecotourism and community based tourism. The lack of definite regulations controlling and encouraging may affect the adverse results on nature, environment and local people. Then, this research intends to recommend the introduction of specific law for regulating homestay.

1.3 Research Objectives

(1) To study the meaning and purpose of homestay by searching into history, development of accommodations, and development of tourism principles, practices, and philosophies.

(2) To study the differences and the similarities between hotel and homestay in many aspects such as historical background, physical structure, facilities, services and standards of qualities etc.

(3) To study the necessary of mandatory condition of law governing homestay, to find the advantages and disadvantages.

1.4 Scope of research

This thesis focuses on the study and analysis the laws or regulations relating to homestay establishment comparing to hotel law, and the emerging of homestay and tourism principles. Study by considering books and articles related in order to compare and analyze to seek the solutions, to guideline the application and interpretation of law includes, and to find the appropriate provisions on homestay business establishment.

1.5 Research Methodology

Research methods is documentary research in order to study and analysis the information from books, articles, theses, and other documents in relation to the problem to find guidelines principles to suggest the appropriate drafting of law and regulation. By studying and comparing the laws relating to homestay accommodation
business of United States (California), Australia (Victoria) and Republic of China (Taiwan).

1.6 Expected Research Outcomes

(1) Recognize the meaning and purpose of homestay that it is more than an accommodation, it is consist with concept of alternative tourism that pay responsible to nature, environment and well-being of local people.

(2) Realize the different between hotel and homestay and why the law should provide a different set of law to govern homestay specifically even homestay is in the scope of meaning of hotel.

(3) Realize the necessity of a compulsory condition of law governing homestay business which is aimed to control and monitor homestay business operation, to support or encourage homestay business establishment, to provide protective measure or remedy for tourists and operators for any damage occurred in homestay service, and to provide measures enable the operators to engage in more public, nature and environment responsibilities.
CHAPTER 2
THE CONCEPT OF HOMESTAY

2.1 Homestay definition

2.1.1 Homestay as accommodation

A homestay is a specialist term referring to types of accommodation where tourists or guests pay to stay in private homes, where interaction takes place with a host and family usually living upon the premises, and with whom public space, is to a degree, shared. This definition can therefore be seen as incorporating a number of other terms, including bed and breakfast, guesthouse and farmstay\(^{31}\).

There is a difficulty experienced in finding common term with the same shared meaning to describe homestay. For example, in Scottish and New Zealand studies, the research has focused upon small accommodation establishments. In a New Zealand context the focus has been upon B&Bs, home-stay, and farm-stay establishments. In a Scottish context, this has ranged from host families, cultural stays, bed and breakfasts, farmhouse stays, self-catering accommodation, guest houses, and small hotel collectively referred to as “homestay” or commercial home accommodation\(^{32}\).

The term “home-stay” accommodation is inevitably a term with specific cultural associations. In Australia for instance the term is associated with farmhouse accommodation, B&B type accommodation within private homes\(^{33}\). In the United Kingdom, it is traditionally associated with the English as a Foreign Language Sector. As a generic term it is used variously to refer to types of accommodation where visitors or guests pay directly or indirectly to stay in private homes. It is found that the term used to refer to a range of accommodation type including farmstay

\(^{33}\) *Id.* at 184.
accommodation, host families, some small hotel and B&Bs\textsuperscript{34}. Accommodation such as guest houses, boarding houses, lodging houses whose terms are sometimes used synonymously with hotels and B&Bs are also included as homestay establishments\textsuperscript{35}.

2.1.2 Homestay as a form of tourism

Homestay is a generic term used to describe a form of holiday that involves staying with the host’s family. While the ‘Bed and Breakfast’ concept also involves the guest staying within the host’s dwelling, the homestay is characterized by the guest’s participation in the host’s way of life. This contrasts with the working definition of homestay in Indonesia, which is budget accommodation constructed within villages or small towns and operated by local people; another term for these is loosen. In essence, the homestay in Malaysia bears many similarities with the farmstay concept practiced in Germany and New Zealand\textsuperscript{36}.

2.1.3 Homestay in many appearances

Central to the homestay concepts is the agrarian way of life, and besides offering and affordable form of holiday, it contains a high degree of educational element (Hall, 2000). Despite being commonly associated with rural and agritourism, the homestay concept has also been adapted to an urban setting as in the case of Singapore. Interestingly, there are many variants of the homestay concept\textsuperscript{37}, as follows.

1. Canada – Cultural homestay, farmstay, heritage homestay
2. USA – Agricultural homestay, educational homestay
3. Australia – Farmstay
4. Japan – Home visit, educational homestay
5. South Korea – Educational homestay

\textsuperscript{35} Rhodri Thomas, \textit{supra} note 32 at 184.
\textsuperscript{36} Hamzah, Amran, \textit{Malaysian homestays from the perspective of young Japanese tourists: the quest for furusato}, in: \textit{Asian Tourism: Growth and Change}, 193-207 (Elsevier Ltd., 2008)
\textsuperscript{37} Janet Cochrane, \textit{Asian Tourism: Growth and Change}, 194 (Elsevier Ltd., 2008)
6. South Africa – Leisure stay
7. New Zealand – Cottage homestay, farmstay
8. Philippines – Cultural homestay
9. Thailand – Student homestay, cultural homestay, volunteer homestay
10. Singapore – Urban homestay
11. Indonesia – Cultural homestay, leisure homestay

2.2 The Uniqueness Characteristics of Homestay

Not only the objective description is important for homestay, but also the associations: private homes, interaction with host or family who live on the premises, sharing of space which thereby becomes “public”. The associations may be described as linked by the concept of the home which may be perceived to distinguish homestay establishments from other forms of accommodation. For instance, those hotels where the host’s (the manager, perhaps also staff) private home is not on the premises, and the boundaries distinguishing public space open to staff and visitors from private space open to staff only, are relatively distinct would not fall under the term homestay. Thus, one may refer to a sector of homestay accommodation to distinguish the accommodation from other types which do not share all the characteristics to the same degree.

In New Zealand, under the accommodation categories, guest & hosted, includes bed & breakfasts, farm and homestays, boutique lodges, inns, guest houses, country hotels and similar establishments providing ‘homelike’ or ‘character’ accommodation. Typically emphasis is on the personal interaction between the guest and the host (frequently the owner). Kitchen or cooking facilities are not usually provided, although some properties may offer self-contained cottages. Depending on the style of the property, bedrooms may include tea and coffee making facilities, a

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38 Eric Laws and Maree Thyne, supra note 34 at 17.
39 Paul A. Lynch, Alison J. McIntosh and Hazel Tucker, Commercial Homes in Tourism: An International Perspective, 4, (Routledge, 2009)
40 Rhodri Thomas, supra note 32 at 185.
television and a phone. Lounge facilities are usually shared with the hosts and/or other guests. Bathrooms may be ensuite, private or shared. Breakfasts are a feature and are usually included in the tariff\textsuperscript{41}.

Interestingly, the category has no establishment size limit and permits establishments of more than fifteen rooms to fall under the same category, presumably those providing “character” rather than “home-like” accommodation\textsuperscript{42}.

However, the distinctions between those establishments labeled a B&B and those as a homestay are often unclear\textsuperscript{43}. There is the study also make this point comparing home host accommodation in Australia and B&B accommodation in Europe. On average these establishments have 3 rooms offering mostly double accommodation. All establishments offer breakfast, usually in a shared dining area, although these range from full cooked breakfasts to cereal and toast. The range of facilities offered within home-hosted accommodation is also varied\textsuperscript{44}.

Hosting within the personal of family home is unique. The nature and construction of the commercial home experience provided for guests is to large extent determined by the homeowner and occupants; their personality, motivations, expectations, experience, interpersonal skills own tidiness and style, management strategies, tolerance and attempts to make the accommodation experience homely.\textsuperscript{45} On the one hand, the home embodies tradition, historical associations, such as a sense of community and a way of life that lends itself to concept of nostalgia, but on the other hand, much evidence is given of the changing nature and adaptability of the significance of home interrelated to broader social change\textsuperscript{46}.

\textsuperscript{42} Rhodri Thomas, supra note 32 at 185.
\textsuperscript{43} Id. at 185.
\textsuperscript{44} Id. at 185.
\textsuperscript{45} Alison J. McIntosh and Candice Harris, The discourse of home hosting: Examining the personal experiences of commercial home hosts, in Commercial Homes in Tourism: An International Perspective, edited by Pual A. Lynch, et. al., 89 (Routledge, 2009)
\textsuperscript{46} Paul A. Lynch, Alison J. McIntosh and Hazel Tucker, supra note 39 at 205.
2.3 Homestay development through concept of tourism

2.3.1 Sustainable development and sustainable tourism

The term, sustainable development, was popularized in Our Common Future, a report published by the World Commission on Environment and Development (WCED) in 1987. Also known as the Brundtland report47, Our Common Future included the classic definition of sustainable development: development which meets the needs of the present without compromising the ability of future generations to meet their own needs48. The world Tourism Organization (UNWTO) defines sustainability in the context of tourism as a set of principles referring to environmental, economic and sociocultural aspects of tourism development, and suitable balance which must be established between these three dimensions to guarantee long-term sustainability49. Sustainable tourism can be simply defined as tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, and the environment and host communities50.

Sustainable tourism may be regarded most basically as the application of the sustainable development idea into the tourism sector. Essentially, sustainable tourism involves the minimization of negative impacts and the maximization of positive impacts. While sustainable tourism may consequently be considered as a feature of sustainable development as well as a vehicle for achieving the latter, there is not as direct a relationship between the two terms as might be

49 Philip Sloan, Claudia Simons-Kaufman and Willy Legrand, Sustainable Hospitality and Tourism as Motors for Development: Case studies from developing regions of the world, 16, (Routledge, Taylor&Francis Group, 2012)
expected\textsuperscript{51}. The Brundtland Report makes no directly mention of tourism but it is underlie in the concept of conservation of living natural resources - plants, animals, and micro-organisms, and the non-living elements of the environment on which they depend. The governments need to reinforce and expand existing strategies. Urgent needs include better wildlife and protected-area management, more protected areas of a non-conventional type, more game cropping and ranching projects, more promotion of wildlife-based tourism, and stronger anti-poaching measures\textsuperscript{52}. Sustainable tourism has been mentioned again in the Agenda 21 of United Nations Conference on Environment and Development, Rio de Janerio, Brazil, 3 to 14 June 1992, as the income-generating activities\textsuperscript{53}.

\textbf{2.3.2 Alternative tourism}

It is not surprising that no universally agreed or widely adopted definition of alternative tourism is to be found. A number of projects and policies promoting the new forms of tourism appeared in developing countries during the 1970s and early 1980s. The outward manifestations of these various projects are similar, with an emphasis on locally owned and operated, small scale traditional accommodation unit\textsuperscript{54}. In the search to minimize the problems caused by mass tourism and for a conceptual framework which is more destination friendly new ideas of what tourism should be have emerged. These ideas are often given the generic title of alternative tourism and have in part been embraced by the private sector, in response to the demands of a wider society in the 1990s for greener and

\begin{itemize}
\item \textsuperscript{51} David Weaver, \textit{Sustainable Tourism: Theory and Practice}, 9-10 (Elsevier Ltd., 2006)
\item \textsuperscript{54} Valene L. Smith and William R. Eadington, \textit{Tourism Alternatives: Potentials and Problems in the Development of Tourism}, 16, (International Academy for the Study of Tourism, 1992)
\end{itemize}
environmentally friendly products. Alternative tourism also implies that a form of tourism is being developed which is more environmentally friendly than the mass tourism\textsuperscript{55}.

Alternative tourism can be broadly defined as a form of tourism that creates to be compatible with natural, social and community values and which allows both hosts and quests to enjoy positive and worthwhile interaction and shared experiences\textsuperscript{56}. By implication, this form of alternative tourism development will require a high input of planning and regulations so as not to recreate the unplanned development seen around the world, where local ownership may be high, but many destinations have suffered from rapid expansion of tourism. Alternative tourism concept tend to adopt a narrow aspect, for example, it is defined as a form of tourism that tourist stay in the houses of local residents. This type of alternative tourism generally referred to as homestay tourism that has been described as a notable local originality\textsuperscript{57}.

Specific features of alternative tourism that provided the conceptual idea and specific practices of forms of tourism,

1. The preservation, protection, and enhancement of the quality of the resource base which is fundamental to tourism itself

2. The fostering and active promotion of development, in relation to additional visitor attractions and infrastructure, with roots in the specific locale and development in ways which complement local attributes.

3. The endorsement of infrastructure, hence economic growth, when and where it improves local conditions and not where it is destructive or exceeds the carrying capacity of the natural environment or the limits of the social environment whereby the quality of community life is adversely affected.

4. Tourism which attempts to minimize its impact upon the environment, is ecologically sound, and avoids the negative impacts of many large-

\textsuperscript{55} Peter Burns and Andrew Holden, \textit{Tourism: A new Perspective}, 208-209, (Prentice Hall, 1995)
\textsuperscript{57} David Weaver, \textit{supra} note 51 at 38-39.
scale tourism developments undertaken in the areas which have not previously been
developed.

5. An emphasis on, not only ecological sustainability, but also
-cultural sustainability. That is, tourism which does not damage the culture of the host
community, encouraging a respect for the cultural realities experienced by the tourist
through education and organized encounter⁵⁸.

2.3.3 Agritourism

Agritourism is a style of vacation that is normally spent on farms. The term agritourism is understood differently by tourists and provider of agritourism services. For a tourist, agritourism means familiarizing oneself with agricultural production or recreation in the agricultural environment or it may include an opportunity to help with farming tasks during the visit. However, this definition does not fully render what the term agritourism means to people providing agritourist services. In fact agritourism is a term introduced by representatives of the supply party representing the interests of farms providing agritourist services. This resulted in a considerable extension of the term to all activities related to providing services for tourists and holidaymakers. Therefore the entities providing agritourist services
include in the term agritourism various forms of the accommodation industry–agri-
accommodation; the food and beverage industry – agri-food and beverages; recreation
– agri-recreation; relaxation – agri-relaxation; sport – agri-sport; and even health care
and rehabilitation – agri-therapy⁶⁹.

Agri-accommodation industry comprises accommodation services provided by agritourist farms. There are many types of agri-hotel services such as farm stay, cottage stay, agri-hotel (motel), self-service beds, agri-camping and special agri-hotel services. A farm stay is an accommodation service provided by an agritourist farm for tourists who want to stay there for at least one night⁶⁰.

⁵⁸ Stephen Wearing and John Neil, supra note 56 at 5.
⁵⁹ Michal Sznajder, Lucyna Przezborska, and Frank Scrimgeour, Agritourism, 3-4
(CAB International, 2009)
⁶⁰ Id. at 135-137.
There is a long tradition of farm-stay tourism in Europe but in the United States, it only reached California at the end of the twentieth century after becoming established in New England a little earlier. Farm-stay tourism is a subset of rural tourism or agritourism in which visitors actually stay on farms. It has been defined as ‘the housing of tourists in rural homes which continue to practice farming activities’. The growth of this type of tourism has been encouraged by the diversification of the tourism market from standard family groups to individuals travelling alone or in groups with similar interests, such as bird watching or groups of similar ages. In the United States, where paid vacations are much shorter than in Europe, increasing pressure to reduce distance travelled to minimize use of expensive petrol and to reduce carbon footprints have encouraged short stay vacations in nearby rural areas. In California, there is increasing pressure to protect farmland as population and housing spread out of the cities. Rural tourism has seen the need to diversify its offerings in response to these consumer changes. Farm lodgings for tourists are no longer just thought of as places to stay in a rural environment but also as offering special pursuits to complement the stay.61

A farmstay is contextualized within agri-tourism, which offers a unique country holiday experience that invites visitors to stay on farms and in rural communities to enjoy agricultural experiences. As one said that a farmstay is a holiday for people to see a different way of life and whatever is happening at the time our guests arrive is what they participate in. Although similar to homestays, wherein the owners and their guests live under the same roof, some farmstays offer accommodation away from the family home. An addition variation in the study was one farmstay which operated in the off-farm property family home. Regardless of location of the farmstay within, adjacent or at distance to the farmhouse or property, farmstay operation is an additional activity to the normal functioning of the farm.62

61 Rebecca Maria Torres and Janet Henshall Momsen, Tourism and Agriculture: New Geographies of Consumption, Production and Rural Restructuring, 163 (Routledge, 2011)
62 Gayle Jennings and Daniela Stehlik, Farmstay enterprises: (Re) interpreting public/private domain and ‘home’ sites and sights, in Commercial Homes in Tourism: An International Perspective, edited by Pual A. Lynch, et. al. 52 (Routledge, 2009)
2.3.4 Ecotourism

Green and sustainability are often issues associated with the global tourism industry. In many cases, tourism is often cited as one the drivers for the conservation of natural areas and biological diversity. For example, ecotourism is often used to illustrate how the notion of sustainable development (that is, business practices which successfully accommodate the diverse goals of economic growth, biodiversity protection and community participation) can be put into action\(^\text{63}\).

An increasing number of destinations and businesses are aggressively pursuing ecotourism as a specialized part of their sustainable tourism development strategies. The emergence of ecotourism in the mid-1980s is closely associated with the Maxican consultant Hector Crballos-Lascurain, who defined the sector as involving travel to relatively undisturbed or uncontaminated natural areas with the specific object studying, admiring and enjoying the scenery and its wild plants and animals, as well as any existing cultural aspects found in these areas. This oft-quoted definition captures two criteria – nature-based attractions and education or appreciative motivations – that have since become almost universally recognized as two of the three core prerequisites of an ecotourism experience. The third criterion, environmental and sociocultural sustainability, is implicit in most of the definitions that have been subsequently put forward\(^\text{64}\).

It is now widely accepted that ecotourism involves an emphasis on nature-based attractions, educational interactions with these attractions and management practice that make every reasonable effort to achieve environmentally and socioculturally sustainable outcomes. However, a closer analysis of these three core criteria reveals the existence of comprehensive and minimalist ideal types, which suggest different expectation and outcomes. A parallel typology, based more on market and experience characteristics, differentiates between hard and soft ecotourists, although a combination of hard and soft traits characterizes the structured ecotourist market. Hard ecotourism is essentially a form of alternative tourism, while soft ecotourism suggests mass tourism or even mass ecotourism and it is this distinction that helps to account for large variation in the estimated size of the

\(^{63}\) Rhodri Thomas, supra note 32 at 197.
\(^{64}\) David Weaver, supra note 51 at 191-192.
ecotourism industry. The ecolodge of the specialized ecotourism industry itself cater mainly to the hard ecotourist market.65

Within the tourism sector, the recent movement towards sustainable tourism has given rise to an extensive body of environment policies, programs and practices relevant to small firms. At the macro-level, the World Tourism Organization (2003) has enunciated a set of environment principles that are included within its Global Code of Ethics. Another set of desirable practices has been promulgated by the Green Globe 21 certification program, which aims to accredit and brand sustainable tourism businesses around the world based on their environment, social and economic performance. This Program is helping to deliver a range of environmental and social improvements through the firms that it certifies. Likewise, the Nature and Ecotourism Program (NEAP) developed by the industry body Ecotourism Australia is a certification scheme aimed at achieving best practice by ecotourism operators in Australia.66

2.3.5 Community Based Tourism

Community-based tourism develops in many ways, and the structures, goal and theme represent differently according to environments, culture and stages of development. However, there are the general features of community-based tourism, the first important, community based tourism is social sustainable. This means the tourism activities are developed and operated, for the most part, by local community members with their consent and support. It implies that there is a forum for debate, and the community has been encouraged to participate in the activity. Secondly, it is also important that an equitable distribution of income is enjoyed by the local community. This may include income circulate which go to co-ops, joint ventures, community associations businesses that widely employ local people, or to a range of entrepreneurs starting or operating small and medium sized of business enterprises. Another important feature of community-based tourism is its honoring for local culture, heritage and traditions. Similarly, community based

65 Id. at 205.
66 Rhodri Thomas, supra note 32 at 200.
tourism implies regard and responsibility for the natural heritage, especially where the environment or nature is one of tourist attractions.\textsuperscript{67}

The homestay is intentional to fulfill numerous purposes. But, the first and significant, it is tourism activity directly connected to the community. Local people organize and host the homestay, and they are the primary recipients of the benefits, financial and otherwise from tourism activity. In addition to the host families, many of the small businesses in the local communities also benefit directly from the tourists\textsuperscript{68}.

2.4 Homestay under concept of accommodation

2.4.1 Development of accommodation

The earliest guest rooms were parts of private dwellings, and travelers were hosted almost like members of the family. The Middle East and in the Orient, caravansaries and inns date back to antiquity. In more modern times, first the stagecoach and then railroads, steamships, the automobile, motorcoach, and airplane expanded the need for adequate accommodations. The railroad brought the downtown city hotel, the automobile and motorcoach brought the motel, and airplane led to the boom in accommodations within or near airports.\textsuperscript{69}

2.4.2 The emergence of homestay

Homestay are not new and have long served the domestic virtually unnoticed. However homestay are being given a facelift to make them more attractive to the global tourism market.\textsuperscript{70} Several historical accounts of the use of the commercial home for tourist accommodation note that it has a long history in many countries, but that in the second half of the twentieth century the use of commercial homes for tourist accommodation has varied greatly across different geographical

\textsuperscript{67} Michael J. Hatton, \textit{Community-Based Tourism in the Asia-Pacific}, 2-3 (APEC publication, 1999)

\textsuperscript{68} \textit{Id.} at 39.

\textsuperscript{69} Charles R. Goeldner and J.R. Brent Ritchie, \textit{supra} note 1 at 57.

\textsuperscript{70} Peter Burns and Marina, \textit{Tourism Development: Growth, Myths and Inequalities}, 203-204, \textit{(CAB international, 2008)}
regions. More specifically, it has been suggested that in the United Kingdom and Europe there has been a continuing tradition of commercial home use as a budget form of accommodation. In the United States, Canada, Africa, Australia and New Zealand, however, the commercial home has only recently been taken up again as a form of tourist accommodation. In these settings this type of accommodation is typically more expensive than standard forms of accommodation and is seen as an alternative or specialist type of experience. This seems to suggest that there are a number of different forms of tourist experience classified under this single label.71

2.5 Homestay legal issue

2.5.1 Legislation as the equipment to achieve sustainable tourism goal

Sustainable Tourism, like its parental concept sustainable development, is inherently political. It is widely recognized that government have the greatest potential to shape tourism in dictating how it is promoted, planned, managed, and regulated72. It is recognized that through the use of government planning the tourism industry can be developed and managed in a way that conserves its natural resources and minimizes negative environmental impact. The main tools of government policy aimed at tourism-related environmental problems are73:

- Legislation
- Regulation – including revenue collection and redistribution
- Control
- The coordination of policies and programs
- Infrastructure and incentives
- Planning and promotion between national and local level ecotourism ventures

The primary means of minimizing impacts is to control tourist numbers and as such much government policy is formulated around this intention. Such control include quantity control, for example, zoning or limits to tour group

71 Gianna Moscardo, supra note 12 at 26.
72 Stephen Wearing and John Neil, supra note 56 at 38.
73 Id. at 40-41.
sizes as well as price controls – such as fee or taxes on local operators. A tourism plan should revolve around the natural and socio-economic environment of a country taking into consideration domestic and international tourist market groups as well as resident’s use of tourist attractions and facilities. Fundamental elements include:

- Tourist attractions and activities
- Accommodation
- Transportation and other tourist facilities or services
- Other infrastructure
- Institutional elements

### 2.5.2 The law relating to public general protection

As The developments of hotel law which reach back to medieval England and the time when travel become popular even though the roads were poor and the land was sparsely populated. But, the problems arose at night when travelers sought food, lodging, and all-night protection against brigands and robbers. The rich and the poor could stay in the castles of nobles or monasteries, but the middle-class travelers began to stay in the homes of local people who opened their doors for profit. This situation left much to be desired. The travelers found themselves at the mercy of unscrupulous innkeepers who overcharged, admitted guests capriciously, and innkeepers were believed to associate with robbers and even to help thieves steal from guests. The inns undertake as business to furnish food, protection, and shelter to the wayfaring guest. Having such a public business and the public need being concerned, the innkeeper must supply his service to all; and in order to perform his undertaking he must furnish not merely sufficient food and a tight roof, but sufficient protection against the dangers of country travelling.

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74 Id. at 41.
75 Id. at 42-43.
Accommodation supply has changed significantly over the past ten years, with accommodation facilities other than hotel. Especially, the numbers of homestays which provide tourists or travelers accommodation facilities are increasing.

Accommodation raises some issues in its development and in its marketing. It creates a need for reliable and accurate information for both the tourists and the travel agents and therefore may require supervision and control. Some sort of regulation of accommodation with a view to safeguard interests of the users has been emphasized\(^79\).

In particular, hotel has a problem with reliability. Just as infrequent is the host who betrays the confidence of a guest. Though owners and managers of modern hotels are people of character and integrity whose skill and business resources have made travel convenient and pleasant, it must be remembered that the unprincipled compete with the honest and that the vocation is open to all. But the protection against fraud and depredation still underlies the public policy that will not permit hotelkeepers to avoid the extraordinary responsibility except by the public enemy, an act of God, or the contributory negligence of their guests\(^80\).

Homestay as a tourist accommodation supplement, the emphasis is on smaller size properties and the classification as different forms of hospitality by considering the elements of homeliness and the interaction between hosts and guests. Following the rapid tourism expansion, there are only a small number of homestays that are of good quality\(^81\). The poor homestay operators often lack the capital to provide the requirement facilities. And, some of homestay applicants that may not receive permission to run a homestay due to security concerns\(^82\).

\(^{79}\) A.K. Bhatia, *supra* note 4 at 251.
\(^{81}\) Philip Sloan, Claudia Simons-Kaufman and Willy Legrand, *Sustainable Hospitality and Tourism as Motors for Development: Case studies from developing regions of the world*, 411 (Routledge, 2012)
\(^{82}\) *Id.* at 412.
CHAPTER 3
THE LAW GOVERNING HOMESTAY OR FARMSTAY IN FOREIGN COUNTIES

Homestay or farmstays in many countries have proven to be an effective means of maintaining and revitalizing rural areas. Their development has played a key role in the increased economic viability of many small farms as well as encouraging landscape conservation. This chapter will study the laws, regulations, and standards of homestay or farmstay in selected countries, USA (California), Australia (Victoria) and Republic of China (Taiwan) in order to find the guideline provisions and experienced problems in each country.

3.1 United States (California)

Agritourism brings diversification opportunities to farmers and ranchers that can help buffer fluctuating markets. It can increase farm revenue and enhance community economic activity. It can provide economically feasible ways to care for natural habitats, natural scenic areas, national resources, and special places. However, farmers who are considering an agritourism enterprise including homestay or farmstay as an option to generate additional income may have to understand the various relevant regulations. Because the laws and regulations on such enterprise in United States can be varying from state to state, then, this study has focused on the laws and regulations of California which has the law regarding homestay or farmstay directly.

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There are basic regulation categories that the farmers have to understand before operating an agritourism enterprise as follows\textsuperscript{84}.

### 3.1.1 Land Use and Land Development Regulations

1. County zoning.
2. Building code
3. Road and traffic
4. Use of public lands
5. Signs

### 3.1.2 Public Health and Safety Regulations

1. Food Safety

   The California Uniform Retail Food Facilities Law (CURFFL) is part of the California Health and Safety Code. It is the state law that governs food sanitation for food handling, processing, and preparation activities of the agritourism industry.

   CURFFL is enforced at the local level by the county environmental health department. This department reviews plans and regularly inspects food facilities in accordance with state law. (California Health and Safety Code section 113700 to 114475)

2. Food Handler’s Certificate

   CURFFL provides that at least one person in an enterprise processing or preparing food for the public should have a food handler’s certificate.

3. Agricultural Homestays under California Agricultural Homestay Bill (AB 1258)\textsuperscript{85}

   For establishing the on-farm bed and breakfast, also called farmstays or agricultural homestays, the 1998 law, AB 1258, amended California’s Health and Safety Code to include an agricultural homestay establishment. This law

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\textsuperscript{85} California Agricultural Homestay Bill (AB 1258), available at http://sfp.ucdavis.edu/agritourism/factsheets/ab1258/
allows farm owner to host a limited number of overnight visitors and permits farm families to serve food cooked in the farm kitchen to guests, according to the federal Food Code definition of a family home kitchen.

The California Agricultural Homestay Bill, (AB 1258), passed in July 1999, give a chance for more farmers and ranchers to offer tourists overnight stay. The bill exempts farms and ranching operations that offer overnight stays from the more stringent requirements of operating a commercial restaurant. To qualify for overnight stays, the farms and ranches must produce agricultural products as their primary source of income. Additionally, farmers are limited to six guest rooms and 15 visitors a night - less than the amount allowed for a bed and breakfast operation.

SECTION 1. Section 113870 of the Health and Safety Code is amended to read:

113870. (a) "Restricted food service transient occupancy establishment" means either of the following:

(1) An establishment of 20 guest rooms or less, that provides overnight transient occupancy accommodations, that serves food only to its registered guests, that serves only a breakfast or similar early morning meal, and no other meals, and with respect to which the price of food is included in the price of the overnight transient occupancy accommodation.

(2) An agricultural homestay establishment that meets all of the following requirements:

(A) Has not more than six guest rooms or accommodates not more than 15 guests.

(B) Provides overnight transient accommodations.

(C) Serves food only to its registered guests and serves meals at any time, and with respect to which the price of food is included in the price of the overnight transient occupancy accommodation.

(D) Lodging and meals are incidental and not the primary function of the agricultural homestay establishment.

(E) The agricultural homestay establishment is located on, and is a part of, a farm, as defined in Section 52262 of the Food and Agricultural Code, that produces agricultural products as its primary source of income.
(b) Notwithstanding subdivision (a), a restricted food service transient occupancy establishment may serve light foods or snacks presented to the guest for self-service.

(c) For purposes of this section, "restricted food service transient occupancy establishment" refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator shall be immaterial.

Farmstay kitchens are regularly inspected by the county department of environmental health. Agricultural homestay must meet all other applicable state and local regulations and zoning requirements as well. Article 18 of CURFFL addresses the regulations for agricultural homestay establishments; see Restrict Food Service Transient Occupancy Establishment.

(4) Public Safety

Agricultural operations involving the public must comply with public safety and accessibility regulations such as those concerning emergency-exit access (fire safety) and restroom facilities. There are also local ordinances and codes for fire prevention and safety, including requirements relating to fire extinguishers and on-site water.

3.1.3 Environmental Health Regulations

(1) Water

The quality of water provided to visitor in agritourism or nature tourism.

(2) Septic Systems

The requirements of a permit to repair, upgrade, or construct a septic system. There are the site evaluation for new construction and evaluation for an existing septic system.

3.1.4 Direct-Marketing Regulations

(1) Weights and Measures
(2) Package Labeling
(3) Organic Registration
(4) Farmers’ Market Permits

3.1.5 Business Regulations

(1) Fictitious Business Name Statement

(2) Business License

Doing business in a California county must have a California business license. The license must renew annually and pay a fee each time of application.

(3) Liquor License

There are many kinds of liquor licenses. Applying for the liquor license requires that the person have to visit the nearest office of the Department of Alcoholic Beverage Control. According to ABC instructions, individual must apply in person because considerable detailed personal information is required, including fingerprints from all individual applicants, managers, and managing officers of applicant corporations.

(4) Transient Occupancy Tax

If individual operate an agricultural homestay or farm B&B, he must pay a transient occupancy tax (TOT). TOT is a state tax on revenues generated locally from the hotel, motel, and accommodations industry. In many counties and in some incorporated towns, the TOT includes a local tax as well as the state tax. County TOT rates range from 5 to 12 percent of the accommodation fee. Often, county boards of supervisors will use the county TOT funds to support promotional and advertising campaigns organized by the local chamber of commerce or convention and visitors’ bureau.

The operator must collect the TOT from visitors and remit the funds quarterly to the county tax collector. But first he must register his enterprise with the county tax collector and obtain a transient occupancy registration certificate. Like the business license, this certificate needs to be displayed conspicuously on the farm or ranch.

(5) Labor Laws
(6) Employer Identification Number
(7) Occupational Health and Safety
(8) Employee State-Tax Registration

According to laws and regulations imposed by federal, state, and local government, homestay or farmstay was regulated by permission, license and inspection by the official agency in order to protect tourists, the operators and public interest.

3.2 Australia (Victoria)

In tourism industry, the accommodation sector constitutes one element of the complete tourism product. The farm tourism phenomenon has grown worldwide as farmers have sought to supplement their incomes by providing accommodation and associated activities to visitors. In a farmstay, tourists may have particular new about the accommodation experience within the context of the complete holiday \(^{86}\).

3.2.1 The various types of accommodation in Victoria, Australia.

The establishment of an accommodation business in Australia, it is important to start with the understanding the laws, regulations, and governmental requirements which can be vary from state to state, for example, in Victoria, Australia, it need to comply with a multitude of laws and licensing requirements including planning, food safety, liquor licensing, insurance, safety, and other standards and requirements for prescribed accommodation \(^{87}\). In addition to


\(^{87}\) See Public Health and Wellbeing Regulations 2009, Division 2—Standards and requirements for prescribed Accommodation, available at
regulations applying to all businesses the following licenses and registrations may apply to various types of accommodation in Victoria, Australia.

1. Hotel/motel:
   1.1 Must register a hotel or motel premises with the local council if the premises can accommodate five or more guests (Public Health and Wellbeing Act and Public Health and Wellbeing Regulations 2009 (Vic)). Involve contacting the local council to apply for registration, having the premises inspected and then paying the registration fee.
   1.2 Accommodation building must have specific fire safety systems installed (Building Regulations 2006 (Vic)).
   1.3 If intending to sell alcohol a liquor license is required and employees involved in dealing with alcohol must hold a current ‘responsible serving of alcohol’ certificate.

2. Caravan Park:
   2.1 Registration of a caravan park with the local council.
   2.2 If it has long term residents, it also comes under the Residential Tenancies Act 1997 (Vic) and Consumer Affairs Victoria (CAV).
   2.3 Accommodation building must have specific fire safety systems installed (Building Regulations).
   2.4 Must follow the various Australian Standards specific to moveable dwellings, such as drainage and electrical installations.

3. Bed & Breakfast, Guest House or Farmstay:
   3.1 Must register a B&B, guest house or farmstay premises with the local council if the premises can accommodate five or more guests (Public Health and Wellbeing Act and Public Health and Wellbeing Regulations). Involve contacting the local council to apply for registration, having the premises inspected and then paying the registration fee.
   3.2 Accommodation building must have specific fire safety systems installed (Building Regulations).

4. Rooming House:

4.1 Must register a rooming house premises with the local council if the premises can accommodate four or more guests (Public Health and Wellbeing Act and Public Health and Wellbeing Regulations). Involve contacting the local council to apply for registration, having the premises inspected and then paying the registration fee.

4.2 Accommodation building must have specific fire safety systems installed (Building Regulations).

5. Hostel:

5.1 Must register hostel premises with the local council if the premises can accommodate five or more guests (Public Health and Wellbeing Act 2008 and Public Health and Wellbeing Regulations 2009). Involve contacting the local council to apply for registration, getting the premises inspected and then paying the registration fee.

5.2 Fire safety, accommodation building must have specific fire safety systems installed (Building Regulations 2006).

6. Student Dormitory or Holiday Camp:

6.1 Must register hostel premises with the local council if the premises can accommodate six or more guests (Public Health and Wellbeing Act 2008 and Public Health and Wellbeing Regulations 2009). Involve contacting the local council to apply for registration, getting the premises inspected and then paying the registration fee.

6.2 Accommodation building must have specific fire safety systems installed (Building Regulations 2006)\(^88\).

In Australia (Victoria), there is a guideline factsheet provided for business operator to understand the laws and regulation concerning to their accommodation business and the general guidance can be found at the Australian

Business Licence and Information Service (ABLIS). Accommodation businesses that covered by the Public Health and Wellbeing Regulations 2009 (Victoria) and require to be registered are the following.

1. Bed and breakfast accommodating more than five people
2. Rooming house accommodating more than four people
3. Hotels and motels
4. Guesthouses and boutique hotels
5. Self-contained accommodation
6. Farmstays or holiday camps; or
7. Hostel or student dormitory

Businesses that are not covered and not require to be registered by the Prescribed Accommodation Regulations are:

1. Caravan parks;
2. House and granny flat;
3. Public hospitals and nursing homes;
4. Retirement villages;
5. Temporary crisis accommodation\(^\text{89}\).

### 3.2.2 Meeting government requirements

The main local, state and federal Government requirements are as follows.

1. Applying for a planning permit

Before start up a new business, undertake land or building development, or change the purpose of a property, the first step is to apply for a planning permit from local council. A planning permit is usually not required for a Bed & Breakfast accommodating five guests or less, but registration is still required.

2. A building permit

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If the development involves construction, demolition, alteration or extension of a building, it will probably need a building permit. This can be issued by either the local council building surveyor or a private registered building surveyor.

3.2.3 Registrations with local council

(1) Registration of Prescribed Accommodation Under the provisions of the Health (Prescribed Accommodation) Regulations 2001, an accommodation business will need to apply to be registered with its local council. The application must include a plan of the premises, drawn to a scale of not less than 1:100, and showing the proposed use of each room.

(2) Registration of Food Premises under the Victorian Food Act 1984, an accommodation business that provides food also needs a Registration of Food Premises from their local council.

3.2.4 Further licenses, registrations and permits

Any further licenses required will depend on the activities to be included in the business operations. As an example, a motel with a restaurant is likely to need:

(1) Register a business or company name
(2) Register for tax
(3) A planning permit from the local council and general liquor license from Consumer Affairs Victoria.
(4) Music licenses from the Australian Performing Rights Association and Phonographic Performance Company of Australia if play the recorded music.
(5) A permit to establish an outdoor eating facility from the local council.

3.2.5 Insuring the business

As well as insuring the premises and assets, the following additional insurances can be critical for accommodations businesses.

- Public liability to cover paying guests and visitors.
- Product liability to cover prepared food or other products offered to guests
- Motor vehicle insurance if your vehicle is used for business purposes.
- Personal injury and/or income protection\(^{90}\).

### 3.3 Republic of China (Taiwan)

Over the past decade, Taiwan’s homestay has developed significantly. When the Regulations for the Management of Homestay Facilities\(^{91}\) were issued this is promulgated in accordance with paragraph 3, Article 25 of the Statute for the Development of Tourism\(^{92}\). The homestay establishment has to comply with the requirements of the Regulations, as follows.

#### 3.3.1 General provision

The Regulations define “a homestay facility” as “a lodging facility run as a family sideline business, using the spare rooms of a self-used residence to provide tourists with a rural living experience. Such lodging facility usually incorporates local culture, natural landscape, ecological environment, environmental resources, and agricultural, forestry, fishery, or livestock farming activities\(^{93}\).”

#### 3.3.2 Application, licensing, and change of registration for homestay facilities

1) The establishment of homestay shall be limited to the following areas, and shall comply with related supervisory regulations on land use.
- Designated scenic spots

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\(^{90}\) Tourism Victoria: **Product Development Fact Sheet: Starting up an accommodation business, available at**


\(^{92}\) See Regulations, 2001, Article 1

\(^{93}\) See Regulations, 2001, Article 3
- Tourist sites
- National parks
- Aboriginal reservations
- Remote areas
- Offshore islands
- Recreational farms with business registration certificates issued by the administrative authority for agriculture, or recreational agriculture areas designated by the administrative authority for agriculture.
- Nature villages under the Kinmen Special Area Plan
- Non-urban land\textsuperscript{94}.

2) A homestay shall be, in principle, at a scale of no more than 5 guest rooms, with a total floor area of no more than 150 square metres. However, a business registration certificate may be issued to a homestay with specific tourism features that has an operating scale of no more than 15 guest rooms, with a total floor area of no more than 200 square metres, provided that such homestay is located in an aboriginal reservation, a recreational farm with a business registration certificate issued by the administrative authority for agriculture, a recreational agriculture area designated by the administrative authority for agriculture, a tourist site, a remote area, or on an offshore island.

The "remote area" and "specific tourism features" as mentioned in the preceding paragraph shall be determined by the local administrative authority, which shall file the criteria for determination with the central administrative authority for reference before implementation of such criteria. Such criteria may be modified in accordance with practical necessity\textsuperscript{95}.

3) The building of a homestay shall comply with the following provisions:

The materials and decorations of inner walls and ceilings, the structure of partition walls, and the structure and width of corridors shall meet the requirements laid down in Articles 9, 10, and 11 of the Regulations for the

\textsuperscript{94} See Regulations, 2001, Article 5
\textsuperscript{95} See Regulations, 2001, Article 6

A building with a floor area of over 200 square metres for each above-ground floor, or one with a total floor area of over 200 square metres for all below-ground floors, shall have staircases and platforms built with a net width of 1.2 metres or above. A floor whose area is over 240 square metres shall have no less than two staircases that have a through connection to all the other floors of the building. Any irregularities shall be rectified in accordance with Article 13 of the Regulations mentioned in the preceding paragraph. However, standards for the building and facility of a homestay which is subject to the provisions of Paragraph 1 of the preceding article shall be exempt from application of the preceding paragraph of this article96.

4) The fire control equipment of homestay shall meet the following requirements:
- Each guest room, staircase shaft, and corridor shall be equipped with emergency lights.
- Homestay shall be equipped with automatic fire alarm systems, or each guest room shall be equipped with fire alarms.
- No fewer than two fire extinguishers shall be securely installed in places of good visibility and accessibility. At least one fire extinguisher shall be installed on each floor in a building which has more than one floor above the ground97.

5) The operating equipment of a homestay shall meet the following requirements:
- Each guest room and bathroom shall have adequate ventilation and shall receive sufficient light.
- The homestay shall provide hot and cold water as well as sanitation equipment, and the water heater shall be installed outside the building.
- The equipment and environment of the homestay shall be constantly kept clean and tidy so as to prevent the propagation of mosquitoes, flies, cockroaches, rats, and other disease carriers, and to cut off their breeding sources.

96 See Regulations, 2001, Article 7
97 See Regulations, 2001, Article 8
- The quality of drinking water shall meet the requirements detailed under applicable standards\textsuperscript{98}.

6) Applications for the registration for homestay shall comply with the following provisions:
- The structure of a homestay shall be for residential use only. However, a farmstead may be used as a homestay when it is located in an area covered by the provisions of Paragraph 1, Article 6.
- A homestay shall be operated by the actual user of the building. However, a homestay commissioned by the local government on an offshore island may be exempt from this provision.
- A homestay may not be established in a communal dwelling house.
- A homestay may not be established in a below-ground floor of a building\textsuperscript{99}.

7) A person who falls into any of the following conditions may not operate homestay accommodation:
- Not having complete capacity to execute legal transactions.
- Having been convicted under the Organized Crimes Control Act, Statute for Narcotics Hazard Control, or Firearms Control Act.
- Having been adjudicated to receive correctional treatment under the Anti-Hooliganism Statute
- Having been convicted under any of the following laws: the Law on the Prevention of Child and Teenage Sex Trade; and the sexual assault provision of the Criminal Code.
- Being an ex-convict sentenced to imprisonment of five years or more, and having completed the sentence or been pardoned less than five years previously\textsuperscript{100}.

8) The name of a homestay may not be the same as that of any other homestay located in the same municipality, county, or township\textsuperscript{101}.

9) Those intending to operate homestay accommodation business shall, before commencing operations, submit an application together with the

\textsuperscript{98} See Regulations, 2001, Article 9
\textsuperscript{99} See Regulations, 2001, Article 10
\textsuperscript{100} See Regulations, 2001, Article 11
\textsuperscript{101} See Regulations, 2001, Article 12
following documents to the local administrative authority for registration, pay registration fees, and obtain a homestay registration certificate and exclusive trade symbol:

- Application form.
- One photocopy of the certifying document of land use classification for the premises (when the premises are located in an urban area).
- One copy of land address map and one copy of land registration, issued within three months before the application.
- Documentation evidencing consent for use of the premises (not required when the applicant is the owner of the premises).
- One copy of building registration or other documentation verifying the title of the house.
- One photocopy of building use permit, or documentation which can verify the legitimacy of the building use.
- One photocopy of business liability insurance policy.
- Photos of exterior and interior of the homestay, including guest rooms, bathrooms, and other business-related facilities.
- Other documentation as required by the local administrative authority.

10) A homestay registration certificate shall document the following items:

- Name of homestay.
- Address of homestay.
- Name of operator of homestay.
- Date of registration approval, document number, and registration certificate serial number.
- Other items required by the local administrative authority.
- The format of the application form for homestay shall be fixed by the central administrative authority and printed by the local administrative authority.

102 See Regulations, 2001, Article 13
103 See Regulations, 2001, Article 14
11) When reviewing an application for homestay registration, the local administrative authority may request the competent authorities for health, fire, and building affairs to conduct onsite investigations\textsuperscript{104}.

12) In the event of any items necessity to be submitted or corrected concerning an application for homestay registration, the local administrative authority shall notify the applicant in writing to demand that the items be submitted or corrected within a fixed period\textsuperscript{105}.

13) The local administrative authority should reject an application for homestay registration, in written documentation stating the reasons for rejection, when any of the following cases arises:
- The required items are not submitted or corrected within the fixed period of time after notification is issued.
- The application fails to comply with the Statute for the Development of Tourism or these Regulations.
- The application is found by other competent authorities to have failed to comply with laws or regulations\textsuperscript{106}.

14) In the event of change in any of the items of a homestay registration, the operator shall submit the change to the local administrative authority along with an application form and pertinent documentation within 15 days after the incident of the change.

The local administrative authority shall, by the 10th day of the following month, report to the Tourism Bureau of the Ministry of Transportation and Communications the documentation on the establishment and change of the homestay facility\textsuperscript{107}.

15) The operator of a homestay who intends to suspend operations or business for more than one month shall submit an application detailing the reasons to the administrative authorities within 15 days following the occurrence of the suspension.

\textsuperscript{104} See Regulations, 2001, Article 15  
\textsuperscript{105} See Regulations, 2001, Article 16  
\textsuperscript{106} See Regulations, 2001, Article 17  
\textsuperscript{107} See Regulations, 2001, Article 18
An application as described above may not be made for a suspension of operation or business in excess of one year. An operator may apply, with reasonable justifications, for extension of suspension for one year at most. The application for extension should be filed within the final 15 days of the original period of suspension.

After the suspension period expires, the operator should file for business resumption with the administrative authority within 15 days.

In the event that an operator fails to file the report according to the first paragraph of this Article or to apply for business resumption according to the third paragraph for more than six months, the authority may revoke the registration certificate of the business.\(^{108}\)

16) In the event of any loss, destruction of, or damage to the homestay registration certificate, the operator shall apply to the local administrative authority for reissuance or replacement within 15 days after the incident of the aforesaid conditions.\(^{109}\)

3.3.3 Management and supervision of homestay facilities

1) The operator of a homestay shall purchase a liability insurance policy with the pertinent coverage and minimum insured value as specified below:
- Human bodily injury or death, per person: NT$ 2 million.
- Human bodily injury or death caused in each incident: NT$ 10 million.
- Loss of or damage to property in each incident: NT$ 20 million.
- Total insured value for the insured period: NT$ 24 million.
- Notwithstanding the insurance coverage and the insured value mentioned in the preceding paragraph, laws and regulations promulgated by local governments shall apply when they offer more favorable terms for the protection of consumers.\(^{110}\)

2) The room rates for guest rooms in a homestay, as well as changes in those rates, are to be fixed by the operator and shall be reported to the local administrative authority.

\(^{108}\) See Regulations, 2001, Article 19

\(^{109}\) See Regulations, 2001, Article 20

\(^{110}\) See Regulations, 2001, Article 21
The actual charges for guest rooms shall not be higher than the rates fixed as mentioned in the preceding paragraph\textsuperscript{111}.

3) The operator of a homestay shall present room rates, lodgment rules, and emergency maps in clearly visible and brightly lighted places in the guest rooms\textsuperscript{112}.

4) The operator of a homestay shall present the homestay registration certificate in a clearly visible place in the hallway, and shall have the designated homestay logo presented in a clearly visible place outside the building\textsuperscript{113}.

5) The operator of a homestay shall maintain lodger registration books to record information on lodgers in accordance with the required format on a daily basis, and shall submit this information to the local police station.

The lodger registration books mentioned in the preceding paragraph shall be kept in inventory for a period of one year.

The format of the lodger registration books as referred to in paragraph one above shall be fixed by the administrative authority and printed by the operator of a homestay\textsuperscript{114}.

6) Upon discovering an emergency involving illness of or injury to a lodger, the operator of a homestay shall immediately assist in taking the lodger for medical treatment. Upon discovering the possible contraction of an epidemic disease by a lodger, the operator shall immediately notify a competent health or medical agency for proper treatment\textsuperscript{115}.

7) The operator of a homestay may not engage in any of the following acts:
- Soliciting travelers by yelling, shouting or other illicit means.
- Forcing travelers to purchase goods.
- Arbitrarily raising of lodgment charges or seeking of profits by illicit means.
- Installing equipment that may violate guest’s privacy, or engaging in any behavior that may cause disturbance to the guest.

\textsuperscript{111} See Regulations, 2001, Article 22
\textsuperscript{112} See Regulations, 2001, Article 23
\textsuperscript{113} See Regulations, 2001, Article 24
\textsuperscript{114} See Regulations, 2001, Article 25
\textsuperscript{115} See Regulations, 2001, Article 26
- Expanding the operation scale of a homestay accommodation without permission\textsuperscript{116}.

8) The operator of a homestay shall:
- Ensure the sanitation and safety of beverage and food provided in the homestay facility.
- Maintain tidiness, cleanliness, and peacefulness within and around the homestay facility.
- Have bedclothes of the guest rooms cleansed and replaced with clean ones after each use.
- When organizing folk cultural programs, paying due attention to protection of the natural environment, maintaining cleanliness of the environment, avoiding disturbance to the local community, and ensuring public safety\textsuperscript{117}.

9) The operator of homestay shall report to the local police station upon discovering any of the following conditions pertaining to a lodger:
- Suspicion of jeopardizing national security.
- Carrying of guns and weapons, dangerous goods, or other prohibited goods.
- Consumption of addictive drugs or other narcotics.
- Showing of signs of committing suicide, or being dead.
- Making of loud noises, participating in group gambling, or engaging in other behavior that causes a disturbance to the public or violates public order or good social morals, and refusing to follow persuasion to desist.
- Forcible taking of lodgment without presenting proper identification documentation, or refusing to register for the lodgment.
- Posing of a treat to public safety or arousing suspicion of having committed other crimes\textsuperscript{118}.

10) The operator of a homestay shall submit to the local administrative authority statistical data, conforming to the required format, on occupancy ratios, number of lodgers, revenues, and so on for the latest six months, by the end of January and July each year.

\textsuperscript{116} See Regulations, 2001, Article 27
\textsuperscript{117} See Regulations, 2001, Article 28
\textsuperscript{118} See Regulations, 2001, Article 29
The local administrative authority shall submit the data mentioned in the preceding paragraph to the Tourism Bureau of the Ministry of Transportation and Communications by the end of the following month\textsuperscript{119}.

11) The operator of a homestay shall take orientation and training courses on homestay management organized by the government agency itself, or by related agencies or organizations commissioned by the government agency\textsuperscript{120}.

12) The government agency or the competent authority for related matters may award or acknowledge the operator of a homestay who meets one of the following conditions:
- Having made special contributions to national honor or social order.
- Having performed in an outstanding manner in fostering international friendship through participation in international promotional campaigns.
- Having outstanding performance in promoting the tourism industry
- Having an excellent record in improving service quality.
- Having been recognized by lodgers for excellent hospitality services or good service practices.
- Having made special contributions to the promotion of culture, quality of life, and the tourism industry in the local community.
- Having evidenced other good conduct or practices deserving commendation\textsuperscript{121}.

13) The administrative authority may send authorized personnel with proper identification documentation to visit and inspect a homestay accommodation.

The visits and inspections referred to in the preceding paragraph may be conducted on a regular or an irregular basis.

The operator of a homestay shall offer active cooperation and necessary assistance regarding inspection by the administrative authority\textsuperscript{122}.

14) For the purpose of improving performance in the supervision of homestays, the central administrative authority may conduct regular or irregular

\textsuperscript{119} See Regulations, 2001, Article 30
\textsuperscript{120} See Regulations, 2001, Article 31
\textsuperscript{121} See Regulations, 2001, Article 32
\textsuperscript{122} See Regulations, 2001, Article 33
supervisory evaluations of the administrative authorities of municipal and county governments\textsuperscript{123}.

15) The operator of a homestay who violates the provisions of these Regulations shall be subject to punishment by the local administrative authority in accordance with the Statute for the Development of Tourism\textsuperscript{124}.

3.3.4 Additional provisions

The licensing and registration fee for each new homestay registration certificate is NT$ 1,000. The fee for the renewal or reissuance of a registration certificate is NT$ 500.

There will be no charges for registration certificate renewal or reissuance necessitated by a change of address caused by the rezoning of the administrative district or by a change in the house numbering system affecting the homestay accommodation in question\textsuperscript{125}.

3.4 Critical assessment of foreign law system

From the study, there are laws governing homestay accommodation businesses in foreign countries. The law of foreign countries has recognized homestay as a type of accommodation and provided the compulsory registration system as the basic tool in controlling homestay accommodation businesses as well as compulsory quality standards. However, there are different legal systems in each country.

According to the law governing homestay accommodation businesses in the United States (California), there are many laws and regulations relating to homestay accommodation businesses, for example, Land Use and Land Development Regulations, Public Health and Safety Regulations, Environmental Health Regulations and Business Regulations. There are many government agencies concerned with regulating homestay accommodation businesses. The numerous and

\textsuperscript{123} See Regulations, 2001, Article 34
\textsuperscript{124} See Regulations, 2001, Article 35
\textsuperscript{125} See Regulations, 2001, Article 36
complicated regulations cause difficulties in establishing and operating homestay accommodation business.

Similarly, in Australia (Victoria), the homestay or farmstay operators have to comply with complicated and overloaded laws and requirements, for example, Public Health and Wellbeing Act, Public Health and Wellbeing Regulations and Building Regulations. All of laws and requirements cause complexity in operating and establishing homestay or farmstay.

In Republic of China (Taiwan), there is a set of laws and regulations governing homestay accommodation business. The law recognizes homestay as a type of accommodation and the special aspect of homestay as a type of alternative tourism. The law provides the definition of homestay, compulsory registration system, quality standards, states authorities, registration fees and environment protection as well as the punishment for breach of the provisions. It significantly contributes to homestay accommodation businesses in the Republic of China (Taiwan) to be more of a professional service. In addition, there are a flexible regulations allowing homestays to with up to 15 rooms for sale to guest to operate legally if there is a specific tourism features determined by the government agency such as those located on a tourist farm or in a remote area. The flexibility of such provision can be improved as deemed appropriate for each local area.

It can be concluded that the law of Republic of China (Taiwan) has provided the comprehensive and legible provisions regulating homestay accommodation business. The government agency can apply the law efficiently because the law has definitely provided the system of state authority, registration system and the quality standard in controlling homestay accommodation businesses. People can easily understand and comply with the law. Then people can obtain the benefit from homestay accommodation businesses. Moreover, homestay accommodation businesses can be connected with local culture, natural landscapes, environmental resources and agriculture to provide in-depth experiences for travelers. It can also be integrated with other tourism resources to promote local economic development and create employment opportunities.
CHAPTER 4
THE LAW GOVERNING HOMESTAY IN THAILAND

At present, hotel law and regulations have segregated accommodation into two categories that is hotel and other types of accommodation which is not a hotel. In order to study the reason and the necessity of the regulation that governs each type of accommodation, the history must be studied, the evolution and the concept of the law on accommodation in Thailand. The first accommodation law in Thailand came about when the accommodation business expanded continually, it was necessary to have a law to regulate and organize the business to be in the legal system and achieve the quality standards.

4.1 Development of accommodation law in Thailand

Thailand's first law regulating on accommodation business was the Hotel Act B.E. 2478\textsuperscript{126} which was adopted by the parliament. The hotels have to be in a reasonably good order by organizing the hotel business under the official control. The Act was later amended three times.

The first amendment in B.E. 2484 as described in the Hotel Act (No. 2) B.E. 2484\textsuperscript{127} as amended in regard to a license that is expired on 31\textsuperscript{st} December each year\textsuperscript{128}.

\textsuperscript{126}พระราชบัญญัติโรงแรม พ.ศ. 2478 ประกาศในราชกิจจานุเบกษา เล่ม 52 หน้า 1368 ลงวันที่ 13 ตุลาคม 2478 (Hotel Act B.E. 2478 published in royal gazette volume 52, page 1368, October 13, 2478)

\textsuperscript{127}พระราชบัญญัติโรงแรม (ฉบับที่ 2) พ.ศ. 2484 ประกาศในราชกิจจานุเบกษา เล่ม 58 หน้า 1495 ลงวันที่ 4 พฤศจิกายน 2484 (Hotel Act (No.2) B.E. 2484 published in royal gazette volume 58, page 1495, November 4, 2484)

\textsuperscript{128}พระราชบัญญัติโรงแรม (ฉบับที่ 2) พ.ศ. 2484 มาตรา 3 ให้แก้ไขคำว่า “วันที่ 31 มีนาคม” ในวรรค 2 ของมาตรา 6 แห่งพระราชบัญญัติโรงแรม พุทธศักราช 2478 เป็น “วันที่ 31 ธันวาคม” (Hotel Act (No.2) B.E. 2484 Section 3 Modifying word “31 March” in paragraph 2 of Section 6 of Hotel Act B.E. 2478 to be “31 December”)
The second amendment in B.E. 2495 as appeared in the Hotel Act (No. 3) B.E. 2495\textsuperscript{129} as additionally amended on charge and fee from the operator of hotel\textsuperscript{130}. Moreover, and the amendments on guest recording book which have to record the true information or information that will not damage to general public\textsuperscript{131}. And the act also provided prohibits provisions on accepting guest under infectious diseases law\textsuperscript{132}.

The third amendment in B.E. 2503 as appeared in the Hotel Act (No. 4) B.E. 2503\textsuperscript{133} as additionally amended focus on preparing the list of guests for the benefits in collecting taxes from hotel operator. The operator must write down the name of every guests and the time of accepting. And since the licensing fee rate was too low, so should improve the fee rate accordingly\textsuperscript{134}.

For a many decades, the Hotel Act B.E. 2478 had been enforced, then, some of provision became outdated and inappropriate for the circumstances. The Thai Economy and accommodation business developed and expanded considerably from the original implementation of the law. Therefore, it is necessary to issue the Hotel Act B.E. 2547 in order to promote and raise the standard of hotel business operation and prescribe the criteria for business operation to suit the circumstances of each type of hotel\textsuperscript{135}.

\textsuperscript{129} พระราชบัญญัติโรงแรม พ.ศ. 2495 ประกาศในราชกิจจานุเบกษา ตอนที่ 11 เล่ม 69 ลงวันที่ 19 กุมภาพันธ์ 2495 (Hotel Act B.E. 2495 published in royal gazette part 11, volume 69, February 19, 2495)
\textsuperscript{130} พระราชบัญญัติโรงแรม (ฉบับที่ 3) พ.ศ. 2495 มาตรา 3 (See Hotel Act (No.3) B.E. 2495 Section 3)
\textsuperscript{131} พระราชบัญญัติโรงแรม (ฉบับที่ 3) พ.ศ. 2495มาตรา 4 และมาตรา 5 (See Hotel Act (No.3) B.E. 2495 Section 4 and Section 5)
\textsuperscript{132} พระราชบัญญัติโรงแรม (ฉบับที่ 3) พ.ศ. 2495 มาตรา 8 (See Hotel Act (No.3) B.E. 2495 Section 8)
\textsuperscript{133} พระราชบัญญัติโรงแรม (ฉบับที่ 4) พ.ศ. 2503 ประกาศในราชกิจจานุเบกษา เล่ม 77 ตอนที่ 112 ลงวันที่ 31 ธันวาคม 2503 (Hotel Act (No.4) B.E. 2503 published in royal gazette volume 77, part 112, December 31, 2503)
\textsuperscript{134} หมายเหตุท้าย พระราชบัญญัติโรงแรม พ.ศ. 2503 (See Note of the Hotel Act B.E. 2503)
\textsuperscript{135} หมายเหตุท้าย พระราชบัญญัติโรงแรม พ.ศ. 2547 (See Note of the Hotel Act B.E. 2547)
There are currently appearing in a variety of accommodation forms which is likely to have expanded even more in order to accommodate the growth in tourism sector from all regions of the world.

4.2 Various types of accommodation

Accommodations which are called by a different name, in business operation both large and small such as Resort, Guest House, and Homestay, were at that time considered as hotel business at all because the law provided definition of ‘hotel’ without taking the size of accommodation or number of room into consideration. This issue has been existed even the Hotel Act B.E. 2547 can be enforceable because the Act does not take the size of accommodation or number of room into consideration of hotel definition as well.

According to the Hotel Act B.E. 2547, section 4 provides the definition of hotel as a place that was established with the business objective to provide temporary accommodation for traveler for service charge. However it does not include:

1) The place that provides temporary accommodation which is run by Government or public organization with the non-profit objective.

2) The place that is established for the purpose of residential service which specifically charges a monthly fee as a minimum payment.

3) Another place as prescribed in the Ministerial Regulation

According to section 13 of Hotel Act B.E. 2547 has provided the authority of Minister of Interior in issuing Ministerial Regulation for standards and conditions of hotel business operation. Then, in B.E. 2551, the Minister of Interior has issued the Ministerial Regulation prescribing criteria and standard of hotel business

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136 คณาธิป ทองรวีวงศ์, อ้างแล้ว เชิงอรรถที่ 13 หน้า 297. (Kanathip Thongraweewong, supra note 13 at 297.)

137 พระราชบัญญัติโรงแรม พ.ศ. 2547 ประกาศในราชกิจจานุเบกษา เล่ม 121 ตอนพิเศษ 70 กระดาษ ลงวันที่ 12 พฤศจิกายน 2547 (Hotel Act B.E. 2547 published in royal gazette, volume 121, special issue 70, November 12, 2547)

138 พระราชบัญญัติโรงแรม พ.ศ. 2547 มาตรา 13 (See Hotel Act B.E. 2547 Section 13)
B.E. 2551\textsuperscript{139} which excluding the small size of accommodation from the definition of hotel.

The Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551 Article 1 provides that the accommodation, that has a number of rooms in the same building or multiple buildings in totaling not more than four units, the capacity of guests in totaling not more than twenty people, is established to provide temporary accommodation for people traveling or any other person which specifically charges, with the nature of the business to earn additional income, and it has been notified to the Registrar in the form prescribed by the Minister, is not hotel according to the definition of "hotel" under Section 4 (3) of Hotel Act B.E. 2547\textsuperscript{140}.

Because, at present, ecotourism has become more popular, in each locality has provided small accommodation for supplementary income, which is the business that promotes tourism, generates income for the locals including the dissemination and preservation of traditions and culture. However the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551 shall not be applicable to define the criteria and conditions concerning the location, feature, facilities, or promoting environmental quality standards, stability, healthy and safety of accommodation that are not hotel\textsuperscript{141}.

4.3 Homestay accommodation laws and regulations

According to the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551, homestay as the small size accommodation which has

\textsuperscript{139} กฎกระทรวง กําหนดประเภทและหลักเกณฑ์การประกอบธุรกิจโรงแรม พ.ศ. 2551 ประกาศในราชกิจจานุเบกษา เล่ม 125 ตอนที่ 70 ก ลงวันที่ 23 พฤษภาคม 2551 (Ministerial Regulation prescribed criteria and standard of hotel business B.E. 2551, published in royal gazette volume 125, part 70 ก, May 23, 2551 )

\textsuperscript{140} กฎกระทรวง กําหนดประเภทและหลักเกณฑ์การประกอบธุรกิจโรงแรม พ.ศ. 2551 ข้อ 1 (See Ministerial Regulation prescribed criteria and standard of hotel business B.E. 2551, Article 1)

\textsuperscript{141} หมายเหตุ ท้ายกฎกระทรวง กําหนดประเภทและหลักเกณฑ์การประกอบธุรกิจโรงแรม พ.ศ. 2551 (See Note of the Ministerial Regulation prescribed criteria and standard of hotel business B.E. 2551)
been excluded from the definition of hotel is not under the criteria and conditions concerning the location, feature, facilities, or promoting environmental quality standards, stability, health and safety of accommodation as provided for hotel business. In addition, the notification of homestay business operation to the registrar under Article 1 of the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551 is not a compulsory notification.

Then, the Tourism Department has issued the Announcement on Thai Homestay Standard B.E. 2554\textsuperscript{142} by the virtue of section 32 of the National Government Organization Act B.E. 2534 as amended by the National Government Organization Act (No.5) B.E. 2545. The Announcement on Thai Homestay Standard B.E. 2554 has no compulsory registration licensing. As the result, homestay business is not controlled by the state. The Announcement on Thai Homestay Standard B.E. 2554 cannot completely accomplish its objective – to develop service sector of tourism, support and develop the standards of homestay and develop the operating network that will lead to community sustainable tourism in order to bring benefits to economic, social, and culture, including conservation of natural resources and environments.

Because of the definition of homestay under the Announcement on Thai Homestay Standard B.E. 2554 is focused on accommodation by using the fewer number of rooms and the less capacity of guests in classifying the homestay as different type of accommodation. Therefore, it must be studied by comparing to the Hotel Act B.E. 2547 and the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551.

The Announcement on Thai Homestay Standard B.E. 2554 has provided provisions separated into 5 chapters as follows.

\textsuperscript{142} ประกาศกรมการท่องเที่ยว เรื่อง กําหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 (Announcement of Department of Tourism on “Thai Homestay Standard B.E. 2554”, published in royal gazette volume 129, special issue 26 ง, January 31, 2555)
4.3.1 Definition\textsuperscript{143}

(1) “Thai Homestay” means a form of tourism that tourists will stay with the homeowner under the same roof. The homestay will provide the rooms or living spaces remaining within the home that can be adapted for tourists staying temporarily. The total number of rooms does not exceed four rooms and guests do not exceed 20 people. And homestay will provide other service facilities as appropriate for consideration fee as business operating for an additional income. According to the definition of "hotel" under Hotel Act B.E. 2547 and is registered with the Department of Tourism under the rules prescribed.

(2) “Thai Homestay Standard” means homestay that has achieved the 10 categories of standard of services. According this Announcement, the standards are consisting of accommodation, food service, safety, hospitality, tourism program, natural resources, culture, supplementary income and community business, homestay management, and public relations.

(3) “Commission” means the Commission of Thai Homestay Standard

4.3.2 Standards and indicators\textsuperscript{144}

The Tourism Department has established the standards for Thai homestay service. To apply for certification, homestay operators have to conform to the qualifications including of 10 categories as follows.

(1) Accommodation

(1.1) Lodging characteristic is proper proportional

(1.2) Accommodation and mattress are clean and comfortable

(1.3) Shower and toilet clean and coveralls

\textsuperscript{143} ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 4 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 4)

\textsuperscript{144} ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 5 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 5)
(1.4) Relax corner at home or in the community

(2) Food service
    (2.1) Type of food and the ingredients used for cooking
    (2.2) Clean drinking water
    (2.3) Clean food containers
    (2.4) Kitchen and equipment hygiene

(3) Security and safety
    (3.1) Preparedness on First Aid
    (3.2) Security guard on duty

(4) The hospitality of host and its members
    (4.1) Hospitality and create familiarity.
    (4.2) Creating activities to exchange community knowledge

(5) The tour program
    (5.1) Tour program must be accepted by the community
    (5.2) Tourism activities information
    (5.3) Homeowners are local guides or coordinate a local guide

(6) Natural Resources and Environment
    (6.1) Tourist attractions within the community or nearby
    (6.2) Maintenance tourist attractions
    (6.3) Conservation plans or measures to reduce the impact of tourism and global warming
    (6.4) There are activities to reduce the impact of tourism. To conserve natural resources and the environment and reduce global warming

(7) Culture
    (7.1) The preservation of local cultural traditions
    (7.2) Maintaining local lifestyle

(8) The creation of valuable and value of community products
    (8.1) Community product as souvenirs sold to tourists
    (8.2) Creation of valuable and the value of product that is community identity

(9) Management of the homestay group
    (9.1) The integration of the locals
(9.2) Executive Committee of homestay
(9.3) The rules of work of the Committee
(9.4) Fair distribution of benefits
(9.5) Reservation, registration, deposit, advances booking and advance deposit.
(9.6) Details of fees and service charges that are clear and present
(10) Public relations
(10.1) Publications, documents and tourism Information of the community
(10.2) Publishing

4.3.3 Procedures and criteria for assessing Thai homestay standards

In evaluating the quality of Thai homestay standards as prescribed in the Announcement on Thai Homestay Standards B.E. 2554, the benchmark of Thai homestay standard use the average scores of arithmetic mean or the percentage. A homestay standard has to be a level of average arithmetic mean for all 10 categories of standard not lower than 3.5 score from 5 score, or not less than 70%\(^{145}\). Homestay that has been qualified standard will be evaluated again after three years of certification by applying for re-certification. In evaluation, if the score lower than prescribed score, the certification will be revoked and the operators must return the certification letter and sign to the Department of Tourism\(^{146}\).

\(^{145}\) ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 7 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 7)

\(^{146}\) ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 9 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 9)
4.3.4 Certification seal

Every homestay establishments that meets the minimum requirements of standard is given a certificate and a certification seal.\(^{147}\)

4.3.5 The complaint and the appeal

The tourists who received damages from certificated homestay can complain over the homestay for dismissal from being standard Thai homestay by a written complaint to the Director General of Department of Tourism.\(^{148}\)

The Director General will appoint a committee to investigate. The investigation will be made within thirty days and report the results of investigation to the Commission without delay.\(^{149}\)

The Commission of Thai Homestay Standard will jointly consider the facts. And the Department of Tourism will inform the damaged tourists (the complainant) and homestay provider within thirty days from the date the Commission has finished consideration.\(^{150}\)

If the damaged tourists (the complainant) and homestay provider disagrees with the decision of the Commission, they has a right to appeal the decision by a written of appeal to the Director General within thirty days from the date of

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\(^{147}\) ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 10 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 10)

\(^{148}\) ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 11 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 11)

\(^{149}\) ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 12 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 12)

\(^{150}\) ประกาศกรมการท่องเที่ยว เรื่อง ก าหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 13 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 13)
receiving the decision\textsuperscript{151}.

The Director General will appoint a new committee of investigation. The investigations will be carried out within thirty days and report the results of investigation to the Commission without delay\textsuperscript{152}.

Then, the Department of Tourism will inform the tourists (the complainant) and homestay provider within thirty days from the date the Commission has finished consideration. The decision of the Commission shall be a majority, and shall be final\textsuperscript{153}.

\textsuperscript{151}ประกาศกรมการท่องเที่ยว เรื่อง กําหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 14 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 14)
\textsuperscript{152}ประกาศกรมการท่องเที่ยว เรื่อง กําหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 15 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 15)
\textsuperscript{153}ประกาศกรมการท่องเที่ยว เรื่อง กําหนดมาตรฐานบริการท่องเที่ยวมาตรฐานโฮมสเตย์ไทย พ.ศ. 2554 ข้อ 16 (See Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554, Article 16)
CHAPTER 5
ANALYZE THE APPROPRIATE PROVISIONS ON HOMESTAY ACCOMMODATION BUSINESS IN THAILAND

From the previous chapter, there are the laws governing accommodation business in Thailand taken into consideration that is Hotel Act B.E. 2547, the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551 and the Announcement on Thai Homestay Standard B.E. 2554.

However, the Announcement on Thai Homestay Standard B.E. 2554 is only a guideline for homestay operators in management of homestay accommodation by providing the standards and indicators for certification assessment. Because of the Announcement on Thai Homestay Standard B.E. 2554 has not provided the compulsory registration system, this caused many problems. In contrast, many countries have recognized homestay operation as a type of accommodation business and provide the specific law governing such business operation strictly. The following analyses are focused on the appropriate provisions relating to homestay accommodation business in Thailand.

5.1 Definition of homestay.

According to Hotel Act B.E. 2547 Section 4, "Hotel" means the accommodation that is established with the business objective to provide temporary accommodation for travelers or anyone else for service charge. However, it would not include:

(1) The accommodation that is set up to provide temporary accommodation which is run by the Government or other public organization, or was established for a charity or education with non-profit or revenue sharing.

(2) The accommodation that is established for purpose of residential service which specifically charges a monthly fee as a minimum payment.

(3) Another accommodation as prescribed in the Ministerial regulations.
From the definition of hotel, it can be considered that all types of accommodation, which are established with the business objective to provide temporary accommodation for travelers or anyone else for service charge, is a hotel. Then, homestay which is established with a business objective to provide temporary accommodation for travelers falls into the definition of a hotel under the Hotel Act B.E. 2547.

However, the Ministerial Regulations prescribing criteria and standard of hotel business B.E. 2551 provides that the accommodation, that has a number of rooms in the same building or multiple buildings in totaling not more than four units, the capacity of guests in totaling not more than twenty people, is established to provide temporary accommodation for people traveling or any other person which specifically charges, with the nature of the business to earn additional income, and it has been notified to the Registrar in the form prescribed by the Minister, is not hotel according to the definition of "hotel" under Section 4 (3) of Hotel Act B.E. 2547. This resulted homestay to be excluded from the definition of hotel and the requirements under the Hotel Act B.E. 2547.

Then, the Announcement on Thai Homestay Standard B.E. 2554 comes into force. It provides the definition of homestay as a form of tourism that tourists will stay with the homeowner under the same roof. The homestay operator will provide the leftover rooms or living spaces within the home that can be adapted for tourists staying temporarily. The total number of rooms does not exceed four units and guests do not exceed 20 people. And the homestay will provide other service facilities as appropriate for consideration fee as a business operating for an additional income. According to the definition of "hotel" under Hotel Act B.E. 2547 and is registered with the Department of Tourism under the rules prescribed.

This definition resulted homestay to be included in the meaning of hotel, however, the Announcement on Thai Homestay Standard B.E. 2554 has no compulsory enforcement for homestay operator. In addition, it does not overrule the Ministerial Regulations prescribing criteria and standard of hotel business B.E. 2551. Besides, it can be noticed that the Announcement on Thai Homestay Standard B.E. 2554 is issued by the Department of Tourism by the virtue of Section 32 of the National Government Organization Act B.E. 2534, as amended by the National
Government Organization Act, (No. 5) B.E. 2545. There is no relation to the Hotel Act B.E. 2547.

Due to the definition of homestay under the Announcement on Thai Homestay Standard B.E. 2554 focuses on tourists or travelers accommodations. It is defined the classifications by the fewer number of rooms and less capacity of guests. Therefore, it must be considered by comparing to the Hotel Act B.E. 2547 and the Ministerial Regulations prescribing criteria and standard of hotel business B.E. 2551.

However, the definition of homestay under the Announcement on Thai Homestay Standard B.E. 2554 is not clear. It cannot demonstrate the uniqueness of homestay accommodation compared to other types of accommodation. The Announcement on Thai Homestay Standard B.E. 2554 provides the size of accommodation as the criteria for determination of homestay. This criterion does not demonstrate the concept of tourism as an alternative ecotourism. And it does not indicate the characteristics of the residence in the home, this means living in a house of the homeowner and the interaction between the guest and host that will lead to learning and exchanging of cultural and experience.

The unclear definition causes the misuse of title homestay to attract tourists. But, it does not provide the services a homestay should. There is also the use of homestay title to avoid compliance with laws in which hotels much comply with. In addition, the law is not clearly defined, it will pose a problem to those who must abide by the law and cannot follow the law correctly because the people and state officials do not understand the contents of such law.

The study found that, there are many elements that should be taken into consideration for providing the definition of homestay. The critical elements are divided into two parts, as follows.

5.1.1 Physical elements

1) The number of rooms

Thailand regulation uses the number of rooms to classify the homestay as the different type of accommodation. In the United States (California), the number of rooms which is limited to 6 guest rooms is the criteria that the law allows for an establishment of agricultural homestay. The Republic of China (Taiwan)
states that a homestay accommodation shall provide number of rooms no more than 5
guest rooms. And the limited number of rooms no more than 15 guest rooms for
issuing a homestay business registration certification that has the specific tourism
features.

(2) The capacity number of guests

Similarly, the capacity number of guest has been used as the
criteria to classify the homestay as the different type of accommodation in accordance
with the number of rooms. In the United States (California), it allows a farm owner to
host a limited number of 15 overnight visitors and permits the farm owner to serve
meals cooked in the farm kitchen to visitors. In Victoria, Australia, the farmstay
premises must be registered with the local council if the premise can accommodate
five or more guests. Thailand’s regulation states that the capacity of guest does not
exceed 20 people. In contrast, the law of the Republic of China (Taiwan) does not
provide the capacity of guest as the element for issuing a business registration
certification.

(3) The size of the service area

The law of the Republic of China (Taiwan) provides the total
floor area of no more than 150 square metres as the criteria to classify an
accommodation as a homestay. However, a homestay with specific tourism features,
with a total floor area of no more than 200 square metres can receive a business
registration certification as well.

The law of Australia (Victoria) has provided the regulation on
overcrowding in prescribed accommodation. A proprietor of a prescribed accommodation
must not permit a room in the prescribed accommodation to be used as a bedroom if it
has a floor area of less than 7.5 square metres. If persons are accommodated in the
prescribed accommodation, other than a holiday camp, for a period of 31 days or less,
the maximum number of persons permitted to occupy a bedroom is in the case of a
bedroom with a floor area of less than 10 square metres, 2 persons; and, in the case of
a bedroom with a floor area of 10 square metres or more, 3 persons and an additional
person for every 2 square metres of floor area that exceeds 10 square metres.
According to the physical elements, the study found that there are different criteria in classifying homestay or farmstay accommodation business between the law of United States (California) and the law of Republic of China (Taiwan).

The law of the United States (California), an agricultural homestay that meets all of the prescribed requirements will be considered as ‘Restricted food service transient occupancy establishment’ under section 113870 of the Health and Safety Code. The agricultural homestay establishment which is located on or is a part of a farm is the important prescribed requirement. This requirement mandates homestay accommodation business in United States (California) must be established on a farm or be a part of a farm.

In contrast, the law of Republic of China (Taiwan) has provided the definition of homestay in a broader perspective. Homestays in the Republic of China (Taiwan) usually incorporate local culture, natural landscape, ecological environment, environmental resources, and agricultural, forestry, fishery, or livestock farming activities. Moreover, homestay facilities in the Republic of China (Taiwan) can be located in an aboriginal reservation, a recreational farm with a business registration certificate issued by the government agency for agriculture, a tourist site, a remote area, or on an offshore island.

In addition, the law of the Republic of China (Taiwan) has provided the special principle to give more flexibility for the limited number of rooms or size of service area. A homestay with specific tourism features can provide up to 15 guest rooms and a total floor area of no more than 200 square metres to be eligible to receive a business registration certification from government agency. Specific tourism features make it possible to expand the size of the accommodation depending on the specific tourism features that exist in each area. The specific tourism features shall be determined by the government agency and may improve in accordance with necessary practices. This criterion can be adopted under Thai law on homestay accommodation businesses to provide the flexibility for the limited number of rooms and size of service area in order to allow homestay providers to accommodate more tourists as appropriate for each local area.
It can be noticed that the physical elements of homestay, the number of rooms, the capacity of guests and the size of service area, are often smaller or less than the number of rooms, the capacity of guests and the size of service area of other type of accommodation. The determination that homestay is a small sized accommodation is corresponding to the practice of other countries. So that people whose homes have space leftover and are looking for extra income can do this kind of business. However, the criterion of the size of the service area does not exist in the law of Thailand.

5.1.2 Activities elements

Providing homestay accommodation within a family’s home is unique. The interaction between hosts and guests distinguish homestay establishments from other forms of accommodation. The nature and construction of the home experience provided to the guest is to a large extent determined by the homeowner. On the other hand, the homestay embodies the tradition and history of a community and a way of life that lends itself to concept of sentimentality. The responsibility to provide a homely experience depends on the management of the homeowner. Providing these activities constitutes the interaction between hosts and guests.

The activities that homestay operators provide to tourist may consist with the objective of educational exchange and learning culture and lifestyle as well as the objective of tourism. In Thailand, such activities are often a combination of many objectives such as learning culture and the way of life, ecotourism, agritourism, and community-based tourism objectives. Each local community will provide the different activities according to culture or lifestyle of their community and the activities will depend on the tourist attractions existing in each local community. Activities related to culture or lifestyle could include cooking, dining, cultural shows, cultural events, religious events and farming activities. The activities relating to tourist attraction include tours of cultural attractions, natural attractions, and recreation activities.

For this issue, the law of Republic of China (Taiwan) defines a homestay as an accommodation which operates as a family’s secondary occupation business, using the leftover rooms of a self-used home to furnish tourists with a
countryside living experience. It usually includes local culture, natural scenery, ecological environment, and agricultural, forestry, fishing, or farming activities. The definition is clearly that it is an accommodation established with a special purpose and appearance of activities. It can also demonstrate the ecotourism, agritourism, and community-based tourism concept. It also indicates the uniqueness of homestay as the different type of accommodation. However, as the area size elements, Thai laws do not include activities elements into the definition of homestay 154.

5.2 The quality standard of service

From the study, the Announcement of Department of Tourism on Thai Homestay Standards B.E. 2554 has provided the standards and indicators for homestay service consisting of 10 categories. The study is aimed to indicate the appropriate of the provisions by comparing the hotel law to the law of foreign countries that have set quality standards of accommodation service in many aspects. The study has divided the considerations into two categories – the standard of homestay as tourist accommodation and the standard of homestay as alternative tourism, as follows.

5.2.1 The standard of homestay as tourist accommodation

(1) Accommodation condition

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided a standard for the accommodation that the lodging characteristic should be in proper proportional, the accommodation and mattress should be clean and comfortable, the shower and toilet should be clean and coveralls. There should be an area to relax in the home or in the community. Such standards are in accordance with the provisions of foreign countries.

In Australia (Victoria), according to the Public Health and Wellbeing Regulations 2009, farmstay premises must be registered with the local council if the premises can accommodate five or more guests. The law has provided the hygiene, sanitation and cleanliness as the requirements for prescribed accommodation. The owner of prescribed accommodation must maintain the prescribed accommodation and all bedrooms, toilets, bathrooms, laundries, kitchens, living rooms and any common areas provided with the accommodation to be in good working order; and in a clean, sanitary and hygienic condition; and in a good state of repair. In addition the owner of prescribed accommodation must ensure that each bedroom and any toilet or bathroom attached to the bedroom is cleaned after the bedroom is vacated and before its reuse by another occupier. A proprietor of prescribed accommodation must ensure that all bed linen provided with the accommodation is changed with clean linen at least weekly; and after the accommodation is vacated and before its reuse by another occupier.

According to the law of the Republic of China (Taiwan), homestay service must have the cleaned bedclothes for guest rooms and it need to be replaced with clean ones after each use. The homestay operators must maintain tidiness, cleanliness, and peacefulness within and around the homestay accommodation.

The laws of foreign countries emphasize that cleanliness and comfortability of accommodations as stated under the Announcement of the Department of Tourism on Thai Homestay Standard B.E. 2554. However, the Announcement of the Department of Tourism on Thai Homestay Standard B.E. 2554 is not the compulsory standard, then the appropriate conditions of homestay, the cleanliness and comfortable would different as there is no single standard for all homestay operators.

(2) Food service and drinking water

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided a standard for the food service, clean drinking water, the appropriate type of food and the ingredients used for cooking, clean food containers, and kitchen and equipment hygiene. However, this standard is not a compulsory standard; it is only the guideline for homestay operators
to follow which contrast to the law of foreign countries that use a restrictive provision.

According to the law of the United States (California), there are laws to govern food, sanitation for food handling, processing, and preparation activities of the agritourism industry. It states that at least one person in an enterprise processing or preparing food for the public to possess a current food handler’s certificate. Farmstay kitchens are regularly inspected by the county department of environmental health.

In Australia (Victoria), according to the Public Health and Wellbeing Regulations 2009, farmstay premises must be registered with the local council if the premises can accommodate five or more guests. The law has states that the operator of the prescribed accommodation must maintain the prescribed accommodation and kitchens to be in good working order; and in a clean, sanitary and hygienic condition; and in a good state of repair. The operator must ensure that drinking water supplied to another person is fit for human consumption, if the drinking water was not supplied to the proprietor by a water supplier. And the operator must provide a continuous and adequate supply of water and hot water to kitchen and drinking water facilities. Moreover, the accommodations in Australia (Victoria) that provide food also need a Registration of Food Premises with local council according to the Food Act 1984.

In the Republic of China (Taiwan), the operator of a homestay shall ensure the sanitation and safety of beverages and food provided in the homestay. The quality of drinking water shall meet the requirements detailed under applicable standards.

The study found that many countries have restrictive provisions on food safety, sanitation for food handling, and mandate that kitchens must be in good working order; and food preparation must be done in clean, sanitary and hygienic conditions. Such provisions protect guests who have been served food. The Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has addressed, but it is not a compulsory standard which may result in the food safety and quality of drinking water to be inadequate. Therefore, the provision on food safety including drinking water should be made as a compulsory standard.
(3) Security and safety

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided standards for preparedness on First Aid and security guards. However, this standard is only the guideline for homestay operator. It is not compulsory standard as provided under the hotel law. Moreover, the Hotel Act B.E. 2547 has provided the surpassing safety standard on fire safety and the stable condition of building. According to the Hotel Act B.E. 2547, the hotel operator has the duty to take care and facilitate to the guest in case of conflagration and there is the penalty anyone who breaches such provision.

Under the law of the United States (California), agricultural operations involving the public must comply with public safety and accessibility regulations such as those concerning emergency-exit access (fire safety) and restroom facilities. There are also local ordinances and codes for fire prevention and safety, including requirements relating to fire extinguishers and on-site water.

In Australia (Victoria), accommodation buildings must have specific fire safety systems installed according to the Building Regulations.

According to the law of Republic of China (Taiwan), the fire control equipment of a homestay shall comply with the standard such as homestay shall have the automatic fire alarm systems, it should have at least two fire extinguishers installed in visible places with access. At least one fire extinguisher shall be installed on each floor of any building which has more than one floor above the ground.

Moreover, the law of the Republic of China (Taiwan) provides that the operator of homestay shall report to the local police station upon discovering any suspicious situations involving national security, carrying of guns and other weapons, dangerous goods, or other prohibited goods, consumption of addictive drugs or other narcotics, death, making of loud noises, participating in group gambling, or engaging in other behavior that causes a disturbance to the public or violates public order or good social morals, and refusing to follow persuasion to desist, forcible taking of lodgment without presenting proper identification documentation, or refusing to register for the lodgment, and posing of a treat to public safety or arousing suspicion of having committed other crimes.
Countries put in place strict fire safety standards to help protect their guest and capital losses from fire damage. Not only the loss of guest but also the loss of the homestay operator, therefore the provision on fire safety standards can provide protection for everyone concerned to the homestay. In addition, the homestay operator should have the duty related to other public safety as provided under the law of Republic of China that the operator who meets any suspicious persons or threatening situation, they have a duty to inform the police. Therefore, the provision on public safety standard is necessary to be considered in providing homestay accommodation business standard.

(4) Credibility of homestay accommodation business

According to the Hotel Act B.E. 2547, the duty of the hotel operator to show they are reliable to the general public such as displaying the hotel license and service charges in a notable place. However, such principles do not apply to homestay because the Ministerial Regulation prescribing the criteria and standard of hotel business B.E. 2551 has excluded homestay from definition of hotel. In addition, the Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554 only provides the management standard and indicator for certification assessment that homestay accommodation business should have the details of fees and service charges that are clear and present and providing the reservation, registration, deposit, advances booking and advance deposit. This standard is only the guideline for homestay operator. It is not compulsory standard as provided under the hotel law that the hotel operator has to comply with the listed standards of management according to the Hotel Act B.E. 2547, by providing the administrative penalties for the person breach the provisions.

In the United States, the law states that the person who receives the business license has to display the license in a notable place on the premises.

In Australia, the law states that a proprietor of prescribed accommodation must not state or cause to be stated in any advertisement, notice or sign issued or put up in relation to the accommodation, that the premises were registered or approved for any class of accommodation other than that set out on the certificate of registration.
The law of the Republic of China (Taiwan), states the room rates in a homestay as well as the changing in those rates, shall be fixed by the operator and shall be reported to the local government agency. The room rates, lodgment rules, and emergency maps shall be displayed in highly visible and brightly lighted places in the guest rooms. Besides, the homestay registration certificate shall be displayed in a highly visible place in the hallway, and shall have the designated homestay logo displayed in a highly visible place outside the building. In addition, the lodger registration books shall be maintained to record information on lodgers in accordance with the required format on a daily basis, and shall submit this information to the local police station and to be kept in inventory for a period of one year.

It can be noticed that the countries has realize of the public reliance on the accommodation service business because such business has to serve the other general. It is necessary to provide the rule that contribute the fair practice in order to protect general public.

(5) Prevention and mitigation of environmental pollution

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554, states the standard for preparation of conservation plans or measures and activities to reduce the impact of tourism and global warming and to conserve natural resources and the environment. This standard is only the guideline for homestay operator. It is not a compulsory standard; so, it may not be enough for preventing and mitigating of environment pollution, especially, when compared to the standard of foreign countries that have clear provisions regulating this issue.

According to the law of United States (California), there are standards on septic systems, there are requirements to obtain permits to repair, upgrade, or construct a septic system. There are the site evaluations for new construction and evaluation for existing septic system.

The law of Australia (Victoria), the Public Health and Wellbeing Regulations 2009, states that a proprietor of prescribed accommodation must ensure that all sewage and waste water is discharged to a reticulated sewerage system; or to a wastewater treatment system permitted under the Environment Protection Act 1970. A proprietor of prescribed accommodation must provide sufficient vermin-proof
receptacles at the prescribed accommodation for the collection and storage of all rubbish; and ensure that the receptacles are regularly cleaned.

In Republic of China (Taiwan), the operator has the duty to maintain tidiness, cleanliness, and peacefulness within and around the homestay. When organizing folk cultural programs, paying due attention to protection of the natural environment, maintaining cleanliness of the environment, avoiding disturbance to the local community, and ensuring public safety. In addition, the equipment and environment of the homestay shall be constantly kept clean and tidy so as to prevent the propagation of mosquitoes, flies, cockroaches, rats, and other disease carriers, and to cut off their breeding sources.

These laws and standards adopted by foreign countries shows how important prevention and mitigation of environmental pollution by providing provisions that the operator of accommodation service has the duty to protect, prevent, and maintain the cleanliness and tidy of environment by equipping a septic system, or a wastewater treatment system, the sufficient vermin-proof receptacles and the equipment and environment of the homestay shall be constantly kept clean and tidy.

5.2.2 The standard of homestay as alternative tourism

From the study, homestay has been promoted as the alternative tourism to attract more tourists. To become considered an alternative tourism accommodation, there are many quality standards concerned. In addition to the above considerations, the following considerations under this part are also equally important.

(1) The hospitality of host family

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided standard on hospitality and create familiarity and creating activities to exchange community knowledge. From the study, the concept of homestay attaches importance to the term ‘home’. The special characteristic is a sense of being a home through the interaction between homeowners and their guests. This standard contributes to the uniqueness of homestay that is different from other type of accommodation. Therefore, the standard of hospitality as provided under the Announcement of the Department of Tourism on Thai Homestay
Standards B.E.2554 is appropriate to be the guideline for homestay operator to conform in order to support the notable aspect of homestay as alternative tourism.

In the Republic of China (Taiwan), the law provides the award and acknowledgement for the homestay operator who has been recognized by lodgers for their excellent hospitality services or good service practices in order to encourage homestay operators to provide an appropriate service standard.

This standard is only practice manner of the host family to be a homestay, therefore, the provisions of law should provide only the guideline and encouragement for homestay operator who offers the excellent hospitality services by providing an award or acknowledgement.

(2) The tour program

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided standard that homestay provider should provide the tour program accepted by the community, tourism activities information, and homeowners can be a local guide or coordinate the other local guide. This standard can demonstrate the uniqueness of homestay by providing activities offered to tourists in form of tour programs. The tour programs can be varied from each local community. The various aspects of the tour program can depend on the culture, lifestyle and tourist attractions existing in each local community.

Moreover, the tour program must be accepted by the community in order to support the participation of the locals under the concept of community-based tourism that tourism activities should be developed and operated by the local community. Under community-based tourism, local people organize tourism activities including tour programs, and they are the primary recipients of the benefits, honor for local culture, heritage and traditions and pay for the car the natural environment, especially where the environment or nature is the tourist attractions in local community.

In the Republic of China (Taiwan), the law provides the definition of a homestay accommodation that includes local culture, natural scenery, ecological environment, agricultural, forestry, fishing, or farming activities and awarding or acknowledging the homestay operator who have made special contributions to the promotion of culture, quality of life, and the tourism industry in
the local community and have the outstanding performance in promoting the tourism industry.

The Announcement of Department of Tourism on Thai Homestay Standards B.E.2554 has provided the appropriate provisions on tour program standards that must be accepted by the community. Therefore, the law should provide the standards for the tour program to be accepted by the community as a qualification for registration of homestay in order to create the uniqueness of homestay as alternative tourism and to accomplish the objective of community-based tourism. In addition, the law should provide the award and acknowledgement for homestay operator who have made special contributions to the promotion of culture, quality of life, and the tourism industry in the local community and have the outstanding performance in promoting the tourism industry.

(3) Preservation of culture

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided standards for the preservation of local cultural traditions and maintaining local lifestyle.

In the Republic of China (Taiwan), the administrative authority or the competent authority for related matters may award or acknowledge the operator of homestay who having made special contributions to the promotion of culture, quality of life, and the tourism industry in the local community.

Because the culture in each region or local community has its own uniqueness, the culture can be expressed naturally from the identity of people. Though, the practice manners in preservation of the local cultural traditions and maintaining local lifestyle should be kept in the mind of homestay operators who want to differentiate their operation from the other. Therefore, the standards on culture should be adopted under the provision of law as the guideline and the law should provide the award and acknowledgement for homestay operators who have made special contributions to the preservation of local cultural traditions and maintaining local lifestyle and have the outstanding performance in promoting the tourism industry. The mentioned award and acknowledgement will encourage homestay operator to practice for preservation of local cultural traditions and maintaining local lifestyle even more.
(4) The creation of valuable and the value of product that is community identity

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided standards for homestay operators to support using community products as souvenirs to be sold to tourists and the value of product that is community identity. The principles are similar to the law of the Republic of China (Taiwan) that the government agency may award or acknowledge the homestay operator who makes special contributions to the promotion of quality of life and tourism industry in the local community.

This standard is conformed to the concept of community based tourism that was aimed to create the well-being of local people and allow them to be the primary recipients of the benefits from tourism activities. This standard should be adopted under the provision of law as the guideline for homestay operators in order to support and promote products from the community.

(5) Conservation of nature and environment

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided the standard for the maintenance of tourist attractions, preparation of conservation plans or measures and activities to reduce the impact of tourism and global warming to conserve natural resources and the environment.

From the study, under the law of the Republic of China, the law provides that when organizing folk cultural programs, the operator has to pay due attention to the protection of the natural environment, maintain cleanliness of the environment, avoid disturbance to the local community, and ensure public safety.

The standard on conservation of nature and environment around the homestay is an important issue under the ecotourism concept which is a specialized part of sustainable tourism development which consists of diverse goals of economic growth, biodiversity protection and community participation. It is now widely accepted that ecotourism involves an emphasis on nature-based attractions, educational interactions with these attractions and the management practices to make every reasonable effort to achieve environmentally and socioculturally sustainable outcomes. Therefore, it is necessary to adopt the standard on conservation of nature.
and environment under the provision of law to provide a duty of homestay operator to pay attention to protection of the natural environment.

(6) The management of homestay group by local community

According to the Announcement of the Department of Tourism on Thai Homestay Standards B.E.2554 has provided standard on management of the homestay group that there should be an integration of the locals, the executive committee of the homestay, the rules of work of the committee, the fair distribution of benefits. The homestay should have the publications, documents and tourism information of the community. The homestay should provide the tour program that has been accepted by the community.

This standard promotes the participation of the locals under the concept of community-based tourism where the tourism activities are developed and operated by local community. Under community-based tourism, local people organize tourism activities where they are the primary recipients of the benefits from the tourism activities.

Practically, there is the appropriate standard on management of homestay group provided under the Announcement of Department of Tourism on Thai Homestay Standards B.E. 2554, however, it is only a guideline for homestay operator. Therefore, the law should adopt such standard in order to support and develop the management of homestay group and create competitiveness of homestay accommodation across the country.

In conclusion, the standard of homestay as a tourist accommodation in foreign countries, each country has the specific law provided with strict standards on public health, cleanliness, food safety, public safety or fire safety, prevention or mitigation of environmental pollution by making the laws the compulsory with penalties. The study found that the Announcement of Department of Tourism on Thai Homestay Standards B.E. 2554 does not provide any duty provisions on fire safety, public safety, and prevention or mitigation of environmental pollution. In particular, the Announcement of Department of Tourism on Thai Homestay Standards B.E. 2554 is not compulsory standard. The laws of foreign countries are enforceable as restrictive laws with the compulsory enforcement. The operator must comply with
such laws from the startup of homestay accommodation. It is required to maintain such quality standards at all times the homestay accommodation business is in operation.

For the standard of homestay as alternative tourism, it is special aspect of homestay consisting of sustainable tourism, ecotourism, agritourism and community-based tourism with concepts including culture and local tradition, so, homestays are different from other accommodations. Homestay is consisting of the sensitive objectives. In foreign countries, there are no laws to regulate homestay to accomplish such objectives. However, there is a law of Republic of China (Taiwan) that encourages the homestay operator to provide excellent hospitality services, good service practices and the promotion of culture, quality of life, and the tourism industry in the local community by awarding or acknowledging such homestay operator. In Thailand, the Announcement of Department of Tourism on Thai Homestay Standards B.E. 2554 has recognized the concepts of sustainable tourism, ecotourism, and community based tourism. However, the standards are only provided for operators who voluntarily participate in the certification assessment. To achieve the objectives of sustainable tourism, ecotourism, and community based tourism may be difficult because the operators do not fall under the single standard. Therefore, the restrictive law can contribute to the concepts of sustainable tourism, ecotourism, and community based tourism to be formed. For example, the law can restrict the qualification of homestay operator to be local people only.

5.3 The remedies to tourists for injury and damages

The Hotel Act B.E. 2547 does not specify a remedy for the damage to the guests, but the Ministerial Regulations prescribing criteria and standard of hotel business B.E. 2551 has provided that the hotel operator must provide First Aid and send patients to nearby hospitals as the basic services and facilities for guests. The homestay which has been excluded from the definition of hotel is not governed by the Ministerial Regulations prescribing criteria and standard of hotel business B.E. 2551.

According to the Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554 provides under the safety standard that the homestay
should prepare First Aid. This may not cover the liability of homestay operators that would be held liable to any tourist for injury and other damages. When there is no direct legal duty and liability of the homestay operator to guests in case of damage to life, body, health, and property, which may cause the guests to get inadequate care. Their only other remedy would be to seek damages against the Homestay operator under the Civil Procedure or Criminal Procedure. This will be time consuming and expensive.

In foreign countries, the solution for the problem of improper remedies is to require the homestay operator to buy an insurance policy. For example, Australia (Victoria) and Republic of China (Taiwan), public liability requires the homestay operator to cover paying guests and visitors, product liability to cover prepared food or other products offered to guests, for human bodily injury or death and for the loss of or damage to property. In addition, the law of Republic of China (Taiwan) states that the homestay operator has a duty to help the guests who are sick or injured by taking the guest to the get appropriate medical treatment.

Therefore, the law on homestay should adopt the principle of remedies to tourist for injury and damages in order to provide the appropriate remedy to tourist and reduce expenses as well as avoid time consuming.

5.4 The control and supervision by state

According to the Hotel Act B.E. 2547 and the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551 has not provided the provision relating to the authority of state agency in control, monitor or inspect homestay accommodation business. Moreover, the Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554 has no compulsory licensing registration. There are no rules provided that the state has authority to monitor or inspect the operation of the homestay accommodation business. Homestay operators currently do not have to inform the existence of the operation to the government agency and registration or permission is not necessary for operating a homestay accommodation business. If the homestay has not been thoroughly investigated by state, it can lead to the misuse the homestay title in order to avoid the application of
hotel law. In addition, if the state is unable to control the operation of the homestay it may cause problems of criminal offenses hidden behind the homestay business such as drugs, prostitution, gambling, and money laundering and so on. Because of homestay is a business of lodging which was made available to general public, the operation will, therefore, affect society in general.

The study of foreign laws suggests that the registration of homestay accommodation business is important. Because they considered homestays that offer residents to tourists as a type of business that provides accommodation to public general. It is necessary to have the quality and standard controls as well as monitoring such business to be operated orderly. The registration system is the basic tool for the state to control such business. Moreover, the registration of homestay can be the tool for state to provide support and promotion to homestay operators. Therefore, the law on homestay of Thailand should provide the control and supervision by state as the basic principle by providing the compulsory registration and license system for homestay accommodation business in Thailand.

The study on control and supervision by state can be divided into two parts. There are the control before the registration and the control after the registration, as follows.

5.4.1 The control before registration

In the United States (California), agricultural operations involving the public must comply with public safety and accessibility regulations such as those concerning emergency-exit access (fire safety), fire extinguishers, on-site water and restroom facilities. Moreover, the California Uniform Retail Food Facilities Law (CURFFL), the County Department of Environmental Health will review plans of food facilities. In addition, there are the requirements of a permit to repair, upgrade, or construct a septic system. There are site evaluations for new construction and evaluations for existing septic systems.

In Australia (Victoria), farmstay premises must be registered with the local council if the premises can accommodate five or more guests (Public Health and Wellbeing Act and Public Health and Wellbeing Regulations). To become registered farmstays must contact the local council to apply for registration, have the
premises inspected and pay a registration fee. The accommodation building must have specific fire safety systems installed (Building Regulations).

It can be noted that each country has requirements on minimum standards of accommodation or building by emphasizing food safety, sanitation, public safety, fire safety, but there is some differences. However, the law of the Republic of China (Taiwan) has provided many requirements for homestay registration clearly that the applicant for homestay registration to be accepted, including:

1) The requirements concern with the minimum standard of accommodation.
2) The requirement on qualification of the operator that a person who falls into any of the following conditions may not operate a homestay accommodation business:
   (1) Not having complete capacity to execute legal transactions.
   (2) Having been convicted under the organized crimes control law, statute for narcotics hazard control, or firearms control law.
   (3) Having been adjudicated to receive correctional treatment under the anti-hooliganism provision.
   (4) Having been convicted under any of the law on the prevention of child and teenage sex trade.
   (5) Being an ex-convict sentenced to imprisonment of five years or more, and having completed the sentence or been pardoned less than five years previously.
3) The requirement on specific burden of operator that the operator must purchase business liability insurance policy for public liability to cover paying guests and visitors, product liability to cover prepared food or other products offered to guests, for human bodily injury or death and for the loss of or damage to property. And the law requires the applicant to submit the copy of such insurance policy with the application form.

Then, the person who intends to operate homestay accommodation shall tender the application form and other related documents to the local government agency for registration, pay registration fees, and obtain a homestay registration certificate and the exclusive sign.
4) In reviewing the application, the government agency has authority to investigate at the place homestay located by cooperating investigation with the other related government agencies.

5) The government agency can reject an application for homestay registration if the required documents are not submitted, the applicant fail to comply with the minimum standard of homestay.

5.4.2 The control after registration

The investigation and inspection by state in each country depend on the specific law. In the United States (California), farmstay kitchens will be regularly inspected by the County Department of Environmental Health. However, the law of the Republic of China (Taiwan) states clearly on this issue. There is a front door investigation by the related government agencies after the registration of the homestay. The government agency may visit and inspect a homestay on a regular or an irregular basis to ensure the compliance with the regulations.

Therefore, the law on homestay of Thailand should provide authority of government agency to visit and inspect homestay accommodation business to ensure the compliance with the law and the operation is in order.

5.5 Taxation and fees

At present time, in Thailand, there are no compulsory rules stating that the state has authority to monitor or inspect the operation of the homestay and there is no compulsory registration system for homestay accommodation businesses. Monitoring or inspection of such businesses is difficult. The income from homestay business may be hidden from tax authorities. In addition, there is the problem of budget hotels using the homestay title in order to avoid the application of hotel law, taxation and regular fees.

In foreign countries, there are regulations imposing fees on homestay operations such as the law of the Republic of China imposes the license and registration fees for the new homestay registration and the fees for the renewal or reissuance of a registration. However, there will be no charges for registration
certificate renewal or reissuance necessitated by a change of address caused by the rezoning of the administrative district or by a change in the house numbering system affecting the homestay accommodation in question.

Under the law of the United States (California), an agricultural homestay operation must pay a transient occupancy tax (TOT). TOT is a state tax on revenues generated locally from the hotel, motel, and accommodations industry. In many counties of California and in some incorporated towns, the TOT includes a local tax as well as the state tax. County TOT rates range from 5 to 12 percent of the accommodation fee. Often, county boards of supervisors will use the county TOT funds to support promotional and advertising campaigns organized by the local chamber of commerce or convention and visitors’ bureau. The homestay operator must collect the TOT from visitors and remit the funds quarterly to the county tax collector. But first the homestay operation must register with the county tax collector and obtain a transient occupancy registration certificate. Like the business license, this certificate needs to be displayed conspicuously on the farm or ranch.

The study on taxation and fees can be divided into two parts, including the license and registration fees and the specific tax.

The license and registration fees, when the law provides the license registration system, it is normally to provide the license and registration fees. In Thailand, if the law enforces homestay to be registered with the government agency, it should carefully impose the appropriate amount of fees.

The specific tax, at present time, the imposing additional specific tax, as in the United States (California), in Thailand may not appropriate. In order to encourage the homestay business operation and support tourism development, it should avoid the prescribing the loaded tax burden on the operators and tourists.

5.6 Nature and environment protection

According to the Hotel Act B.E. 2547 it is required that hotel operators must maintain environmental quality in accordance with the law on the promotion and maintenance of environmental quality. But the homestay accommodation business is
excluded from such requirement by the provision of the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551.

Although the Announcement on Thai Homestay Standard B.E. 2554 provides the standards and indicators for certification assessment on natural resources and environment standards, there is no compulsory certification assessment. This may cause homestay operators to neglect to maintain the environment and natural resources. As a result, environmental degradation, lower quality of life in communities and the negative impact of tourism on the community in the long term.

In contrast, the law of foreign countries addresses the environment and natural resource issues such as the law of the Republic of China (Taiwan) which states clearly that the homestay operator shall pay attention to the protection of the natural environment, maintain cleanliness of the environment, avoid disturbances to the local community, and ensure public safety. Moreover, it also provides sanctions for the homestay operators who breach the regulation and that the local administrative have the authority to punish any operators that violate these laws.

It is necessary to adopt the principles for the protection and prevention of natural resources and environment by providing a duty for the homestay operator to pay attention to protection and prevention of the natural and environment including preparation the conservation plans or measures and provide activities to conserve natural resources, to reduce the impact of tourism and global warming.
CHAPTER 6
CONCLUSIONS AND SUGGESTIONS

6.1 Conclusions

The significance of the problem relating to homestay accommodation business in Thailand is the characteristic and nature of homestays which are different from hotels under the Hotel Act B.E. 2547. While the popularity of homestays in Thailand tourism industry has been increasing, the standards of service, safety, and quality have been neglected. In addition, the avoidance of the application of Hotel Act B.E. 2547 by using ‘homestay’ banner has increased. These cause a negative effect on tourism industry and the country. The accommodation that provides to the general public should have quality standards.

The standard of homestays as tourist accommodations should emphasize the standards on public health, cleanliness, food safety, public safety, fire safety, prevention or mitigation of environmental pollution by providing compulsory standards with the penalties. The study found that the Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554 does not provide any standard on fire safety, public safety, and prevention or mitigation of environmental pollution. In particular, the Announcement of Department of Tourism on Thai Homestay Standard B.E. 2554 is not compulsory standards.

Furthermore, homestays are not only accommodation service but also an alternative tourism that has been proposed to attract tourists with the concepts of sustainability, ecotourism and community based tourism. Tourism development that has no proper plan and management may have adverse affects on nature, environment and local people.

For the standards on homestay as alternative tourism, it is special aspect of homestays that consist of sustainable tourism, ecotourism, and community-based tourism concepts including culture and local tradition. Homestays are different from other accommodations because it consists of the special objectives. For this issue the trend of law is to encourage the homestay operator to provide for excellent hospitality
services or good service practices and the promotion of culture, quality of life, and the tourism industry in the local community by awarding or acknowledging such homestay operator. However, the trend of law in form of anti-market or the restrictions of rights are necessary to accomplish the purpose of sustainable tourism, ecotourism, and community-based tourism that pays attention to nature and environment protection as well as well-being of local people.

In addition, the study found that the compulsory licensing registration of homestay accommodation businesses is important because homestay is a type of accommodation business that provides temporary resident to public general. So, it is necessary to have the quality and standard controls as well as monitoring of such business. The homestay should be operated orderly, in order to prevent the misuse the homestay title to avoid the application of hotel law, taxation and regular fees. Moreover, the state will be unable to control the operation of the homestay to prevent the criminal offenses hidden behind the homestay business such as drugs, prostitution, gambling, and money laundering and so on. The registration system is the basic tool for the state to control such business. Besides, the registration of homestay can be the tool for state to provide support and promotion to homestay operators. Therefore, the law on homestay should provide the compulsory registration and license system for homestay accommodation business in Thailand.

In conclusion, the study noticed that the definite law controlling and encouraging homestay accommodation business can have a positive result on nature, the environment and the local people as well as tourism development.

6.2 Suggestions

In order to control and encourage homestay accommodation businesses in Thailand, a specific law is necessary. There are two suggested alternatives for providing provisions for regulating homestay accommodation businesses in Thailand, including the proposal to amend the existing law and the proposal to enact a new act, as follows.
6.2.1 The proposal to amend the existing law

At present, there is the Hotel Act B.E. 2547 and the Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551 regulate the accommodation business in Thailand. Before issuing Ministerial Regulation prescribing criteria and standard of hotel business B.E. 2551, homestay was included under the definition of hotel and the application of the Hotel Act B.E. 2547. The proposal is to amend the hotel act to include homestay as a different type of accommodation, provide the compulsory registration system, provide the minimum standard for homestay accommodation business as prescribed under the Ministerial Regulation and issue the Ministerial Regulation on homestay standard to provide details on registration system and the standards of homestay.

This proposal may be appropriate for regulating the standard of accommodation, because it is similar to the standards for hotels but on a smaller scale. And it would be convenient for government agency to apply the law because homestays also provides accommodation service similar to hotels.

However, homestay accommodations consist for special purposes and services, and some standards are different from the standards of hotel. The name of the Hotel Act B.E. 2547 is defines its own purpose, the amendment of the hotel act by including homestays may confuse people.

6.2.2 The proposal to enact the new act

The enactment of a new act stating the criteria and standards of homestay accommodation business would be the best proposal. Due to the proposed principles regulating homestays have special aspects of anti-market in limiting the rights and liberties of people. According to constitution law such legislation should be issued by the virtue of the law. Therefore, the proposed principles should be provided under the new act in order to control and create quality standards of service for homestay accommodation business in Thailand, to have a positive impact on nature, the environment and well-being of the local people as well as tourism development.

The important proposed principles that should be adopted and provided under the new act are as follow.
1) Definition

From the previous chapter, there are four elements that define homestays. The study has divided the elements into two parts including physical elements and activities elements. Then, the proposed definition of homestay should be divided into two parts as well.

The suggested definition of homestay is that:

“Homestay” means “an accommodation facility run as a family sideline business, using the leftover rooms of a self-used residence to provide tourists with a rural living experience, consisting with physical elements and activities elements, as follows.

(1) Homestay accommodation must have one of the following physical elements.

- The total number of rooms does not exceed four units and limited number of room no more than 15 guest rooms for a homestay that has the specific tourism features, or
- The guests do not exceed 20 people, or
- The total floor area of no more than 150 square metres, and the total floor area of no more than 200 square metres for homestay that has the specific tourism features.

(2) Homestay operator must provide activities to guest
- Providing activities usually incorporates local culture, natural landscape, ecological environment, environmental resources, and agricultural, forestry, fishery, or livestock farming activities.”

2) The quality standard of service

The suggested provisions on the standard of homestay as tourist accommodation and the standard of homestay as alternative tourism are as follows.

(1) The standard of homestay as tourist accommodation

- Accommodation condition

“The lodging characteristic should be in proper proportional, the accommodation and mattress should be clean and comfortable, the shower and
toilet should be clean and coveralls and there should be the relax corner at home or in the community.”

- Food service and drinking water
  “The homestay operator shall ensure the sanitation and safety of beverage, food, and drinking water provided in the homestay and the appropriate type of food and the ingredients used for cooking, clean food containers, and kitchen and equipment hygiene.”

- Security and safety
  “The operator has to prepare a security guard.”
  “The operator must comply with public safety and accessibility regulations such as those concerning emergency-exit access (fire safety) for fire prevention and safety, including requirements relating to fire extinguishers and on-site water and homestay shall have the automatic fire alarm systems”

  “The operator who discovers any suspicious offensive person or threatening situation has a duty to inform the police immediately.”

- Credibility of homestay accommodation business
  “The operator has a duty to display the homestay registration license and the detail of service charge in a notable place.”

  “The details of fees and service charges must be clear and present and providing the reservation, registration, deposit, advances booking and advance deposit.”

  “The operator must not state or cause to be stated in any advertisement, notice or sign issued or put up in relation to the homestay accommodation, that the homestay were registered or approved for any class of accommodation other than that set out on the certificate of registration.”

  “The operator shall have the registered homestay symbol displayed in a highly visible place outside the building.”

- Prevention and mitigation of environmental pollution
  “The operator has to prepare the conservation plans or measures and activities to reduce the impact of tourism and global warming and to conserve natural resources and the environment.”
“The operator has the duty to maintain tidiness, cleanliness, and peacefulness within and around the homestay.”

“The operator has duty to pay due attention to protection of the natural environment, maintaining cleanliness of the environment, avoiding disturbance to the local community.”

(2) The standard of homestay as alternative tourism
- The hospitality of host family
“The government may award and acknowledger the homestay operator who has been recognized by lodgers for excellent hospitality services or good service practices”

- The tour program
“The homestay operator should provide the tour program accepted by the community, tourism activities information, and homeowners can be a local guide or coordinate the other local guide.”

“The tour program must be accepted by the community as the qualification for homestay registration.”

“The government agency may award and acknowledge the homestay operator who has made special contributions to the promotion of tourism industry in the local community.”

- Preservation of culture
“The government agency may award or acknowledge the homestay operator who has made special contributions to the promotion of culture and local tradition.”

- The creation of valuable and the value of product that is community identity
“The government agency may award or acknowledge the homestay operator who has made special contributions to the promotion of quality of life and tourism industry in the local community.”

- Conservation of nature and environment
“The operator has the duty to maintain tourist attractions, preparation of conservation plans or measures and activities to reduce the impact of
tourism and global warming and to conserve natural resources, the environment and pay close attention to protect nature and the environment”

- The management of homestay group by local community
  “There should be the integration of the locals, the executive committee of homestay, the rules of work of the committee, the fair distribution of benefits. And homestays should have the publications, documents and tourism information of the community and publishing. The homestay should provide the tour program that has been accepted by the community.”

3) The remedies to tourists for injury and damages
  There is the suggested provision on remedies to tourists for injury and damages that “the operator must provide First Aid and send patients to nearby hospitals as the basic services and facilities for guests.” And, “the homestay operator has to buy an insurance policy for public liability to cover paying guests and visitors, product liability to cover prepared food or other products offered to guests, for human bodily injury or death and for the loss of or damage to property.”

4) The control and supervision by state
  The law on homestay of Thailand should provide the control and supervision by state as the basic principle by providing the compulsory registration and license system for homestay accommodation business in Thailand. The suggestions include:

(1) The control before registration
  “The requirements on the minimum standard of homestay have to be satisfied.”

  “The requirement on qualification of the operator must be the local people and the person who falls into any of the following conditions may not operate a homestay accommodation business:
(1) Not having complete capacity to execute legal transactions.
(2) Having been convicted under the organized crimes control law, statute for narcotics hazard control, or firearms control law.
(3) Having been adjudicated to receive correctional treatment under the anti-hooliganism provision.

(4) Having been convicted under any of the law on the prevention of child and teenage sex trade.

(5) Being an ex-convict sentenced to imprisonment of five years or more, and having completed the sentence or been pardoned less than five years previously

“The requirement that the operator must purchase a business liability insurance policy for public liability to cover paying guests and visitors, product liability to cover prepared food or other products offered to guests, for human bodily injury or death and for the loss of or damage to property. And the law requires the applicant to submit the copy of such insurance policy with the application form.”

“The person who intends to operate homestay accommodation shall tender the application form and other related documents to the local government agency for registration, pay registration fees, and obtain a homestay registration certificate and the exclusive sign.”

“In reviewing the application, the government agency has authority to inspect the place homestay location by cooperating with investigation with the other related government agencies.”

“The government agency can reject an application for homestay registration if the required documents are not submitted or the applicant fails to comply with the minimum standard of homestay.”

(2) The control after registration

“The government agency may visit and inspect a homestay on a regular or an irregular basis to ensure the compliance with the regulation.”

“The government agency can revoke the license registration if the homestay operator fails to comply with the minimum standard of homestay.”

5) Taxation and fees

“The applicant for homestay registrations shall pay the license and registration fees prescribed for the new homestay registration and the fees for the renewal or reissuance of a registration. However, there will be no charges for registration renewal or reissuance necessitated by a change of address caused by the
rezoning of the local administration or by a change in the house numbering system affecting the homestay in question.”

6) Nature and environment protection

“The homestay operator shall pay attention to protection of the natural environment, maintain cleanliness of the environment, avoid disturbance to the local community.”

Lastly, homestay is developed in tourism industry with the concept of sustainability, ecotourism or community-based tourism. The important purpose is to be more responsible to the environment, conservative to natural areas and sustainable to well-being of local people.

Homestay is not only an accommodation service but also an alternative form of tourism that has been proposed to attract tourist. Currently, homestays have increased greatly to provide tourist accommodation service and it is formed differently according to circumstances and environments of each local community including the difference in physical structure of building, facilities, and type of service. Since, homestays have been promoted as alternative tourism; this can attract more tourists to come to local community. Where there are more tourists, of course, there will be more natural and environment impact.

If tourism development has no proper management plan it may have adverse affects on nature, the environment and local people. The legislation in form of anti-market or has some restrict of right is necessary in order to accomplish the goal of sustainable tourism, ecotourism and community based tourism that pay attention to nature, environment and well-being of local people.

As a part of accommodations, homestays provide service to general public. The experience from the development of accommodation, the quality standard of service and the public safety are the most important issues that have to be considered. Therefore, the definite law and regulation controlling homestay are necessary in order to propose the positive result on nature, environment, local people, general public as well as tourism development in Thailand.
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APPENDICES
APPENDIX A

CALIFORNIA AGRICULTURAL HOMESTAY BILL (AB 1258)

The following information about AB 1258 is an excerpt from the Official California Legislative Information web site.

BILL NUMBER: AB 1258 CHAPTERED BILL TEXT
CHAPTER 180
FILED WITH SECRETARY OF STATE JULY 26, 1999
APPROVED BY GOVERNOR JULY 26, 1999
PASSED THE SENATE JULY 15, 1999
PASSED THE ASSEMBLY MAY 24, 1999
AMENDED IN ASSEMBLY APRIL 15, 1999
INTRODUCED BY
Assembly Member Strom-Martin
FEBRUARY 26, 1999

An act to amend Section 113870 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL’S DIGEST


The California Uniform Retail Food Facilities Law regulates sanitary standards in retail food establishments.

This bill would expand the definition of "restricted food service transient occupancy establishment" to include an agricultural homestay establishment. Because local health agencies are partially responsible for enforcement of the law's provisions, the expansion of the law constitutes a state-mandated local program.

Because existing law makes a violation of any of its provisions a misdemeanor, by creating a new crime, this bill would constitute a state-mandated local program.
The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 113870 of the Health and Safety Code is amended to read:
113870. (a) "Restricted food service transient occupancy establishment" means either of the following:

(1) An establishment of 20 guest rooms or less, that provides overnight transient occupancy accommodations, that serves food only to its registered guests, that serves only a breakfast or similar early morning meal, and no other meals, and with respect to which the price of food is included in the price of the overnight transient occupancy accommodation.

(2) An agricultural homestay establishment that meets all of the following requirements:

(A) Has not more than six guest rooms or accommodates not more than 15 guests.

(B) Provides overnight transient accommodations.

(C) Serves food only to its registered guests and serves meals at any time, and with respect to which the price of food is included in the price of the overnight transient occupancy accommodation.
(D) Lodging and meals are incidental and not the primary function of the agricultural homestay establishment.

(E) The agricultural homestay establishment is located on, and is a part of, a farm, as defined in Section 52262 of the Food and Agricultural Code, that produces agricultural products as its primary source of income.

(b) Notwithstanding subdivision (a), a restricted food service transient occupancy establishment may serve light foods or snacks presented to the guest for self-service.

(c) For purposes of this section, "restricted food service transient occupancy establishment" refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator shall be immaterial.

SECTION 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIIB of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.
APPENDIX B
PUBLIC HEALTH AND WELLBEING REGULATION 2009

The following information about Public Health and Wellbeing Regulation 2009 is an excerpt from the official Australia (Victoria) legislative information web site.

PART 5—PRESCRIBED ACCOMMODATION AND REGISTERED PREMISES

Division 1—Scope and registration

13 Prescribed accommodation

The following classes of accommodation are prescribed to be prescribed accommodation for the purposes of section 3 of the Act—
(a) residential accommodation;
(b) hotels and motels;
(c) hostels;
(d) student dormitories;
(e) holiday camps;
(f) rooming houses.

14 Exempt prescribed accommodation

The following are prescribed not to be prescribed accommodation for the purposes of these regulations—
(a) a house under the exclusive occupation of the occupier; or
(b) a self-contained flat under the exclusive occupation of the occupier consisting of a
   suite of rooms that—
      (i) forms a portion or portions of a building; and
      (ii) includes kitchen, bathroom and toilet facilities; and
      (iii) forms a self-contained residence; or
(c) temporary crisis accommodation; or
(d) a health or residential service within the meaning of section 3(1) of the Residential Tenancies Act 1997; or

(e) a nursing home within the meaning of the National Health Act 1953 of the Commonwealth; or

(f) any retirement village within the meaning of section 3(1) of the Retirement Villages Act 1986; or

(g) any house, building or structure to which Part 4 of the Residential Tenancies Act 1997 applies; or

(h) any vessel, vehicle, tent or caravan; or

(i) premises in which, other than the family of the proprietor, not more than 5 persons are accommodated, and which is not a rooming house.

15 Exempt registered premises

For the purposes of section 69(2) of the Act, the following businesses and classes of businesses are prescribed to be exempt—

(a) the practice of a person registered in the dentists’ division of the register kept by the Dental Practice Board of Victoria under the Health Professions Registration Act 2005;

(b) the practice of a person registered as a medical practitioner registered by the Medical Practitioners Board of Victoria under the Health Professions Registration Act 2005;

(c) the practice of a person registered as a nurse by the Nurses Board of Victoria under the Health Professions Registration Act 2005;

(d) the practice of a person registered as a podiatrist by the Podiatrists Registration Board of Victoria under the Health Professions Registration Act 2005;

(e) the practice of a person registered as an acupuncturist under the Health Professions Registration Act 2005;

(f) the business of a collection centre for which approval has been granted under section 23DNBA of the Health Insurance Act 1973 of the Commonwealth;

(g) the business of a service where human tissue, human fluids or human body products are subjected to analysis for the purposes of the prevention, diagnosis or treatment of disease in human beings and that is not primarily a pathology service;
(h) the business of a mobile hairdresser, except in relation to the principal place of business of the hairdresser;

(i) the business of a mobile beauty therapist, except in relation to the principal place of business of the mobile beauty therapist;

(j) the business of a public hospital, denominational hospital, private hospital, privately-operated hospital, public health service, day procedure centre, multi purpose service or registered community health centre, within the meaning of section 3(1) of the Health Services Act 1988.

16 Applications for registration

For the purpose of section 71(c) of the Act, the prescribed particulars are—

(a) for an application to register prescribed accommodation—

(i) a plan of the premises drawn to a scale of not less than 1:100 and showing the proposed use of each room;

(ii) the date of the application for registration;

(iii) the name and address of the proprietor;

(iv) the address of the premises;

(v) the date of the registration;

(b) for an application to renew the registration of prescribed accommodation—

(i) the date of renewal;

(ii) any conditions on the grant of registration or renewal;

(c) for an application to transfer the registration of prescribed accommodation—

(i) the date of transfer of registration;

(ii) the name and address of the person to whom the registration is transferred;

(iii) the address of the premises to which the registration is transferred;

(d) for an application concerning registered premises—

(i) the date of the application for registration;

(ii) the name and address of the proprietor;

(iii) the business trading name (if any);

(iv) the address of the premises;

(v) the date of registration;
(vi) the registration number (if any);
(vii) the date of renewal of registration (if applicable);
(viii) any conditions on the grant of registration, renewal of registration or transfer of registration (if applicable);
(ix) the name and address of the person to whom the registration is transferred (if applicable).

**Division 2—Standards and requirements for prescribed accommodation**

**17 Overcrowding in prescribed accommodation**

(1) A proprietor of prescribed accommodation must comply with this regulation in relation to the maximum number of persons permitted to be accommodated in each bedroom in the prescribed accommodation.

Penalty: 20 penalty units.

(2) A proprietor of prescribed accommodation must not permit a room in the prescribed accommodation to be used as a bedroom if it has a floor area of less than 7.5 square metres.

Penalty: 20 penalty units.

(3) If persons are accommodated in prescribed accommodation for a period of more than 31 days, the maximum number of persons permitted to occupy a bedroom in respect of the period after the thirty-first day is—

(a) in the case of a bedroom with a floor area of less than 12 square metres, one person;

(b) in the case of a bedroom with a floor area of 12 square metres or more, 2 persons and an additional person for every 4 square metres of floor area that exceeds 12 square metres.

(4) If persons are accommodated in prescribed accommodation, other than a holiday camp, for a period of 31 days or less, the maximum number of persons permitted to occupy a bedroom is—

(a) in the case of a bedroom with a floor area of less than 10 square metres, 2 persons;
(b) in the case of a bedroom with a floor area of 10 square metres or more, 3 persons and an additional person for every 2 square metres of floor area that exceeds 10 square metres.

(5) Subject to subregulation (2), a proprietor of a holiday camp must provide at least 2 square metres of floor area in a bedroom for each person who is accommodated for a period of 31 days or less.

(6) For the purposes of this regulation—

(a) one child under the age of 3 years is not counted as a person;

(b) two children under the age of 3 years are counted as one person;

(c) floor area includes the area occupied by any cupboard or other built-in furniture, fixture or fitting but does not include any area occupied by any bathroom or toilet in, or attached to, the bedroom.

18 Maintenance of prescribed accommodation

A proprietor of prescribed accommodation must maintain the prescribed accommodation and all bedrooms, toilets, bathrooms, laundries, kitchens, living rooms and any common areas provided with the accommodation—

(a) in good working order; and

(b) in a clean, sanitary and hygienic condition; and

(c) in a good state of repair.

Penalty: 20 penalty units.

19 Cleanliness of prescribed accommodation

(1) In addition to the requirement under regulation 18(b), a proprietor of prescribed accommodation must ensure that each bedroom and any toilet or bathroom attached to the bedroom is cleaned after the bedroom is vacated and before its re-use by another occupier.

Penalty: 20 penalty units.

(2) A proprietor of prescribed accommodation must ensure that all bed linen provided with the accommodation is changed with clean linen—

(a) at least weekly; and

(b) after the accommodation is vacated and before its re-use by another occupier.

Penalty: 20 penalty units.
20 Water supplied to prescribed accommodation

(1) A proprietor of prescribed accommodation must provide a continuous and adequate supply of water to all toilet, bathing, kitchen, laundry and drinking water facilities.

Penalty: 20 penalty units.

(2) A proprietor of prescribed accommodation must provide a continuous and adequate supply of hot water to all bathing, laundry and kitchen facilities.

Penalty: 20 penalty units.

21 Drinking water and prescribed accommodation

A proprietor of prescribed accommodation must ensure that drinking water supplied by the proprietor to another person is fit for human consumption if the drinking water was not supplied to the proprietor by a water supplier.

Penalty: 20 penalty units.

22 Discharge of sewage and waste water in prescribed accommodation

A proprietor of prescribed accommodation must ensure that all sewage and waste water is discharged—

(a) to a reticulated sewerage system; or

(b) to a wastewater treatment system permitted under the Environment Protection Act 1970.

Penalty: 20 penalty units.

23 Refuse receptacles and prescribed accommodation

A proprietor of prescribed accommodation must—

(a) provide sufficient vermin-proof receptacles at the prescribed accommodation for the collection and storage of all rubbish; and

(b) ensure that the receptacles are regularly cleaned.

Penalty: 20 penalty units.

24 Refuse disposal and prescribed accommodation

A proprietor of prescribed accommodation must ensure that all refuse at the accommodation is regularly removed by means of a refuse collection service provided by the local Council or a private contractor engaged by the proprietor.

Penalty: 20 penalty units.

25 Toilet and bathing facilities in prescribed accommodation
A proprietor of prescribed accommodation must provide at least one toilet, one bath or shower and one wash basin for every 10 persons or fraction of that number of persons occupying the accommodation.

Penalty: 20 penalty units.

26 Register of occupants of prescribed accommodation

(1) A proprietor of prescribed accommodation must keep a register recording—

(a) the names and addresses of persons occupying the accommodation; and

(b) the dates of their arrival and departure.

Penalty: 20 penalty units.

(2) A proprietor is exempted from compliance with subregulation (1), if the proprietor is required under any other Act or regulation to keep a similar register.

(3) The proprietor must retain the register referred to in subregulation (1) or (2) for at least 12 months after the date of the last entry in the register.

Penalty: 20 penalty units.

27 Advertising and prescribed accommodation

A proprietor of prescribed accommodation must not state or cause to be stated in any advertisement, notice or sign issued or put up in relation to the accommodation, that the premises were registered or approved for any class of accommodation other than that set out on the certificate of registration.

Penalty: 20 penalty units.
APPENDIX C
REGULATIONS FOR THE MANAGEMENT OF HOMESTAY FACILITIES

The following information about Regulations for the Management of Homestay Facilities is an excerpt from the Tourism Bureau, M.O.T.C. Republic of China (Taiwan) web site.

Promulgated as per a Ministry of Transportation and Communications ordinance, Reference (2001) MOTC Integrated No. 00094, dated December 12, 2001, in a complete issue covering a total of 38 articles.

Chapter I General Provisions

Article 1

These Regulations are promulgated in accordance with paragraph 3, Article 25 of the Statute for the Development of Tourism.

Article 2

The provisions of these Regulations shall apply to the management of homestay facility. For any matters not covered by these provisions, other relevant laws and regulations shall apply.

Article 3

The term "homestay facility" as referred to in these Regulations shall mean a lodging facility run as a family sideline business, using the spare rooms of a self-used residence to provide tourists with a rural living experience. Such lodging facility usually incorporate local culture, natural landscape, ecological environment, environmental resources, and agricultural, forestry, fishery, or livestock farming activities.

Article 4

The administrative authority for homestay facility is the Ministry of Transportation and Communication on the central government level, the municipal governments on the level of self-government of municipalities under the direct
Chapter II Application, licensing, and change of registration for homestay facilities

Article 5

The establishment of homestay facility shall be limited to the following areas, and shall comply with related supervisory regulations on land use.

1. Designated scenic spots
2. Tourist sites
3. National parks
4. Aboriginal reservations
5. Remote areas
6. Offshore islands
7. Recreational farms with business registration certificates issued by the administrative authority for agriculture, or recreational agriculture areas designated by the administrative authority for agriculture.
8. Nature villages under the Kinmen Special Area Plan
9. Non-urban land

Article 6

The business operation of a homestay facility shall be, in principle, at a scale of no more than 5 guest rooms, with a total floor area of no more than 150 square metres. However, a business registration certificate may be issued to a homestay facility with specific tourism features that has an operating scale of no more than 15 guest rooms, with a total floor area of no more than 200 square metres, provided that such homestay facility is located in an aboriginal reservation, a recreational farm with a business registration certificate issued by the administrative authority for agriculture, a recreational agriculture area designated by the administrative authority for agriculture, a tourist site, a remote area, or on an offshore island.

The "remote area" and "specific tourism features" as mentioned in the preceding paragraph shall be determined by the local administrative authority, which shall file the criteria for determination with the central administrative authority for
reference before implementation of such criteria. Such criteria may be modified in accordance with practical necessity.

**Article 7**

The building facility of a homestay facility shall comply with the following provisions:

The materials and decorations of inner walls and ceilings, the structure of partition walls, and the structure and width of corridors shall meet the requirements laid down in Articles 9, 10, and 11 of the Regulations for the Improvement of Facilities for Fire Prevention and Emergency Exit and Equipment for Fire Extinction in Old Buildings.

A building with a floor area of over 200 square metres for each above-ground floor, or one with a total floor area of over 200 square metres for all below-ground floors, shall have staircases and platforms built with a net width of 1.2 metres or above. A floor whose area is over 240 square metres shall have no less than two staircases that have a through connection to all the other floors of the building. Any irregularities shall be rectified in accordance with Article 13 of the Regulations mentioned in the preceding paragraph. However, standards for the building and facility of a homestay facility which is subject to the provisions of Paragraph 1 of the preceding article shall be exempt from application of the preceding paragraph of this article.

**Article 8**

The fire control equipment of homestay facility shall meet the following requirements:

Each guest room, staircase shaft, and corridor shall be equipped with emergency lights.

Homestay facility shall be equipped with automatic fire alarm systems, or each guest room shall be equipped with fire alarms.

No fewer than two fire extinguishers shall be securely installed in places of good visibility and accessibility. At least one fire extinguisher shall be installed on each floor in a building which has more than one floor above the ground.

**Article 9**
The operating equipment of a homestay facility shall meet the following requirements:

Each guest room and bathroom shall have adequate ventilation and shall receive sufficient light.

The homestay facility shall provide hot and cold water as well as sanitation equipment, and the water heater shall be installed outside the building.

The equipment and environment of the homestay facility shall be constantly kept clean and tidy so as to prevent the propagation of mosquitoes, flies, cockroaches, rats, and other disease carriers, and to cut off their breeding sources.

The quality of drinking water shall meet the requirements detailed under applicable standards.

**Article 10**

Applications for the registration for homestay facility shall comply with the following provisions:

The structure of a homestay facility shall be for residential use only. However, a farmstead may be used as a homestay facility when it is located in an area covered by the provisions of Paragraph 1, Article 6.

A homestay facility shall be operated by the actual user of the building. However, a homestay facility commissioned by the local government on an offshore island may be exempt from this provision.

A homestay facility may not be established in a communal dwelling house.

A homestay facility may not be established in a below-ground floor of a building.

**Article 11**

A person who conforms to any of the following conditions may not operate a homestay facility:

Not having complete capacity to execute legal transactions.

Having been convicted under the Organized Crimes Control Act, Statute for Narcotics Hazard Control, or Firearms Control Act.

Having been adjudicated to receive correctional treatment under the Anti-Hooliganism Statute.
Having been convicted under any of the following laws: Articles 22 to 33 of the Law on the Prevention of Child and Teenage Sex Trade; the sexual assault provision of Chapter 16 of the Criminal Code; Articles 231 to 235, Articles 240 to 243, and Article 293 of the Criminal Code.

Being an ex-convict sentenced to imprisonment of five years or more, and having completed the sentence or been pardoned less than five years previously.

**Article 12**

The name of a homestay facility may not be the same as that of any other homestay facility located in the same municipality, county, or township.

**Article 13**

Those intending to operate homestay facility shall, before commencing operations, submit an application together with the following documents to the local administrative authority for registration, pay registration fees, and obtain a homestay registration certificate and exclusive trade symbol:

- Application form;
- One photocopy of the certifying document of land use classification for the premises (when the premises are located in an urban area);
- One copy of land address map and one copy of land registration, issued within three months before the application;
- Documentation evidencing consent for use of the premises (not required when the applicant is the owner of the premises);
- One copy of building registration or other documentation verifying the title of the house;
- One photocopy of building use permit, or documentation which can verify the legitimacy of the building use;
- One photocopy of business liability insurance policy;
- Photos of exterior and interior of the homestay facility, including guest rooms, bathrooms, and other business-related facility;
- Other documentation as required by the local administrative authority.

**Article 14**

A homestay facility registration certificate shall document the following items:

Name of homestay facility;
Address of homestay facility;
Name of operator of homestay facility;
Date of registration approval, document number, and registration certificate serial number;
Other items required by the administrative authority.

The format of the application form for homestay facility shall be fixed by the central administrative authority and printed by the local administrative authority.

**Article 15**
When reviewing an application for homestay facility registration, the local administrative authority may call in competent authorities for health, fire, and building affairs to conduct onsite investigations.

**Article 16**
In the event of any items needing to be submitted or corrected concerning an application for homestay facility registration, the local administrative authority shall notify the applicant in writing to demand that the items be submitted or corrected within a fixed period.

**Article 17**
The local administrative authority should reject an application for homestay facility registration, in written documentation stating the reasons for rejection, when any of the following cases arises:

- The required items are not submitted or corrected within the fixed period of time after notification is issued.
- The application fails to comply with the Statute for the Development of Tourism or these Regulations.
- The application is found by other competent authorities to have failed to comply with laws or regulations.

**Article 18**
In the event of change in any of the items of a homestay facility registration, the operator shall submit the change to the local administrative authority along with an application form and pertinent documentation within 15 days after the occurrence of the change.
The local administrative authority shall, by the 10th day of the following month, report to the Tourism Bureau of the Ministry of Transportation and Communications the documentation on the establishment and change of the homestay facility.

**Article 19**

The operator of a homestay facility who intends to suspend operations or business for more than one month shall submit an application detailing the reasons to the administrative authorities within 15 days following the occurrence of the suspension.

An application as described above may not be made for a suspension of operation or business in excess of one year. An operator may apply, with reasonable justifications, for extension of suspension for one year at most. The application for extension should be filed within the final 15 days of the original period of suspension.

After the suspension period expires, the operator should file for business resumption with the administrative authority within 15 days.

In the event that an operator fails to file the report according to the first paragraph of this Article or to apply for business resumption according to the third paragraph for more than six months, the authority may revoke the registration certificate of the business.

**Article 20**

In the event of any loss, destruction of, or damage to the homestay registration certificate, the operator shall apply to the local administrative authority for reissuance or replacement within 15 days after the occurrence of the aforesaid conditions.

**Chapter III Management and supervision of homestay facilities**

**Article 21**

The operator of a homestay facility shall purchase a liability insurance policy with the pertinent coverage and minimum insured value as specified below:

- Human bodily injury or death, per person: NT$ 2 million.
- Human bodily injury or death caused in each incident: NT$ 10 million.
- Loss of or damage to property in each incident: NT$ 20 million.
- Total insured value for the insured period: NT$ 24 million.
Notwithstanding the insurance coverage and the insured value mentioned in the preceding paragraph, laws and regulations promulgated by local governments shall apply when they offer more favorable terms for the protection of consumers.

**Article 22**

The room rates for guest rooms in a homestay facility, as well as changes in those rates, are to be fixed by the operator and shall be reported to the local administrative authority.

The actual charges for guest rooms shall not be higher than the rates fixed as mentioned in the preceding paragraph.

**Article 23**

The operator of a homestay facility shall display room rates, lodgment rules, and emergency maps in highly visible and brightly lighted places in the guest rooms.

**Article 24**

The operator of a homestay facility shall display the homestay facility registration certificate in a highly visible place in the hallway, and shall have the designated homestay facility logo displayed in a highly visible place outside the building.

**Article 25**

The operator of a homestay facility shall maintain lodger registration books to record information on lodgers in accordance with the required format on a daily basis, and shall submit this information to the local police station.

The lodger registration books mentioned in the preceding paragraph shall be kept in inventory for a period of one year.

The format of the lodger registration books as referred to in paragraph one above shall be fixed by the administrative authority and printed by the operator of a homestay facility.

**Article 26**

Upon discovering an emergency involving illness of or injury to a lodger, the operator of a homestay facility shall immediately assist in taking the lodger for medical treatment. Upon discovering the possible contraction of an epidemic disease by a lodger, the operator shall immediately notify a competent health or medical agency for proper treatment.
**Article 27**

The operator of a homestay facility may not engage in any of the following acts:

- Soliciting travelers by yelling, shouting or other illicit means.
- Forcing travelers to purchase goods.
- Arbitrarily raising of lodgment charges or seeking of profits by illicit means.
- Installing facility that may violate a lodger’s privacy, or engaging in any behavior that may cause disturbance to the lodger.
- Expanding the operation scale of a homestay facility without permission.

**Article 28**

The operator of a homestay facility shall:

- Ensure the sanitation and safety of beverage and food provided in the homestay facility.
- Maintain tidiness, cleanliness, and peacefulness within and around the homestay facility.
- Have bedclothes of the guest rooms cleansed and replaced with clean ones after each use.
- When organizing folk cultural programs, paying due attention to protection of the natural environment, maintaining cleanliness of the environment, avoiding disturbance to the local community, and ensuring public safety.

**Article 29**

The operator of homestay facility shall report to the local police station upon discovering any of the following conditions pertaining a lodger:

- Suspicion of jeopardizing national security;
- Carrying of guns and weapons, dangerous goods, or other prohibited goods;
- Consumption of addictive drugs or other narcotics;
- Showing of sings of committing suicide, or being dead;
- Making of loud noises, participating in group gambling, or engaging in other behavior that causes a disturbance to the public or violates public order or good social morals, and refusing to follow persuasion to desist;
- Forcible taking of lodgment without presenting proper identification documentation, or refusing to register for the lodgment;
Posing of a treat to public safety or arousing suspicion of having committed other crimes.

**Article 30**

The operator of a homestay facility shall submit to the local administrative authority statistical data, conforming with the required format, on occupancy ratios, number of lodgers, revenues, and so on for the latest six months, by the end of January and July each year.

The local administrative authority shall submit the data mentioned in the preceding paragraph to the Tourism Bureau of the Ministry of Transportation and Communications by the end of the following month.

**Article 31**

The operator of a homestay facility shall take orientation and training courses on homestay facility management organized by the administrative authority itself, or by related agencies or organizations commissioned by the administrative authority.

**Article 32**

The administrative authority or the competent authority for related matters may award or acknowledge the operator of a homestay facility who meets one of the following conditions:

- Having made special contributions to national honor or social order;
- Having performed in an outstanding manner in fostering international friendship through participation in international promotional campaigns;
- Having outstanding performance in promoting the tourism industry;
- Having an excellent record in improving service quality;
- Having been recognized by lodgers for excellent hospitality services or good service practices;
- Having made special contributions to the promotion of culture, quality of life, and the tourism industry in the local community;
- Having evidenced other good conduct or practices deserving commendation.

**Article 33**

The administrative authority may send authorized personnel with proper identification documentation to visit and inspect a homestay facility.
The visits and inspections referred to in the preceding paragraph may be conducted on a regular or an irregular basis.

The operator of a homestay facility shall offer active cooperation and necessary assistance regarding inspection by the administrative authority.

**Article 34**

For the purpose of improving performance in the supervision of homestay facility, the central administrative authority may conduct regular or irregular supervisory evaluations of the administrative authorities of municipal and county governments.

**Article 35**

The operator of a homestay facility who violates the provisions of these Regulations shall be subject to punishment by the local administrative authority in accordance with the Statute for the Development of Tourism.

**Chapter V Additional provisions**

**Article 36**

The licensing and registration fee for each new homestay facility registration certificate is NT$ 1,000. The fee for the renewal or reissuance of a registration certificate is NT$ 500.

There will be no charges for registration certificate renewal or reissuance necessitated by a change of address caused by the rezoning of the administrative district or by a change in the house numbering system affecting the homestay facility in question.

**Article 37**

The format of documentation referred to in these Regulations shall be determined by the central administrative authority.

**Article 38**

These Regulations shall become effective on the date of their publication.
### BIOGRAPHY

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