HOUSE DOCKET, NO. 1062 FILED ON: 1/19/2011

HOUSE . . . . . No. 1689

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the modernization of the room occupancy excise.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sean Garballey	*23rd Middlesex*

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HOUSE . . . . . No. 1689

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 1689) of Sean Garballey relative to the room occupancy excise tax. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the modernization of the room occupancy excise.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 16 of chapter 62C of the General Laws, as appearing in the 2002 Offici al Edition, is hereby amended by inserting after the word "operator" in line 53 the following words: -- or room reseller .

SECTION 2. Section 25 of chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after the word "operato r" in line 6 the following words: -- or room reseller.

SECTION 3. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after the word "operator" in line 2 the following words: -- or room reseller .

SECTION 4. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by adding after paragraph (b) thereof the following paragraph:--

12 (b1/2) “Doing business in the commonwealth”, ownership or operation of a bed and
13 breakfast establishment, hotel, lodging house or motel that is located in the commonwealth,
14 maintenance otherwise of a place of business in the commonwealth, the presence of an employee
15 in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of
16 order s for transfer of occupancy of accommodations located in the commonwealth, solicitation
17 in the commonwealth by a reseller of a contract or other cooperative arrangement with an
18 operator with respect to accommodations located in the commonwealth, inspection in the
19 commonwealth of accommodations that may be the subject of a cooperative arrangement
20 between an operator and a reseller, or other exploitation of the market for accommodations or
21 resale of accommodations located in the commonwealth by any means what soever, including,
22 but not limited to, salesmen, solicitors or representatives in the commonwealth, whether such
23 salesmen, solicitors or representatives are employed by the operator or reseller, by a person
24 affiliated with the operator or the reseller by common ownership, or by any other party. This
25 definition is intended to extend the jurisdiction of the commonwealth over operators and resellers
26 to the full extent authorized by the constitution and the laws of the United States; provided,
27 however, that n othing in this paragraph shall be interpreted as authorizing assertion of
28 jurisdiction over an operator or reseller that lacks a direct physical presence in the
29 commonwealth or a physical presence attributed to it by virtue of activities conducted on its b
30 ehalf by another person .

31 SECTION 5. Section 1 of chapter 64G of the General Laws, as so appearing, is
32 hereby further amended by inserting after the word “operator”, in line 49 thereof, the following
33 words: -- or the room reseller.

34 SECTION 6. Sectio n 1 of chapter 64G of the General Laws, as so appearing, is
35 hereby further amended by inserting at the end thereof the following new subsection:-

36 (k) "Room Reseller" or “Reseller”, any person having any right, permission, license, or
37 other authority from o r through an operator to reserve or arrange transfer of occupancy of
38 accommodations the transfer of which is subject to this chapter, such that the occupant pays all
39 or a portion of the rent to the reseller, but such term shall not include a tour operator.

40 SECTION 7. Chapter 64G of the General Laws, as so appearing, is hereby further
41 amended by striking Section 3 thereof and inserting in place thereof the following section: --

42 An excise is hereby imposed upon the transfer of occupancy of any room or roo ms in a
43 bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by any
44 operator or room reseller doing business in the commonwealth at the rate of five per cent of the
45 total amount of rent for each such occupancy. No excise s hall be imposed if the total amount
46 of rent paid by the occupant is less than fifteen dollars per day or its equivalent.

47 The operator or room reseller shall pay the excise to the commissioner at the time
48 provided for filing the return required by secti on sixteen of chapter sixty-two C.

49 SECTION 8. Section 3A of chapter 64G, as so appearing, is hereby amended by
50 striking the first three sentences thereof and inserting in their place the following three
51 sentences:-

52 Any city or town which accepts the provisions of this section shall be authorized to
53 impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and
54 breakfast establishment, hotel, lodging house or motel located within such city or town by any

55 operator or room res eller at a rate up to, but not exceeding, four per cent of the total amount of
56 rent paid by the occupant for each such occupancy; provided, however, that the city of Boston is
57 hereby authorized to impose such local excise upon the transfer of occupancy of any room in a
58 bed and breakfast establishment, hotel, lodging house or motel located within said city by any
59 operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of
60 rent paid by the occupant for each such occupa ncy. No excise shall be imposed if the total
61 amount of rent paid by the occupant is less than fifteen dollars per day or its equivalent or if the
62 accommodation is exempt under the provisions of section two of this chapter. The operator or
63 room reseller shall pay the local excise tax imposed under the provisions of this section to the
64 commissioner at the same time and in the same manner as the excise tax due the commonwealth.

65 SECTION 9. Chapter 64G of the General Laws, as so appearing, is hereby further
66 amended by adding after Section 3A thereof the following section:--

67 Section 3B. Notwithstanding any other provision of this chapter, in cases in which
68 occupancy is transferred through the use of a room reseller, the application of the excise shall be
69 as follows:

70 If the room reseller is required to register under Section 6 of this chapter to collect the
71 excise, the room reseller shall collect and pay to the commissioner the excise upon the amount of
72 rent paid by the occupant to the room reseller, l ess the amount of rent that the reseller has paid
73 to the operator.

74 Whether or not the room reseller is so registered, the operator shall collect and pay to the
75 commissioner the excise upon the amount of rent paid to the operator by the reseller or the
76 occupant.

77 SECTION 10. Chapter 64G of the General Laws, as so appearing, is hereby further
78 amended by striking section 4 thereof and inserting in place thereof the following section:--

79 Reimbursement for the excise imposed under sections 3 and 3A of this chapter shall be
80 paid by the occupant or the room reseller to the operator and by the occupant to the room
81 reseller, as the case may be, and each operator and room reseller doing business in the
82 commonwealth shall add to the rent and shall collect fro m the occupant or the room reseller the
83 full amount of the excise imposed, in accordance with the requirements of sections 3 and 3A of
84 this chapter, and such excise shall be a debt to the operator or room reseller, when so added to
85 the rent, and shall be r ecoverable at law in the same manner as other debts.

86 SECTION 11. Chapter 64G of the General Laws, as so appearing, is hereby further
87 amended by striking Section 5 thereof and inserting in place thereof the following section:--

88 The amount of the excise co llected by the operator or the room reseller under the
89 provisions of this chapter shall be stated and charged separately from the rent and shown
90 separately on any record thereof at the time the transfer of occupancy is made, or on any
91 evidence of such tran sfer issued or used by the operator or the room reseller.

92 SECTION 12. Chapter 64G of the General Laws, as so appearing, is hereby further
93 amended by striking Section 6 thereof and inserting in place thereof the following section:--

94 No person shall ope rate a bed and breakfast establishment, hotel, lodging house or motel
95 in this commonwealth, or do business as a room reseller in the commonwealth, unless a
96 certificate of registration has been issued to him in accordance with Section 67 of chapter 62C.

97 SECTION 13. Section 7A of Chapter 64G of the General Laws, as so appearing, is
98 hereby amended by inserting after the word “operator” in line 1 the following words:-- or room
99 reseller .

100 SECTION 14. Section 7A of Chapter 64G of the General Laws, as so ap pearing, is
101 hereby further amended by inserting after the word “operator” in line 7 the following words:-- or
102 room reseller .

103 SECTION 15. Chapter 64G of the General Laws, as so appearing, is hereby further
104 amended by striking Section 7B thereof and inse rting in place thereof the following section:--

105 Every operator or room reseller who fails to pay to the commissioner any sums required
106 to be paid by this chapter shall be personally and individually liable therefor to the
107 commonwealth. The terms “opera tor” and “room reseller”, as used in this section, include an
108 officer or employee of a corporation, or a member or employee of a partnership, who as such
109 officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

110 SECTION 16. Section 12 of Chapter 64G of the General Laws, as so appearing, is
111 hereby amended by inserting after the word “operator” in line 5 the following words:-- and each
112 room reseller .

113 SECTION 17. The commissioner may promulgate rules and regulations nec essary
114 to implement sections 1 through 16 hereof.

115 SECTION 18. This act shall be effective for transfers of occupancy taking place on
116 or after January 1, 2011.