

HOUSE No. 2618

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz and RoseLee Vincent

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 regulating short-term residential rentals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>1/16/2015</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>1/16/2015</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>11/22/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>11/22/2019</i>
<i>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>	<i>11/22/2019</i>

HOUSE No. 2618

By Representatives Michlewitz of Boston and Vincent of Revere, a petition (accompanied by bill, House, No. 2618) of Aaron Michlewitz, RoseLee Vincent and others relative to the taxation of short-term residential rentals. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act regulating short-term residential rentals.

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

1 Chapter 64 of the General Laws is hereby amended by adding after Chapter 64M the
2 following Chapter

3 CHAPTER 64 N: SHORT TERM RESIDENTIAL RENTAL EXCISE

4 SECTION 1. DEFINITIONS

5 In this Chapter, the following words and phrases shall have the following meaning,
6 unless the context requires otherwise:

7 “Business Entity,” a corporation, partnership, or other legal entity that is not a natural
8 person that owns or leases one or more residential units.

9 “Conversion or Convert,” a change of use from Residential Use to Tourist or Transient
10 Use, including, but not limited to, renting a Residential Unit as a Tourist or Transient Use.

11 “Department,” the Department of Housing and Community Development.

12 “Director,” the Director of the Department of Housing and Community Development.

13 “Hosting Platform,” a person or entity that provides a means through which a Principal
14 Occupant may offer a Residential Unit for Tourist or Transient Use. This service is usually,
15 though not necessarily, provided through an online platform and generally allows a Principal
16 Occupant to advertise the Residential Unit through a website provided by the Hosting Platform
17 and provides a means for potential tourist or transient users to arrange Tourist or Transient Use
18 and payment, whether the tourist or transient pays rent directly to the Principal Occupant or to
19 the Hosting Platform.

20 “Interested Party,” a Permanent Resident of the Building in which the Tourist or
21 Transient Use is alleged to occur, any homeowner association associated with the Residential
22 Unit in which the Tourist or Transient Use is alleged to occur, the owner of the Residential Unit
23 in which the Tourist or Transient Use is alleged to occur, the relevant city or town, or the
24 commonwealth.

25 “Permanent Resident,” a person who occupies a Residential Unit for at least 60
26 consecutive days with intent to establish that unit as his or her primary residence. A permanent
27 resident may be an owner or a lessee.

28 “Primary Residence,” the Permanent Resident’s usual place of return for housing as
29 documented by at least two of the following: motor vehicle registration, driver’s license, voter
30 registration, tax documents showing the Resident Unit as the Permanent Resident’s residence for
31 the purposes of a home owner’s tax exemption, or a utility bill. For this purposes of this Chapter,
32 a person may have only one Primary Residence.

“Principal Occupant,” any person who is the owner of, or lessee of, a Residential Unit who is offering said Residential Unit for Tourist or Transient Use.

“Relevant City or Town,” the city or town where the Residence in question is located.

“Renter,” an individual who is engaging in a Short-Term Residential Rental for Tourist or Transient Use.

“Residential Unit or Residence,” a room or rooms, including a condominium or a room or dwelling unit that forms part of a tenancy-in-common arrangement, in any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied for Residential Use, as defined by the relevant Housing Code.

“Residential Use,” any use for occupancy of a Residential Unit by a Principal Occupant.

“Short-Term Residential Rental,” a Tourist or Transient Use where all of the following conditions are met:

(a) the Residential Unit is offered for Tourist or Transient Use by the Permanent Resident of the Residential Unit;

(b) the Permanent Resident is a natural person;

(c) the Permanent Resident has registered the Residential Unit and maintains good standing on the Department’s Short-Term Residential Rental Registry.

“Short-Term Residential License,” a license that is granted by the Department to the Principal Occupant after the Relevant City or Town has approved the Principal Occupant’s application for Short-Term Residential Rental.

“Short-Term Residential Rental Registry or Registry,” a database of information maintained by the Department that includes information regarding Principal Occupants who are permitted to offer Residential Units for Short-Term Residential Rental. Only one Principal Occupant per Residential Unit may be included on the Registry at any given time. The Registry shall be available for public review to the extent required by law, except that, to the extent permitted by law, the Department shall redact any Permanent Resident names from the records available for public review.

“Tourist or Transient Use,” any use of a Residential Unit for Occupancy for less than a 30-day term of tenancy, or occupancy for less than 30 days of a Residential Unit leased or owned by a Business Entity, whether on a short-term or long-term basis, including any occupancy by employees or guests of a Business Entity for less than 30 days where payment for the Residential Unit is contracted for or paid by the Business Entity.

SECTION 2. IMPOSITION AND RATE OF EXCISE

An excise is hereby imposed upon Renters of Short-Term Residential Rentals of a Residence for Tourist or Transient use in this commonwealth, as set forth in subsection (f) of Section 6 of this Chapter at the rate of five per cent of the total amount of rent for each such rental. No excise shall be imposed if the total amount of rent is less than fifteen dollars per day or its equivalent.

SECTION 3. LOCAL EXCISE TAX; INFORMATION CONCERNING AMOUNT COLLECTED AVAILABLE

Any city or town which accepts the provisions of this section shall be authorized to impose a local excise tax upon Renters of Short-Term Residential Rentals of a Residence for

Tourist of Transient Use, as set forth in subsection (f) of Section 6 of this Chapter, of a residence within such city or town at a rate up to, but not exceeding, 6 per cent of the total amount of rent for each such rental; provided, however, that the city of Boston is hereby authorized to impose such local excise upon Renters of Short-Term Residential Rentals of a Residence for Tourist of Transient Use, as set forth in subsection (f) of Section 6 of this Chapter at the rate of up to, but not exceeding 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be imposed if the total amount of rent is less than fifteen dollars per day or its equivalent. The renter shall pay the local excise tax imposed under the provisions of this section to the commissioner of the department of revenue at the same time and in the same manner as the excise tax due to the commonwealth. All sums received by the commissioner under this section as excise shall at least quarterly be distributed, credited and paid by the state treasurer upon certification to the commissioner to each city or town that has adopted the provisions of this section in proportion to the amount of such sums received from the Short-Term Residential Rentals in each such city or town.

This section shall only take effect in a city or town accepting the provisions of this section by a majority vote of the city council with approval of the mayor, in the case of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a city a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a special meeting called for the purpose, in the case of a municipality with a town meeting form of government; or by a majority vote of the town council, in the case of a municipality with a town council form of government. The provisions of this section shall take effect on the first day of the calendar quarter following thirty days after such acceptance, or on the first day of such later calendar quarter as the city or town may designate. The city or town, in accepting the provisions

of this section, may not revoke or otherwise amend the applicable local tax rate more often than once in any twelve month period.

The commissioner of the department of revenue shall make available to any city or town requesting such information the total amount of tax collected under this section in the preceding fiscal year in the city or town requesting this information.

SECTION 4. REIMBURSEMENT FOR EXCISE BY RENTER

Reimbursement for the excise hereby imposed shall be paid by the Renter of such Residence or Residences to the Principal Occupant or Hosting Platform. Principal Occupants and Hosting Platforms in this commonwealth shall add to the rent and shall collect from the Renter the full amount of the excise imposed by this chapter, or an amount equal as nearly as possible or practical to the average equivalent thereof; and such excise shall be a debt from the Renter to the Principal Occupant or Hosting Platform, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

SECTION 5. SEPARATE STATEMENT AND CHARGE OF AMOUNT OF EXCISE

The amount of the excise collected by the Principal Occupant or Hosting Platform from the renter under the provisions of this Chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of such transfer issued or used by the operator.

SECTION 6. REQUIREMENTS FOR LAWFUL SHORT-TERM RESIDENTIAL RENTAL; REMEDIES

(a) Except as set forth in subsection (f) of Section 6 of this Chapter, it shall be unlawful for

1. any Principal Occupant to offer a Residential Unit for rent for Tourist or Transient Use;

2. any Principal Occupant to offer a Residential Unit for rent to a Business Entity that will allow the use of a Residential Unit for Tourist or Transient Use; or

3. any Business Entity to allow the use of a Residential Unit for Tourist or Transient Use.

(b) The Principal Occupant and Business Entity, if any, shall retain and make available to the Relevant City or Town records to demonstrate compliance with this Act, upon written request as provided herein. Any Principal Occupant offering his or her Residence as a Short-Term Residential Rental shall retain and make available to the Relevant City or Town records to demonstrate compliance with this Chapter, including, but not limited to, records demonstrating Residence, the number of days per calendar year the Principal Occupant has occupied the Residential Unit, and the number of days per calendar year the Residential Unit has been rented for Short-Term Residential Use, including specific dates and the duration of each stay.

(c) Upon filing of a written Complaint that a Principal Occupant or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting Platform is not complying with the requirements of this Act, the Relevant City or Town shall take reasonable steps necessary to determine the validity of the Complaint. The Relevant City or Town may independently determine whether a Principal Occupant or Business Entity may be renting a Residential Unit for

Tourist or Transient Use in violation of this Chapter or whether a Hosting Platform has failed to comply with the requirements of this Act.

To determine if there is a violation of this Act, the Relevant City or Town may initiate an investigation of the subject property or Hosting Platform's allegedly unlawful activities. This investigation may include, but is not limited to, an inspection of the subject property by the Relevant City or Town and/or a request for any pertinent information from the Principal Occupant, Business Entity, owner, or Hosting Platform, such as leases, business records, or other relevant documents. The Relevant City or Town shall have discretion to determine whether there is a potential violation of this Act. Notwithstanding any other provision of this Chapter, any alleged violation related to failure to comply with the requirements of the Business and Tax Regulations Code shall be enforced by the Treasurer/Tax Collector under the provisions of that Code.

(d) Civil Action:

1. The Relevant City or Town or the State Attorney General's Office may institute civil proceedings for injunctive and monetary relief, including civil penalties, against a Principal Occupant, Business Entity, or Hosting Platform for violations of this Chapter at any time. Following the filing of a Complaint by the Relevant City or Town or the State Attorney General's Office, any Interested Party may institute civil proceedings for injunctive relief against an owner, Principal Occupant, or Business Entity under this Chapter.

2. If the Relevant City or Town or the State Attorney General's Office is the prevailing party in any civil action under this Chapter, a Principal Occupant or Business Entity in violation of this Chapter or a Hosting Platform in violation of this Chapter may be liable for civil

penalties of not more than \$1,000 per day for the period of the unlawful activity. Other Interested Parties may not seek monetary damages. If the Relevant City or Town, the Department, or any other Interested Party, is the prevailing party, the Interested Party shall be entitled to the costs of enforcing this Chapter, including reasonable attorneys' fees, pursuant to an order of the Court. Any monetary award obtained by the Relevant City or Town or by the commonwealth in such a civil action shall be divided with half of the monetary award given to the Department and half of the monetary award given to the Relevant City or Town. Both the State and the Relevant City or Town shall use said monetary awards for enforcement of this Chapter and, through the use of these funds, shall reimburse other departments and agencies in the Relevant City or Town and in the commonwealth for all costs and fees incurred in the enforcement of this Chapter.

(e) Any Principal Occupant or Business Entity who rents a Residential Unit for Tourist or Transient Use in violation of this Chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be punishable by a fine of not more than \$1,000 or by imprisonment of not more than six months, or by both. Each Residential Unit rented for Tourist or Transient Use shall constitute a separate offense.

(f) Exception for Short-Term Residential Rental:

1. Notwithstanding the restrictions set forth in this section, a Principal Occupant may offer his or her Residence as a Short-Term Residential Rental if:

i. The Principal Occupant maintains records for at least two years, or from the beginning of the Principal Occupant's residency, whichever is later, provided that the Principal Occupant has resided in the Residential Unit for at least 60 days, demonstrating compliance with this Chapter, including, but not limited to, information demonstrating Residency, the number of

days per calendar year he or she has occupied the Residential Unit, the number of days per calendar year the Residential Unit has been rented as a Short-Term Residential Rental, and compliance with the insurance requirement in subsection (iii) of this Section. These records shall be provided to the Relevant City or Town as a precondition for the Residential Unit being registered on the Short-Term Residential Registry;

ii. The Principal Occupant complies with any and all applicable provisions of State and Federal law, as well as the relevant municipal code, including but not limited to the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required transient occupancy taxes, and the occupancy requirements of the relevant housing code;

iii. The Principal Occupant maintains liability insurance appropriate to cover the Short-Term Residential Rental Use in the aggregate of not less than \$500,000 or conducts each Short-Term Residential Rental transaction through a Hosting Platform that provides equal or greater coverage. Such coverage shall defend and indemnify the Principal Occupant and, as named additional insured(s), any tenant(s) and owner(s) in the building for their bodily injury and property damage arising from the Short-Term Residential Use;

iv. The Residential Unit is registered on the Short-Term Residential Rental Registry;

v. The Principal Occupant includes the Department-issued registration number on any Hosting Platform listing or any other listing offering the Residential Unit for use as a Short-Term Residential Rental;

vi. For units subject to rent control provisions, the Principal Occupant shall comply with the initial rent limitation for subtenants and shall charge the Renter no more rent than the rent the Principal Occupant is paying to any landlord per month; and

vii. The Principal Occupant can demonstrate to the satisfaction of the Relevant City or Town that the Residential Unit and the property on which it is located is not subject to any outstanding building, electrical, plumbing, mechanical, fire, health, housing, police, or planning code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders, or correction notices. The Relevant City or Town shall report any such outstanding issue to the Department, and the Department shall not include a property that is subject to any such outstanding violations in the Registry. If such a violation occurs once a Residential Unit has been included in the Registry, the Department shall suspend the Residential Unit's registration and registration number until the violation has been cured.

viii. A Principal Occupant offering a Residential Unit for Short-Term Residential Rental shall post a clearly printed sign inside his or her Residential Unit on the inside of the front door that provides information regarding the location of all fire extinguishers, gas shut off valves, fire exits, and pull fire alarms in the unit and building.

ix. Offering a Residential Unit for Short-Term Residential Rental, including but not limited to advertising the Residential Unit's availability, while not maintaining good standing on the Registry shall constitute an unlawful conversion in violation of this Chapter and shall subject the person or entity offering the unit in such a manner to the administrative penalties and enforcement procedures, including civil penalties, of this Chapter.

x. Only one Principal Occupant may be associated with a Residential Unit on the Registry, and it shall be unlawful for any other person, even if that person meets the qualifications of a “Principal Occupant,” to offer said Residential Unit for Short-Term Residential Rental while the Residential Unit is Registered to another Principal Occupant.

xi. A Principal Occupant offering a Residential Unit for a Short-Term Residential Rental shall maintain a valid Short-Term Residential License.

SECTION 7. APPLICATION FOR REGISTRATION OF SHORT-TERM RESIDENTIAL RENTAL

(a) Registration for a Short-Term Residential License shall be for a two-year term, which may be renewed by the Principal Occupant by filing a completed renewal application with the Relevant City or Town. Initial and renewal applications shall be in a form prescribed by the Department. The fee for the initial application and for each renewal shall be \$50, payable to the Relevant City or Town. The application fee shall be due at the time of the application.

The applicant shall demonstrate to the Relevant City or Town that he or she is a Principal Occupant of the Residential Unit by showing that the Residential Unit is listed as the applicant’s residence on at least two of the following: motor vehicle registration, driver’s license, voter registration, tax documents showing the Residential Unit as the applicant’s Primary Residence for home owners’ tax exemption purposes, or a utility bill. A renewal application shall contain sufficient information to show that the applicant is a Principal Occupant of the Residential Unit.

Both the initial application and any renewal application shall contain information sufficient to show that the Residential Unit is the Residence of the applicant, that the applicant is the unit’s Principal Occupant, and that the applicant has the required insurance coverage. The

Relevant City or Town may require additional information if necessary to show the Principal Occupant's compliance with this Chapter.

The Relevant City or Town shall determine, in its sole discretion, the completeness of an application. Upon receipt of a complete initial application, the Relevant City or Town shall send mailed notice to the owner of record of the Residential Unit, informing the owner that an application to the Registry for the unit has been received.

(b) Upon the Relevant City or Town's approval of a Principal Occupant's application, the Relevant City or Town shall send mailed notice of the applicant's approval to the Department. The Department, upon receipt of said notice, shall include the Residential Unit on the Short-Term Residential Registry and shall issue a registration number to the Residential Unit.

(c) To maintain good standing on the Registry, the Principal Occupant shall submit a report to the Relevant City or Town on January 1 of each year regarding the number of days the Residential Unit or any portion thereof has been rented as a Short-Term Residential Rental since either initial registration or the last report, whichever is more recent, as well as any additional information the Relevant City or Town may require to demonstrate the Principal Occupant's compliance with this Act.

SECTION 8. REQUIREMENTS FOR HOSTING PLATFORMS

(a) All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the commonwealth through the Hosting Platform's service. The notice shall be provided prior to the user listing a Residential Unit or renting a Residential Unit and shall include the following information: that this Act regulates Short-Term Rental of Residential Units, the requirements for receiving and maintaining a valid Short-Term

Residential License, and registration number of the unit assigned by the Department in the Short-Term Residential Registry, and the transient occupancy tax obligations related to the rental.

(b) A Hosting Platform shall comply with the requirements of the Business and Tax Regulations Code by, among other applicable requirements, collecting and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability related to an occupant's, resident's, Business Entity's, or Principal Occupant's failure to comply with the requirements of the Business and Tax Regulations Code. A Hosting Platform shall maintain a record demonstrating that the taxes have been remitted to the Department of Revenue and shall make this record available to the Department of Revenue upon request.

(c) Any violation of a Hosting Platform's responsibilities under this Chapter shall subject the Hosting Platform to the administrative penalties and enforcement provisions of this Act, including but not limited to payment of civil penalties of up to \$1,000 per day for the period of the failure to comply, with the exception that any violation related to failure to comply with the requirements of the Business and Tax Regulations Code shall be enforced by the Department of Revenue under that code.

SECTION 9. APPLICABILITY OF OTHER LAWS

(a) The exception set forth in subsection (f) of Section 6 of this Chapter provides an exception only to the requirements established in this Act. It does not confer a right to lease, sublease, or otherwise offer a residential unit for Short-Term Residential Use where such use is not otherwise allowed by law, a homeowners association agreement or requirements, a rental agreement, or any other restriction, covenant, requirement, or enforceable agreement.

(b) The Department shall designate a contact person for members of the public who wish to file complaints under this chapter or who otherwise seek information regarding this Chapter or Short-Term Residential Rentals. This contact person shall also provide information to the public upon request regarding quality of life issues related to Short-Term Residential Rentals, including, for example, noise violations, vandalism, or illegal dumping, and shall direct the member of the public and/or forward any such complaints to the appropriate department within the Relevant City or Town.

(c) Notwithstanding any other provision of this Chapter, nothing in this Chapter shall relieve an individual, Business Entity, or Hosting Platform of the obligations imposed by any and all applicable provisions of state or municipal law, including but not limited to those obligations imposed by the Business and Tax Regulations Code. Further, nothing in this Chapter shall be construed to limit any remedies available under any and all applicable provisions of state and municipal law.

SECTION 10. LOCAL OPTION FOR PERMANENT RESIDENCY REQUIREMENT

It shall be a local option for the all cities and towns within the commonwealth to restrict Short-Term Residential Rentals of Residential Units in accordance with subsection (f) of section 6 of this Chapter to Permanent Residents of the Residential Unit.

To demonstrate that the applicant is a Permanent Resident, the applicant shall provide the Relevant City or Town with an Affidavit, signed under the pains and penalties of perjury, stating that the Residential Unit in question is the applicant's Primary Residence as well as tax documents showing the Residential Unit as the applicant's Primary Residence for home owners' tax exemption purposes.

Section 10 of this Chapter shall take effect in a city or town upon its acceptance in the following manner: by a majority vote of the city council with approval of the mayor, in the case of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a city a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a special meeting called for the purpose, in the case of a municipality with a town meeting form of government; or by a majority vote of the town council, in the case of a municipality with a town council form of government.

SECTION 11. EXCISE TAX EXEMPTION FOR U.S. MILITARY EMPLOYEES TRAVELLING ON MILITARY ORDERS

No excise shall be imposed, pursuant to this Chapter, upon the rental of a Short-Term Rental of a Residential Unit if the Renter is an employee of the United States military traveling on official United States military orders which encompass the date of said rental. Each Principal Occupant and Hosting Platform shall maintain such records as the commissioner shall require to substantiate exemptions claimed under this section.

SECTION 12. IMPLEMENTATION DATE

The Department shall establish the Short-Term Residential Rental Registry and all cities and towns within the Commonwealth shall establish a system for evaluating applicants no later than December 31, 2015.