

HOUSE No. 3324

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes

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 hotel rooms booked online.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------------|------------------------|------------------|
| <i>Russell E. Holmes</i> | <i>6th Suffolk</i> | <i>1/20/2017</i> |
| <i>Daniel J. Ryan</i> | <i>2nd Suffolk</i> | <i>1/27/2017</i> |
| <i>Daniel J. Hunt</i> | <i>13th Suffolk</i> | <i>1/30/2017</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | |
| <i>Carlos González</i> | <i>10th Hampden</i> | |

HOUSE No. 3324

By Mr. Holmes of Boston, a petition (accompanied by bill, House, No. 3324) of Russell E. Holmes and others relative to room occupancy excise tax for certain rooms booked online. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to hotel rooms booked online.

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

1 SECTION 1. Section 1 of chapter 64G of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the definition of “Bed and breakfast home”
3 the following definition:-

4 (b1/2) “Doing business in the commonwealth,” ownership or operation of a bed and
5 breakfast establishment, hotel, lodging house or motel that is located in the
6 commonwealth,

7 maintenance otherwise of a place of business in the commonwealth, the presence of an
8 employee in the commonwealth on more than a de minimis basis, solicitation in the
9 commonwealth of orders for transfer of occupancy of accommodations located in the
10 commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative
11 arrangement with an operator with respect to accommodations located in the commonwealth,
12 inspection in the commonwealth of accommodations that may be the subject of a cooperative

13 arrangement between an operator and a reseller, or other exploitation of the market for
14 accommodations or resale of accommodations located in the commonwealth by any means
15 whatsoever, including, but not limited to, salesmen, solicitors or representatives in the
16 commonwealth, whether those salesmen, solicitors or representatives are employed by the
17 operator or reseller, by a person affiliated with the operator or the reseller by common
18 ownership, or by any other party. This definition is intended to extend the jurisdiction of the
19 commonwealth over operators and resellers to the full extent authorized by the Constitution and
20 the laws of the United States.

21 SECTION 2. Said section 1 of chapter 64G, as so appearing, is hereby further amended
22 by inserting after the word “operator” in line 49, the following words:-

23 or the room reseller.

24 SECTION 3. Said section 1 of chapter 64G, as so appearing, is hereby further amended
25 by inserting after the definition of “rent” the following definitions:-

26 (k) “Room reseller” or “Reseller,” any person having any right, permission, license, or
27 other authority from or through an operator to reserve or arrange transfer of occupancy of
28 accommodations the transfer of which is subject to this chapter, such that the occupant pays all
29 or a portion of the rent to the reseller. The term “Room Reseller” or “Reseller” includes,
30 but is
31 not limited to, sellers of travel packages as defined in this chapter.

32 (l) “Travel package,” a room or rooms bundled with 1 or more separate components such

33 as air transportation, car rental or similar items and charged to the customer or occupant
34 for a
35 single retail price.

36 SECTION 4. Said chapter 64G of the General Laws is hereby further amended by
37 striking out section 3 as appearing in the 2014 Official Edition and inserting in place thereof the
38 following section:-

39 Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or
40 rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth
41 by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of
42 the total amount of rent for each occupancy. No excise shall be imposed if the total amount of
43 rent paid by the occupant is less than \$15 per day or its equivalent. The operator or room reseller
44 shall pay the excise to the commissioner at the time provided for filing the return required
45 by
46 section 16 of chapter 62C.

47 The value of the transfer of any room or rooms bundled as part of a travel package may
48 be determined from the room reseller's books and records that are kept in the regular course of
49 business, including, but not limited to, non-tax purposes.

50 SECTION 5. Section 3A of chapter 64G of the General Laws, as appearing in the 2014
51 Official Edition, is hereby amended by striking out the first, second and third sentences and
52 inserting in place thereof the following sentences:-

53 A city or town that accepts this section may impose a local excise tax upon the transfer of
54 occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or
55 motel located within the city or town by any operator or room reseller at a rate up to, but not
56 exceeding, 6 per cent of the total amount of rent paid by the occupant for the occupancy, but the
57 city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed
58 and breakfast establishment, hotel, lodging house or motel located within the city by any
59 operator or room reseller at the rate of up to but not exceeding 6.5 per cent of the total amount of
60 rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of
61 rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is
62 exempt under section 2. The operator or room reseller shall pay the local excise tax imposed
63 under this section to the commissioner at the same time and in the same manner as the excise tax
64 due the commonwealth.

65 SECTION 6. Said chapter 64G of the General Laws is hereby further amended by
66 inserting after section 3A 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: If the room reseller is required to register under section 6 to collect the excise, the
70 room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid

71 by the occupant to the room reseller, less the amount of rent that the reseller has paid to
72 the

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

76 No assessment shall be made against an operator on the basis of an incorrect remittance
77 of the excise under this chapter by an unaffiliated room reseller and no assessment shall be made
78 against a room reseller on the basis of an incorrect remittance of the excise under this
79 chapter by an unaffiliated operator.

80 SECTION 7. Said chapter 64G of the General Laws is hereby further amended by
81 striking out section 4 as appearing in the 2014 Official Edition and inserting in place thereof the
82 following section:-

83 Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid
84 by the occupant or the room reseller to the operator and by the occupant to the room reseller, as
85 the case may be, and each operator and room reseller doing business in the
86 commonwealth shall add to the rent and shall collect from the occupant or the room reseller the
87 full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be
88 a debt to the

89 operator or room reseller, when so added to the rent, and shall be recoverable at law in
90 the same manner as other debts.

91 SECTION 8. Said chapter 64G of the General Laws is hereby further amended by
92 striking out section 5 as appearing in the 2014 Official Edition and inserting in place thereof the
93 following section:-

94 Section 5. The amount of the excise collected by the operator or the room reseller under
95 this chapter shall be stated and charged separately from the rent and shown separately on any
96 record thereof at the time the transfer of occupancy is made, or on any evidence of the
97 transfer
98 issued or used by the operator or the room reseller. A room reseller shall not be required
99 to
100 disclose to the occupant the amount of tax charged by the operator. The reseller shall
101 represent to the occupant that the separately stated taxes charged by the reseller include taxes
102 charged by the operator.

103 SECTION 9. Said chapter 64G of the General Laws is hereby further amended by
104 striking out section 6 as appearing in the 2014 Official Edition and inserting in place thereof the
105 following section:-

106 Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging
107 house or motel in this commonwealth, or do business as a room reseller in the commonwealth,
108 unless a certificate of registration has been issued to that person in accordance with section 67 of
109 chapter 62C.

110 SECTION 10. Section 7A of said chapter 64G, as appearing in the 2014 Official Edition,
111 is hereby amended by inserting after the word “operator,” in lines 1 and 7, the following words:-
112 or room reseller

113 SECTION 11. Said chapter 64G, as so appearing, is hereby further amended by striking

114 out section 7B as appearing in the 2014 Official Edition and inserting in place thereof the
115 following section:-

116 Section 7B. Every operator or room reseller who fails to pay to the commissioner any
117 sums required to be paid by this chapter shall be personally and individually liable for those
118 amounts to the commonwealth. The terms “operator” and “room reseller,” as used in this section,
119 include an officer or employee of a corporation, or a member or employee of a partnership, who
120 as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

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122 SECTION 12. Section 12 of said chapter 64G, as appearing in the 2014 Official Edition,
123 is hereby amended by inserting after the word “operator,” in line 5, the following words:-

124 and each room reseller

125 SECTION 13. For purposes of the convention center surcharge imposed by section 9 of
126 chapter 152 of the acts of 1997, as amended, the term “operator” shall mean “operator or room
127 reseller.”

128 SECTION 14. This act shall take effect immediately upon passage.