

HOUSE No. 3454

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

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 and insuring short-term rentals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>1/30/2017</i>
<i>Brian Murray</i>	<i>10th Worcester</i>	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	

HOUSE No. 3454

By Mr. Michlewitz of Boston, a petition (subject to Joint Rule 12) of Aaron Michlewitz, Brian Murray and Julian Cyr for legislation to establish a short term residential rental excise. Financial Services.

The Commonwealth of Massachusetts

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

An Act regulating and insuring short-term 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 SECTION 1.

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

4 CHAPTER 64 N: SHORT TERM RESIDENTIAL RENTAL EXCISE

5 Section 1. DEFINITIONS

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

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

10 “Commercial Host,” any person who is the owner of, or lessee of, a residential unit who
11 is offering said residential units for tourist or transient use for more than 60 days a year or is
12 offering a unit or units for rent that is not their primary residence.

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

15 “Department,” the Department of Revenue.

16 “Director,” the Director of the Department of Revenue.

17 “Hosting Platform,” a person or entity that provides a means through which an occupant
18 may offer a Residential Unit for Tourist or Transient Use. This service is provided through any
19 website, software, online-enabled application, mobile phone application or some other similar
20 process to advertise the Residential Unit through a website provided by the Hosting Platform and
21 provides a means for potential tourist or transient users to arrange Tourist or Transient Use and
22 payment, whether the tourist or transient pays rent directly to the Principal Occupant or to the
23 Hosting Platform.

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

28 “Professionally Managed Host,” any person or business entity who is the owner of, or
29 lessee of, a residential unit who is offering said residential unit for tourist or transient use. Said
30 host shall be or employ a manager who is responsible for the upkeep and maintenance of the

31 properties and shall be available to respond to any issues that might arise with the renter. The
32 residential unit in question shall be offered for rent for a minimum of five consecutive nights to
33 an individual renter or renters.

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

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

37 “Residential Host,” any person who is the owner of, or lessee of, a residential unit who is
38 offering said residential unit for tourist or transient use no more than 60 days a year. Said unit
39 shall be the occupant’s primary residence. The occupant shall not offer more than one residential
40 unit for tourist or transient use per relevant city or town and no more than three residential units
41 in the commonwealth.

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

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

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

49 (a) the Residential Unit is offered for Tourist or Transient Use by the Residential,
50 Commercial, or Professionally Managed Host of the Residential Unit on a hosting platform;

51 (c) the Host or business entity has registered the Residential Unit and maintains good
52 standing on the Department’s Short-Term Residential Rental Registry.

53 “Short-Term Residential Rental Registry or Registry,” a database of information
54 maintained by the Department that includes information regarding Hosts who are offering
55 Residential Units for Short-Term Residential Rental. The Registry shall be available for public
56 review to the extent required by law, except that, to the extent permitted by law, the Department
57 shall redact any individual names from the records available for public review.

58 “Tourist or Transient Use,” any use of a Residential Unit for Occupancy for less than a
59 30-day term of tenancy, or occupancy for less than 30 days of a Residential Unit leased or owned
60 by a Business Entity, whether on a short-term or long-term basis, including any occupancy by
61 employees or guests of a Business Entity for less than 30 days where payment for the Residential
62 Unit is contracted for or paid by the Business Entity.

63 Section 2.

64 An excise is hereby imposed upon Renters of Short-Term Residential Rentals of a
65 Residence for Tourist or Transient use in this commonwealth, as set forth in Section 10 of this
66 Chapter at the rate of 4 per cent for the total amount of rent for each rental by a residential host,
67 as defined in Chapter 64N; of 8 per cent for the total amount of rent for each rental by a
68 commercial host, as defined in Chapter 64N; and of 5.7 per cent for the total amount of rent for
69 each rental by a professionally managed host, as defined in Chapter 64N. No excise shall be
70 imposed if the total amount of rent is less than fifteen dollars per day or its equivalent.

71 Section 3.

72 Any city or town which accepts the provisions of this section shall be authorized to
73 impose a local excise tax upon Renters of Short-Term Residential Rentals of a Residence for
74 Tourist or Transient Use, as set forth in Section 10 of this Chapter, of a residence within such
75 city or town at a rate up to, but not exceeding, 5 per cent for the total amount of rent for each
76 rental by a residential host; of 10 per cent for the total amount of rent for each rental by a
77 commercial host; and of 6 per cent for the total amount of rent for each rental by a professionally
78 managed host; provided, however, that the city of Boston is hereby authorized to impose such
79 local excise upon professionally managed host Renters of Short-Term Residential Rentals of a
80 Residence for Tourist or Transient Use, as set forth in Section 10 of this Chapter at the rate of up
81 to, but not exceeding 6.5 per cent of the total amount of rent of each such occupancy. No excise
82 shall be imposed if the total amount of rent is less than fifteen dollars per day or its equivalent.
83 The renter shall pay the local excise tax imposed under the provisions of this section to the
84 commissioner of the department of revenue at the same time and in the same manner as the
85 excise tax due to the commonwealth. All sums received by the commissioner under this section
86 as excise shall at least quarterly be distributed, credited and paid by the state treasurer upon
87 certification to the commissioner to each city or town that has adopted the provisions of this
88 section in proportion to the amount of such sums received from the Short-Term Residential
89 Rentals in each such city or town.

90 Any city or town which accepts the provisions of this section shall promulgate rules and
91 regulations requiring all Short-Term Residential rentals within the city or town to undergo an
92 annual safety inspection before said unit shall be offered for Tourist or Transient Use. The city or
93 town in question shall have 30 days after the host has registered the unit to inspect said unit. If

94 the unit is not inspected within 30 days the host may offer the unit for Tourist or Transient use on
95 a temporary basis. The cost of the inspections shall be charged to the hosts.

96 Any city or town which accepts the provisions of this section shall distribute half of the
97 fund received from commercial hosts to programs addressing low and moderate-income housing.

98 This section shall only take effect in a city or town accepting the provisions of this
99 section by a majority vote of the city council with approval of the mayor, in the case of a city
100 with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a city a
101 Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a special
102 meeting called for the purpose, in the case of a municipality with a town meeting form of
103 government; or by a majority vote of the town council, in the case of a municipality with a town
104 council form of government. The provisions of this section shall take effect on the first day of the
105 calendar quarter following thirty days after such acceptance, or on the first day of such later
106 calendar quarter as the city or town may designate. The city or town, in accepting the provisions
107 of this section, may not revoke or otherwise amend the applicable local tax rate more often than
108 once in any twelve month period.

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

112 Section 4.

113 (a) It shall be a local option for the all cities and towns within the commonwealth to
114 restrict Short-Term Residential Rentals of Residential Units in accordance with Section 10 of
115 this Chapter to Permanent Residents of the Residential Unit.

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

121 Section 4 of this Chapter shall take effect in a city or town upon its acceptance in the
122 following manner: by a majority vote of the city council with approval of the mayor, in the case
123 of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a
124 city a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a
125 special meeting called for the purpose, in the case of a municipality with a town meeting form of
126 government; or by a majority vote of the town council, in the case of a municipality with a town
127 council form of government.

128 Section 5

129 (a) It shall be a local option for all cities and towns within the commonwealth to
130 restrict the number of days a host may rent out a Short-Term Residential Unit.

131 Section 5 of this Chapter shall take effect in a city or town upon its acceptance in the
132 following manner: by a majority vote of the city council with approval of the mayor, in the case
133 of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a
134 city a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a
135 special meeting called for the purpose, in the case of a municipality with a town meeting form of
136 government; or by a majority vote of the town council, in the case of a municipality with a town
137 council form of government.

138 Section 6

139 (a) It shall be a local option for all cities and town within the commonwealth to
140 require Professionally Managed and Commercial Hosts to obtain a business license with the
141 relevant local authority.

142 Section 6 of this Chapter shall take effect in a city or town upon its acceptance in the
143 following manner: by a majority vote of the city council with approval of the mayor, in the case
144 of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a
145 city a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a
146 special meeting called for the purpose, in the case of a municipality with a town meeting form of
147 government; or by a majority vote of the town council, in the case of a municipality with a town
148 council form of government.

149 Section 7.

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

157 Section 8.

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

162 Section 9.

163 (a) Except as set forth in Section 10 of this Chapter, it shall be unlawful for:

164 1. any Hosts to offer a Residential Unit for rent for Tourist or Transient Use
165 on a hosting platform;

166 2. any Hosts to offer a Residential Unit for rent to a Business Entity on a
167 hosting platform that will allow the use of a Residential Unit for Tourist or Transient Use; or

168 3. any Business Entity to allow the use of a Residential Unit for Tourist or
169 Transient Use offered on a hosting platform.

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

178 (c) Upon filing of a written Complaint that a Host or Business Entity has engaged in
179 an alleged unlawful Conversion or that a Hosting Platform is not complying with the
180 requirements of this Act, the Relevant City or Town shall take reasonable steps necessary to
181 determine the validity of the Complaint. The Relevant City or Town may independently
182 determine whether a Host or Business Entity may be renting a Residential Unit for Tourist or
183 Transient Use in violation of this Chapter or whether a Hosting Platform has failed to comply
184 with the requirements of this Act.

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

194 (d) The Relevant City or Town or the State Attorney General’s Office may institute
195 civil proceedings for injunctive and monetary relief, including civil penalties, against a Host,
196 Business Entity, or Hosting Platform for violations of this Chapter at any time. Following the
197 filing of a Complaint by the Relevant City or Town or the State Attorney General’s Office, any
198 Interested Party may institute civil proceedings for injunctive relief against an owner, host , or
199 Business Entity under this Chapter.

200 (e) If the Relevant City or Town or the State Attorney General’s Office is the
201 prevailing party in any civil action under this Chapter, a Host or Business Entity in violation of
202 this Chapter or a Hosting Platform in violation of this Chapter may be liable for civil penalties of
203 not more than \$1,000 per day for the period of the unlawful activity. Other Interested Parties may
204 not seek monetary damages. If the Relevant City or Town, the Department, or any other
205 Interested Party, is the prevailing party, the Interested Party shall be entitled to the costs of
206 enforcing this Chapter, including reasonable attorneys’ fees, pursuant to an order of the Court.
207 Any monetary award obtained by the Relevant City or Town or by the commonwealth in such a
208 civil action shall be divided with half of the monetary award given to the Department and half of
209 the monetary award given to the Relevant City or Town. Both the State and the Relevant City or
210 Town shall use said monetary awards for enforcement of this Chapter and, through the use of
211 these funds, shall reimburse other departments and agencies in the Relevant City or Town and in
212 the commonwealth for all costs and fees incurred in the enforcement of this Chapter.

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

218 Section 10.

219 (a) Notwithstanding the restrictions set forth in this section, a Host may offer a
220 residential unit as a Short-Term Residential Rental if:

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

226 ii. The Host maintains liability insurance appropriate to cover the Short-Term
227 Residential Rental Use in the aggregate of not less than \$1,000,000 or conducts each Short-Term
228 Residential Rental transaction through a Hosting Platform that provides equal or greater
229 coverage. Such coverage shall defend and indemnify the host and, as named additional
230 insured(s), any tenant(s) and owner(s) in the building for their bodily injury and property damage
231 arising from the Short-Term Residential Use;

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

233 iv. Residential Hosts shall maintain records that show said unit is their primary
234 residence, and the number of days per calendar year the Residential Unit has been rented as a
235 Short-Term Residential Rental, These records shall be provided to the Relevant City or Town.

236 v. For units subject to rent control provisions, the Host shall comply with the initial
237 rent limitation for subtenants and shall charge the Renter no more rent than the rent the host is
238 paying to any landlord per month; and

239 vi. The Host can demonstrate to the satisfaction of the Relevant City or Town that the
240 Residential Unit and the property on which it is located is not subject to any outstanding
241 building, electrical, plumbing, mechanical, fire, health, housing, police, or planning code

242 enforcement, including any notices of violation, notices to cure, orders of abatement, cease and
243 desist orders, or correction notices.

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

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

253 Section 11.

254 (a) All Hosting Platforms shall provide the following information in a notice to any
255 user listing a Residential Unit located within the commonwealth through the Hosting Platform’s
256 service. The notice shall be provided prior to the user listing a Residential Unit or renting a
257 Residential Unit and shall include the following information: that this Act regulates Short-Term
258 Rental of Residential Units, and the transient occupancy tax obligations related to the rental.

259 (b) A Hosting Platform shall comply with the requirements of the Business and Tax
260 Regulations Code by, among other applicable requirements, collecting and remitting all required
261 Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability
262 related to a host’s, resident’s, or Business Entity’s failure to comply with the requirements of the
263 Business and Tax Regulations Code. A Hosting Platform shall maintain a record demonstrating

264 that the taxes have been remitted to the Department of Revenue and shall make this record
265 available to the Department of Revenue upon request.

266 (c) A Hosting Platform or Host shall not discriminate in who they rent the Short-
267 Term Residential Rental to on the basis of race, sex, ethnicity, sexual orientation, age, religion,
268 disability, or nationality.

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

275 Section 12.

276 (a) The exception set forth in Section 10 of this Chapter provides an exception only
277 to the requirements established in this Act. It does not confer a right to lease, sublease, or
278 otherwise offer a residential unit for Short-Term Residential Use where such use is not otherwise
279 allowed by law, a homeowners association agreement or requirements, a rental agreement, or any
280 other restriction, covenant, requirement, or enforceable agreement.

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

285 construed to limit any remedies available under any and all applicable provisions of state and
286 municipal law.

287 (c) Notwithstanding any provisions of this chapter, nothing in this chapter shall apply
288 to 'Bed and Breakfast homes' or 'Bed and Breakfast establishments' as defined in Section 1 of
289 Chapter 64G of the Massachusetts General Laws.

290 Section 13.

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

296 SECTION 2.

297 Said Chapter 175 is hereby amended by adding, after section 4D, the following section.

298 Section 4E. Insurers that write homeowners and renters insurance may exclude any
299 and all coverage afforded under the policy issued to a homeowner or lessee for any claim
300 resulting from a short-term residential rental under chapter 64N of the general laws.

301 Insurers that exclude the coverage described in this section shall not have a duty to
302 defend or indemnify any claim expressly excluded by a policy. Nothing shall preclude an insurer
303 from providing coverage for short-term residential rentals if the insurer chooses to do so by
304 contract or endorsement.

305 Any Host who has homeowners insurance shall be required to provide notice to all
306 insurers that the occupant intends to use the residential unit in question as a short-term residential
307 rental.

308 SECTION 3.

309 There shall be a short-term residential rental insurance task force established to review
310 the current laws, regulations and industry practices relating to the insurance coverage provided to
311 lessors and lessees of short-term residential rentals under Chapter 64N of the general laws.

312 The task force shall be comprised of the following members or their designees: the
313 commissioner of insurance who shall serve as chair; the speaker of the Massachusetts House of
314 Representatives; the president of the Massachusetts Senate; the house and senate chairs of the
315 joint committee on financial services; and two persons to be appointed by the governor, 1 of
316 whom shall represent the insurance industry and 1 of whom shall be from the short-term
317 residential rental industry.

318 Not later than 30 days after the effective date of this act, the task force shall convene to
319 study whether claims arising from short-term residential rentals are currently being covered by
320 homeowners' insurance and renters insurance, whether there is a risk that said claims could no
321 longer be covered due to policy exceptions related to commercial use, whether hosting platforms
322 have adequate insurance coverage in place to protect lessors and lessees in the event of a claim,
323 and whether the coverage amounts required under chapter 64N of the general laws are adequate.

324 SECTION 4.

325 The Department shall establish the Short-Term Residential Rental Registry and all cities
326 and towns within the Commonwealth shall establish a system for evaluating applicants no later
327 than December 31, 2018.