

HOUSE No. 4314

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 19, 2018.

The committee on Ways and Means, to whom was referred the Bill regulating and insuring short-term rentals (House, No. 4287), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4314) [Representative Boldyga of Southwick dissents].

For the committee,

JEFFREY SÁNCHEZ.

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**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. Section 6 of chapter 14 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following 2 clauses:-

3 11. Shall establish and maintain a short-term rental registry to record the name of each
4 host and the corresponding address of each residential unit offered for short-term rental under
5 chapter 64O. The commissioner may charge a reasonable fee for such registration.

6 12. Shall maintain on the department's website an easily searchable and regularly
7 updated list of addresses of all residential units offered for short-term rental registered in the
8 short-term rental registry established in clause 11, excluding the names of the hosts of said
9 properties.

10 SECTION 2. Section 16 of chapter 62C of the General Laws, as appearing in the 2016
11 Official Edition, is hereby amended by inserting after subsection (g) the following subsection:-

12 (g1/2) Every host, or by agreement, hosting platform, as defined in section one of chapter
13 sixty-four O, subject to taxation under chapter sixty-four O, shall file a return with the
14 commissioner for each calendar quarter. The commissioner may by regulation require returns
15 under this section to be filed on an annual rather than a quarterly basis or on such other basis as
16 he may determine and to have different filing periods for different groups of hosts or hosting
17 platforms. Every such return shall be filed within twenty days after the expiration of the period
18 covered thereby.

19 SECTION 3. Section 21 of said chapter 62C of the General Laws, as so appearing, is
20 hereby amended by striking out, in lines 161 and 162, the words “chapter 64G and chapter 64L”
21 and inserting in place thereof the following words:- chapter 64G, chapter 64L and chapter 64O.

22 SECTION 4. The General Laws are hereby amended by inserting after chapter 64N the
23 following chapter:-

24 CHAPTER 64O: SHORT-TERM RENTAL EXCISE

25 Section 1. As used in this chapter the following words shall, unless the context clearly
26 requires otherwise, have the following meanings:

27 “Commissioner”, the commissioner of the department of revenue.

28 “Department”, the department of revenue.

29 “Host”, an investor host, a professionally managed host, or a residential host.

30 “Hosting platform”, a person or entity that provides a service through which hosts may
31 offer a residential unit for short-term rental to an occupant through a website, software, online-
32 enabled application, mobile phone application or other similar advertising process, and for which

33 the person or entity collects or receives, directly or indirectly through an agent or intermediary, a
34 fee.

35 “Investor host”, whoever rents between 3 and 5 residential units for short-term rental.

36 “Occupant”, a person who, for consideration, uses, possesses or has a right to use or
37 possess a residential unit offered for short-term rental.

38 “Professionally managed host”, whoever rents 6 or more residential units for short-term
39 rental.

40 “Property manager”, an individual who is responsible for the upkeep and maintenance of
41 residential units and is available either on-site or on-call 24 hours per day.

42 “Residential host”, whoever rents 2 or fewer residential units for short-term rental.

43 “Residential unit”, a room, group of rooms or other living or sleeping space for the
44 lodging of occupants; a single-family dwelling, multi-family dwelling or residential dwelling
45 unit in a multi-unit structure; or a condominium, cooperative, timeshare or similar joint property
46 ownership arrangement, including vacation rentals.

47 “Short-term rental”, the rental of a residential unit for a duration of less than 28
48 consecutive days for a fee; provided, however, “short-term rental” shall not include the rental of
49 those accommodations which are defined in section 1 of chapter 64G.

50 Section 2. An excise is hereby imposed upon an occupant of a residential unit offered for
51 short-term rental for the total amount of rent for each short-term rental, at the rate of 4 per cent
52 by a residential host; 5.7 per cent by an investor host; and 8 per cent by a professionally managed
53 host. No excise shall be imposed if the total amount of rent is less than \$15 per day.

54 Section 3. (a) Any city or town may impose a local excise tax upon an occupant for the
55 total amount of rent for each short-term rental at a rate of up to, but not exceeding, 5 per cent by
56 a residential host; 6 per cent by an investor host; and 10 per cent by a professionally managed
57 host. No excise shall be imposed if the total amount of rent is less than \$15 per day.

58 This subsection shall only take effect in a city or town accepting the provisions of this
59 section by a majority vote of the city council with approval of the mayor, in the case of a city
60 with Plan A, Plan B or Plan F charter; by a majority vote of the city council, in the case of a city
61 with Plan C, Plan D or Plan E charter; by a majority vote of the annual town meeting or a special
62 meeting called for that purpose, in the case of a municipality with a town meeting form of
63 government; or by a majority vote of the town council, in the case of a municipality with a town
64 council form of government. The provisions of this section shall take effect on the first day of the
65 calendar quarter following 30 days after such acceptance, or on the first day of such later
66 calendar quarter as the city or town may designate. The city or town, in accepting the provisions
67 of this section, may not revoke or otherwise amend the applicable local tax rate more often than
68 once in any 12 month period.

69 (b) Any city or town which accepts the provisions of subsection (a) shall enact ordinances
70 or bylaws requiring all residential units offered for short-term rental within the city or town to
71 undergo a safety inspection before said residential units shall be rented. The city or town shall
72 have 60 days after the address of a residential unit is listed on the department's website, as
73 required under section 6 of chapter 14, to inspect said unit. If the residential unit is not inspected
74 within 60 days, the host may offer the residential unit for short-term rental on a temporary basis.
75 The cost of the inspection shall be charged to and paid by the hosts. After the initial safety
76 inspection, cities and towns shall determine the frequency of any subsequent inspections.

77 (c) Any city or town which accepts the provisions of subsection (a) may require a host to
78 demonstrate that a residential unit is not subject to any outstanding building, electrical,
79 plumbing, mechanical, fire, health, housing or planning code enforcement, including any notices
80 of violation, notices to cure, orders of abatement, cease and desist orders or correction notices.

81 (d) Any city or town which accepts the provisions of subsection (a) shall distribute an
82 amount equal to 50 per cent of the excise tax collected by professionally managed hosts pursuant
83 to this section to programs addressing either local infrastructure needs or low- and moderate-
84 income housing programs.

85 Section 4. Any city or town, whether or not such city or town has accepted the provisions
86 of section 3, may enact ordinances or bylaws under this chapter.

87 Any city or town, whether or not such city or town has accepted the provisions of section
88 3, may establish penalties for failure to comply with ordinances or bylaws enacted by said city or
89 town under this chapter.

90 Any city or town, whether or not such city or town has accepted the provisions of section
91 3, may restrict short-term rentals, including but not limited to, a restriction on the number of days
92 hosts may rent out residential units, a requirement that hosts obtain a business licenses and a
93 requirement that each residential unit is the host's primary residence.

94 Section 5. Any excise tax imposed pursuant to sections 2 and 3 shall be paid by the
95 occupant. Hosts, or by agreement, hosting platforms, shall pay the excise to the commissioner at
96 the time provided for filing the return required by section 16 of chapter 62C. Hosts, or, by
97 agreement, hosting platforms, shall add to the rent and shall collect at the same time and in the
98 same manner from the occupant the full amount of the excise tax. Any excise tax shall be stated

99 and charged separately from the rent and shown separately on any record thereof at the time the
100 transfer of occupancy is made, or on any evidence of such transfer issued or used by the host or
101 hosting platform.

102 Hosts, or by agreement, hosting platforms shall pay any local excise tax imposed under
103 section 3 to the commissioner at the same time and in the same manner as the state excise tax.
104 All sums received by the commissioner shall be distributed, credited and paid at least quarterly
105 by the state treasurer upon certification of the commissioner to each city or town that has adopted
106 the provisions of section 3 in proportion to the amount of such sums received from the short-term
107 rentals in each such city or town.

108 The commissioner shall make available to any city or town requesting such information
109 the total amount of room occupancy tax collected pursuant to section 3 in the preceding fiscal
110 year in the city or town requesting the information.

111 Section 6. Hosts shall comply with any and all applicable municipal, state and federal
112 laws, including but not limited to the collection and remittance of required excise taxes.

113 Professionally managed hosts shall employ a property manager for each residential unit
114 and maintain \$1,000,000 or more in liability insurance offered for short-term rental.

115 Hosts shall retain and, upon receipt of written request, make available to the department
116 or to the city or town, short-term rental records, including, but not limited to, those records
117 demonstrating a host's place of primary residence and the number of days per calendar year a
118 residential unit has been rented for short-term rental, including the specific dates and the duration
119 of each stay.

120 Hosts shall register each residential unit with the short-term rental registry maintained by
121 the commissioner pursuant to section 6 of chapter 14.

122 Hosts shall be required to provide notice to all insurers of the host's intention to use the
123 residential unit as a short-term rental.

124 Hosts shall post inside the residential unit information regarding the location of all fire
125 extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.

126 Nothing in this chapter shall confer a right to lease, sublease or otherwise offer a
127 residential unit for short-term rental where such use is prohibited by a homeowner's association
128 agreement or requirements, a rental agreement or any other restriction, covenant, requirement or
129 enforceable agreement.

130 Section 7. Prior to any host listing a residential unit for short-term rental through a
131 hosting platform, the hosting platform shall ensure that the host has registered the residential unit
132 with the short-term rental registry maintained by the commissioner under section 6 of chapter 14
133 and shall provide notice to the host that this chapter regulates short-term rentals and establishes
134 state and local excise tax obligations.

135 Hosting platforms that execute the financial transaction between hosts and occupants
136 shall maintain liability insurance of not less than \$1,000,000 to cover each residential unit
137 offered for short-term rental. Such coverage shall defend and indemnify the host and any tenants
138 or owners in the building for bodily injury or property damage arising from the short-term rental.

139 Hosting platforms that execute the financial transaction between hosts and occupants
140 shall collect and remit any taxes required by this chapter. Hosting platforms shall maintain

141 records of any taxes collected that have been remitted to the commissioner and shall make these
142 records available to the department upon request.

143 Hosting platforms shall provide notice to all potential hosts that standard homeowners or
144 renters insurance may not cover damage or injury to a third-party related to short-term rentals.

145 Hosting platforms and hosts shall not discriminate on the basis of race, sex, gender
146 identity, ethnicity, sexual orientation, age, religion, disability or nationality.

147 Section 8. For residential units subject to rent control provisions, hosts shall charge no
148 more than the prorated maximum amount allowed.

149 Section 9. No excise shall be imposed, pursuant to this chapter, for a short-term rental if
150 the occupant is an employee of the United States military traveling on official United States
151 military orders which encompass the date of said occupancy. Each host and hosting platform
152 shall maintain such records to substantiate exemptions claimed under this section.

153 Section 10. The provisions of chapter 186 shall not apply to short-term rentals.

154 SECTION 5. Chapter 175 of the General Laws, as appearing in the 2016 Official Edition,
155 is hereby amended by inserting after section 4E the following section:-

156 Section 4F. Insurers that write homeowners and renters insurance may exclude any and
157 all coverage afforded under a policy issued to a homeowner or lessee for any claim resulting
158 from a short-term rental under chapter 64O of the general laws.

159 Insurers that exclude the coverage described in this section shall not have a duty to
160 defend or indemnify any claim expressly excluded by a policy. Nothing shall preclude an insurer

161 from providing coverage for short-term rentals if the insurer chooses to do so by contract or
162 endorsement.

163 SECTION 6. Section 1 shall take effect on January 31, 2019.

164 SECTION 7. Sections 2, 3 and 4 shall take effect 1 year after the effective date of this
165 act; provided, however, that the department of revenue shall establish rules and regulations for
166 the collection and remittance of taxes pursuant to section 2 and section 3 of chapter 64O of the
167 General Laws, inserted by section 3 of this act, on or before January 31, 2019.

168 SECTION 8. Cities and towns shall conduct initial inspections on short-term rental units
169 listed on the registry, as required under section 3 of chapter 64O of the General Laws, not later
170 than 6 months after the city or town accepts the provisions of said section 3 of said chapter 64O.