

SENATE No. 1553

The Commonwealth of Massachusetts

PRESENTED BY:

Eric P. Lesser

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 regulation and taxation of transient accommodations in the Commonwealth.

PETITION OF:

NAME:

Eric P. Lesser

DISTRICT/ADDRESS:

First Hampden and Hampshire

SENATE No. 1553

By Mr. Lesser, a petition (accompanied by bill, Senate, No. 1553) of Eric P. Lesser for legislation relative to the regulation and taxation of transient accommodations in the Commonwealth. Revenue.

The Commonwealth of Massachusetts

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

An Act relative to the regulation and taxation of transient accommodations in the Commonwealth.

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. Chapter 64G of the General Laws is hereby amended by striking out
2 sections 1 to 12, inclusive, as so appearing, and inserting in place thereof the following 12
3 sections:-

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

6 “Bed and breakfast establishment”, a house where 1 or more rooms are let and a breakfast
7 is included in the rent.

8 “Commissioner”, the commissioner of revenue.

9 “Hosting platform”, a person who provides a service through any website, software,
10 online-enabled application, mobile phone application or some other similar process which
11 provides a means for: (i) an operator to advertise, list or offer the use of any accommodation

12 subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the
13 payment of rent on any accommodation; and (iii) a person to arrange, book, reserve or rent a
14 transient accommodation.

15 “Hotel”, a building used for the feeding and lodging of guests licensed or required to be
16 licensed under section 6 of chapter 140.

17 “Lodging house”, a house where lodgings are let to 4 or more persons not within the
18 second degree of kindred to the person conducting it, licensed or required to be licensed under
19 section 23 of chapter 140.

20 “Motel”, a building or portion of a building, other than a hotel or lodging house, in which
21 persons are lodged for hire with or without meals and which is licensed or required to be licensed
22 under section 32B of chapter 140 or is a private club.

23 “Occupancy”, the use or possession or the right to the use or possession of any room in a
24 bed and breakfast establishment, hotel, lodging house, transient accommodation or motel
25 designed and normally used for sleeping and living purposes or the right to the use or possession
26 of the furnishings or the services and accommodations, including breakfast in a bed and
27 breakfast establishment, accompanying the use and possession of such room for a period of not
28 more than 31 consecutive calendar days, regardless of whether such use and possession is as a
29 lessee, tenant, guest or licensee.

30 “Occupant”, a person who, for rent, uses, possesses or has a right to use or possess a
31 room in a bed and breakfast establishment, hotel, lodging house, transient accommodation or
32 motel under a lease, concession, permit, right of access, license or agreement.

33 “Operator”, a person operating a bed and breakfast establishment, hotel, lodging house,
34 transient accommodation or motel including, but not limited to, the owner or proprietor of such
35 premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise
36 operating such bed and breakfast establishment, hotel, lodging house, transient accommodation
37 or motel.

38 “Operator’s agent”, a person, including, but not limited to, a property manager, property
39 management company or real estate agent who is not a hosting platform and is authorized by an
40 operator of a bed and breakfast establishment, lodging house or transient accommodation to: (i)
41 manage the operation or upkeep of a property offered for rent; or (ii) book reservations at a
42 property offered for rent.

43 “Person”, includes an individual, partnership, trust or association, with or without
44 transferable shares, joint-stock company, corporation, society, club, organization, institution,
45 estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or
46 representative capacity, whether appointed by a court or otherwise or any combination of
47 individuals acting as a unit.

48 “Rent”, the consideration received for occupancy valued in money, whether received in
49 money or otherwise, including all receipts, cash, credits and property or services of any kind or
50 nature and also any amount for which credit is allowed by the operator to the occupant without
51 any deduction from the consideration.

52 “Transient accommodation”, a vacation, leisure, or short-term rental accommodation
53 offering occupancy in exchange for rent including, but not limited to an apartment, single or
54 multiple family housing, cottage, condominium, time-share unit or any furnished residential

55 accommodation within any area zoned for residential or commercial use that is not a hotel,
56 motel, lodging house or bed and breakfast establishment, which is licensed or required to be
57 licensed under section 32E ½ of chapter 140.

58 Section 2. This chapter shall not be construed to include: (i) lodging accommodations at
59 federal, state or municipal institutions, except as provided for in clause (ii); (ii) lodging
60 accommodations, including dormitories, at religious, charitable, philanthropic and public and
61 private educational institutions; provided, however, that this exemption shall not apply to
62 accommodations provided in a manner ancillary to the achievement of the religious, charitable,
63 philanthropic or educational purposes of such institutions; and provided further, that lodging
64 accommodations provided by a public or private college or university that are not student
65 dormitories or faculty housing and that are available to the general public shall be considered
66 ancillary to the educational purpose of such educational institutions; (iii) privately owned and
67 operated convalescent homes for the aged, infirm, indigent or chronically ill; (iv) religious or
68 charitable homes for the aged, infirm, indigent or chronically ill; (v) summer camps for children
69 not more than 18 years of age or individuals with developmental disabilities; provided, however,
70 that such summer camp which offers its facilities off-season to individuals not less than 60 years
71 of age for a period not to exceed 31 days in any calendar year shall not lose its exemption under
72 this section; (vi) lodging accommodations provided to seasonal employees by employers; and
73 (vii) tenancies at will or month to month leases.

74 For the purposes of this section, an individual with a developmental disability shall mean
75 an individual who has a severe chronic disability which: (A) is attributable to a mental or
76 physical impairment or combination of mental and physical impairments; (B) is likely to
77 continue indefinitely; (C) results in substantial functional limitations in 3 or more of the

78 following areas of major life activity: (1) self-care; (2) receptive and expressive language; (3)
79 learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic
80 self-sufficiency; and (D) reflects the individual's need for a combination and sequence of special,
81 interdisciplinary or generic care, treatment or other services which are of lifelong or extended
82 duration and are individually planned and coordinated.

83 Section 3. An excise shall be imposed upon the transfer of occupancy of a room in a bed
84 and breakfast establishment, hotel, lodging house, transient accommodation or motel by an
85 operator at the rate of 5 per cent of the total amount of rent for each such occupancy. An excise
86 shall not be imposed if the total amount of rent is less than \$15 per day or its equivalent.

87 The operator shall pay the excise to the commissioner at the time provided for filing the
88 return required by section 16 of chapter 62C.

89 Section 3A. A city or town which accepts this section may impose a local excise tax upon
90 the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house,
91 transient accommodation or motel located within that city or town by an operator at a rate of not
92 more than 6 per cent of the total amount of rent for each such occupancy; provided, however,
93 that the city of Boston is hereby authorized to impose such local excise upon the transfer of
94 occupancy of a room in a bed and breakfast establishment, hotel, lodging house, transient
95 accommodation or motel located within the city of Boston by an operator at the rate of not more
96 than 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be imposed
97 if the total amount of rent is less than \$15 per day or its equivalent or if the accommodation is
98 exempt under section 2. The operator shall pay the local excise tax imposed under this section to
99 the commissioner at the same time and in the same manner as the excise tax due to the

100 commonwealth. All sums received by the commissioner under this section as excise, penalties or
101 forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid
102 by the state treasurer upon certification of the commissioner to each city or town that has adopted
103 this section in proportion to the amount of such sums received from the transfer of occupancy in
104 each such city or town. This section shall only take effect in a city or town accepting this section
105 by a majority vote of the: city council with the approval of the mayor, in the case of a city with a
106 Plan A, Plan B or Plan F charter; city council, in the case of a city with a Plan C, Plan D or Plan
107 E charter; annual town meeting or a special meeting called for that purpose in the case of a
108 municipality with a town meeting form of government; or town council, in the case of a
109 municipality with a town council form of government. This section shall take effect on the first
110 day of the calendar quarter following 30 days after such acceptance or on the first day of such
111 later calendar quarter as the city or town may designate. The city or town, in accepting this
112 section, may not revoke or otherwise amend the applicable local tax rate more often than once in
113 a 12-month period.

114 The commissioner shall make available to a city or town requesting such information, the
115 total amount of room occupancy tax collected in the preceding fiscal year in the city or town
116 requesting the information.

117 Section 4. Any city or town which has accepted the provisions of section 3A may not
118 prohibit an operator of a transient accommodation from offering occupancy in exchange for rent
119 through a hosting platform.

120 Section 5. Reimbursement for the excise under this chapter shall be paid by the occupant
121 of such a room to the operator and each operator shall add to the rent and shall collect from the

122 occupant the full amount of the excise imposed by this chapter or an amount equal as nearly as
123 possible or practical to the average equivalent thereof. Such excise shall be a debt from the
124 occupant to the operator, when so added to the rent, and shall be recoverable at law in the same
125 manner as other debts.

126 Section 6. The commissioner may enter into a voluntary collection agreement with a
127 hosting platform or an operator's agent required to remit the excise under section 12, who is
128 willing to assume liability for the collection and remittance of the excise imposed under this
129 chapter on behalf of the operators . The hosting platform or operator's agent shall not be liable
130 for any faults in collecting or remitting the excise caused by the hosting platform's or operator's
131 agent's reasonable reliance on representations made to it by the operator about the nature of the
132 property being rented, the duration of the occupancy or other similar representations made by the
133 operator to the hosting platform or operator's agent. The operator shall be solely liable for any
134 unpaid excise resulting from any such representations. A hosting platform or operator's agent
135 shall not be liable for any over collection of the excise if the excise collected was remitted to the
136 commissioner and if the over collection resulted from the hosting platform's or operator's
137 agent's reasonable reliance on the operator's representations about the nature of the property
138 being rented, about the nature of the occupancy or whether such property was exempt from the
139 excise. The operator shall be solely liable for any monetary damages to the occupant resulting
140 from any such representations.

141 Section 7. The amount of the excise collected by the operator from the occupant under
142 this chapter shall be stated and charged separately from the rent and shown separately on any
143 record thereof at the time the transfer of occupancy is made or on any evidence of such transfer
144 issued or used by the operator.

145 Section 8. A person shall not operate a bed and breakfast establishment, hotel, lodging
146 house, transient accommodation- or motel unless a certificate of registration has been issued to
147 the person in accordance with section 67 of chapter 62C. Registration information for each
148 operator issued a certificate of registration under this section, including but not limited to name
149 and address, shall be maintained by the commissioner and transmitted to each city and town for
150 administration and collection of the excise imposed pursuant to sections 3 and 3A of this chapter.

151 Section 8A. The commissioner shall, through regulation, prescribe records to be
152 maintained by hosting platforms registered under section 6. Each hosting platform shall furnish
153 all information and documents necessary for administration of the room occupancy tax imposed
154 pursuant to sections 3 and 3A; provided, however, that any such request shall be reasonably
155 related to the requirements set forth under this section and any regulations promulgated
156 thereunder. Except as otherwise provided under section 21 of chapter 62C, the disclosure of
157 information obtained under this section, including any tax return or document filed by a taxpayer
158 under section 16 of chapter 62C, shall be prohibited; provided, however, any record furnished by
159 a hosting platform to the department or any other state agency under this section shall not be
160 considered a public record as that term is used in clause 26 of section 7 of chapter 4 or chapter
161 66.

162 Section 9. An operator who has paid the commissioner an excise under section 3 upon an
163 account later determined to be worthless shall be entitled to an abatement of the excise paid on
164 the worthless account. The claim for abatement shall annually be filed not later than April 15,
165 covering the amount of the excise on the accounts determined to be worthless in the prior
166 calendar year.

167 An operator who shall recover an excise on an account previously determined to be
168 worthless, for which an application for abatement has been filed, shall report and include the
169 same in a monthly return at the time of recovery.

170 Section 10. Every operator who fails to pay to the commissioner the sums required to be
171 paid by this chapter shall be personally and individually liable. The term “operator”, as used in
172 this section, includes an officer or employee of a corporation or a member or employee of a
173 partnership or a limited liability company who as such officer, employee or member is under a
174 duty to pay over the taxes imposed by this chapter.

175 An operator who misrepresents to a hosting platform or operator’s agent required to remit
176 the excise under section 12, that the operator’s property is exempt from the excise imposed under
177 section 3 shall be liable for any unpaid excise under this section and shall have committed an
178 unfair trade practice under chapter 93A in making such a misrepresentation to the hosting
179 platform or operator’s agent.

180 Section 11. No excise shall be imposed, pursuant to this chapter, upon the transfer of
181 occupancy of a room in a hotel, lodging house, transient accommodation or motel if the occupant
182 is an employee of the United States military traveling on official United States military orders
183 which encompass the date of that occupancy. Each operator shall maintain records as the
184 commissioner shall require to substantiate exemptions claimed under this section.

185 Section 12. The operator may elect to allow a hosting platform or any operator’s agent to
186 collect rent or facilitate the collection or payment of rent on their behalf through a written
187 agreement on an accommodation subject to the excise under this chapter. A hosting platform or
188 operator’s agent that enters into a written agreement with the operator to collect rent or facilitate

189 the collection or payment of rent on behalf of the operator on an accommodation subject to the
190 excise under this chapter shall: (i) apply for and obtain a certificate of registration from the
191 commissioner in accordance with section 67 of chapter 62C; (ii) assess, collect, report and remit
192 the excise to the commissioner as described in sections 3, 5, 7, 8 and 9; and where applicable (iii)
193 provide notice to the operator that occupancy of any transient accommodations offered through
194 the use of a hosting platform shall be responsible to comply with the provisions of this chapter
195 and any local by-laws, ordinances, or regulations as adopted by local licensing authorities under
196 the provisions of section 32E ½ of chapter 140. The certificate of registration obtained from the
197 commissioner under this subsection shall identify and be in the name of the individual operator,
198 not the hosting platform or operator's agent.

199 A hosting platform or an operator's agent collecting and remitting the excise on behalf of
200 the operator shall provide notification within a reasonable time to the operator that the excise has
201 been collected and remitted to the commissioner under section 3. The notification may be
202 delivered in-hand or by mail or conveyed by electronic message, mobile or smart phone
203 application or some other similar electronic process, digital media or communication portal. An
204 operator shall not be responsible for collecting and remitting the excise on any transaction for
205 which it has received notification from a hosting platform or operator's agent that the excise has
206 been collected and remitted to the commissioner on their behalf.

207 A hosting platform shall establish a toll-free customer service hotline capable of
208 responding to consumer, operator and guest questions and complaints related to the transfer of
209 occupancy or occupancy of transient accommodations subject to the excise under this chapter.
210 The hotline number shall be conspicuously posted along with the hours of operation on the
211 hosting platform's website.

212 The commissioner may promulgate rules and regulations for the assessing, reporting,
213 collecting, remitting and enforcement of the room occupancy excise under this section.

214 SECTION 2. Chapter 140 of the general laws is hereby amended by inserting, after
215 section 32E, the following section:-

216 SECTION 32E ½. (a) Notwithstanding any special or general law to the contrary, any
217 city or town shall have jurisdiction through by-law or ordinance for the licensure of persons
218 conducting, controlling, managing or operating any transient accommodation as defined under
219 section 1 of chapter 64G located within such city or town. As used in this section, the term
220 “transient accommodations” shall have the same meaning defined in section 1 of chapter 64G.
221 The provisions of this paragraph shall apply to every city or town, including, but not limited to
222 the city of Boston and the city of Cambridge.

223 (b) A person shall not conduct, control, manage or operate any transient accommodation
224 without a license granted or issued by any board or municipal licensing authority within a city or
225 town and a certificate of registration in accordance with section 6 of chapter 64G. Any by-laws
226 or ordinances adopted or established by a city or town under this section may reasonably regulate
227 transient accommodations to ensure the general welfare of the residents within the city or town
228 are protected and to meet the following purposes:

229 (i) to reasonably protect the public health and safety of the residents within said city or
230 town, including but not limited to, any by-law or ordinance related to fire and building codes,
231 health and sanitation, transportation or traffic control, solid or hazardous waste and pollution
232 control;

233 (ii) to reasonably comply with ordinances related to noise, protection of welfare, property
234 maintenance and other nuisance issues; and

235 (iii) to expressly prohibit the use, occupancy or licensure of transient accommodations for
236 the purposes of housing any person who has had received a conviction in the past 10 years for
237 any sex offense or violent crime as defined in section 133E of chapter 127, or been convicted of
238 felony robbery or felony fraud.

239 Persons may conduct, control, manage or operate any transient accommodation while
240 their application for licensure under this section is pending; provided, the applicant makes
241 available a certificate issued by the municipal tax collector in said city or town that the applicant
242 is in good standing with respect to any and all local taxes, fees, assessments, betterments or other
243 municipal charges, payable to the municipality on the date of the application as submitted.

244 (c) Any laws, regulations, practices, ordinances, by-laws or decisions of a city or town
245 adopted or established under this section: (i) may not prohibit or unreasonably regulate a
246 transient accommodation within said city or town; and (ii) shall not grant or issue a license under
247 this section to any person who is not at least 21 years of age.

248 (d) Upon reasonable public notice, any board or municipal licensing authority may grant,
249 issue or deny any application for, or revoke or suspend, a license or permit for the operation of
250 transient accommodations, including renewals issued by said board or municipal licensing
251 authority. Unless previously suspended or revoked, a license or permit issued under this section
252 shall expire one year from the date issued. Any board or municipal licensing authority in a city or
253 town under section 22F of chapter 40 and section 31 of chapter 111 may establish a reasonable
254 fee for an annual transient accommodation operator license or permit. A board or municipal

255 licensing authority may however, upon reasonable public notice, suspend or revoke such license
256 or permit if a transient accommodation under this section does not comply with any by-laws or
257 ordinances adopted or established under subsection (b).

258 (e) Every license or permit granted or issued under this section shall specify the name,
259 street address, the mailing address, and phone number of the person conducting, controlling,
260 managing or operating the transient accommodation, including the designation of an emergency
261 point of contact provided by the applicant to the licensing authority to ensure the general welfare
262 of the residents within the city or town are protected. Any information submitted pursuant to a
263 license or permit application shall be treated as confidential and shall not be disclosed for other
264 uses, including to other federal, state or local government entities. Any record furnished by a
265 hosting platform to the municipality under this section shall not be considered a public record as
266 that term is used in clause 26 of section 7 of chapter 4 or chapter 66

267 Whoever conducts, controls, manages or operates a transient accommodation licensed or
268 permitted under this section shall post in a conspicuous place within a common area of the
269 accommodation, a copy of the rules and regulations, if any, adopted by such city or town.

270 (f) A city or town under this section may, through by-law or ordinance, establish a civil
271 fine or penalty for a person conducting, controlling, managing or operating any transient
272 accommodation without a license or permit as required under this section; provided, however, a
273 fine or penalty established under this section shall not exceed \$500. A city or town shall provide
274 a written notice to the person conducting, controlling, managing or operating, directly or
275 indirectly, any transient accommodation in violation of subsection (b) or subsection (e);
276 provided, however, such person shall have an opportunity to appeal such violation within 30

277 days of receiving the written notice from a city or town under this section. The fine or penalty
278 may be imposed under this section if such person fails to appeal or respond to said written notice
279 after 30 days.

280 A local licensing authority under this section may transfer the amount of any fines or
281 penalties collected under this section to the general fund of the city or town or use the amounts
282 collected for the administration, enforcement and oversight of the licensure process pursuant to
283 this section.

284 (g) In carrying out the provisions of subsections (a) to (f), inclusive, a city or town shall
285 not discriminate against any person who submits an application under this section for a transient
286 accommodation license on the grounds of race, color, marital status, physical disability, age, sex,
287 sexual orientation, religion, ancestry or national origin in any manner prohibited by federal or
288 state law.

289 (h) A person conducting, controlling, managing or operating any transient
290 accommodation as licensed under this section shall not discriminate against any person seeking
291 occupancy, as defined in said section 1 of said chapter 64G, the grounds of race, color, marital
292 status, physical disability, age, sex, sexual orientation, religion, ancestry or national origin in any
293 manner prohibited by federal or state law.

294 (i) Any transient accommodation shall be prohibited under the following conditions: (1)
295 the transient accommodation is not licensed as required under this section; (2) the transient
296 accommodation is not registered to operate in the commonwealth under section 67 of chapter
297 62C and section 6 of chapter 64G; and (3) the transient accommodation violates any by-law,
298 ordinance, regulation, or law, if any, adopted or established by a city or town in accordance with

299 the provisions of this section; provided, however, a hosting platform may not be otherwise held
300 liable for any violations thereof under this section.

301 SECTION 3. The commissioner may promulgate rules and regulations to implement and
302 operate voluntary collection agreements under section 6 of chapter 64G of the General Laws
303 within 6 months of the effective date of this act; provided, however, that the rules and regulations
304 shall contain minimum standards for a hosting platform and an operator's agent to be eligible to
305 enter into a voluntary collection agreement with the commissioner.

306 SECTION 4. Sections 1 to 12, inclusive, of chapter 64G of the General Laws, as
307 appearing in section 1, shall be effective for contracts entered into on or after July 1, 2017.

308 SECTION 5. Section 1 shall be effective for tax years beginning on or after January 1,
309 2018.