SENATE DOCKET, NO. 1118 FILED ON: 1/19/2017

SENATE . . . . . No. 1616

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

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 updating and modernizing the room occupancy excise.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael J. Rodrigues	*First Bristol and Plymouth*

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SENATE . . . . . No. 1616

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 1616) of Michael J. Rodrigues for legislation to update and modernize the room occupancy excise. Revenue.

The Commonwealth of Massachusetts

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

An Act updating and modernizing the room occupancy excise.

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

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

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

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

"Commissioner", the commissioner of revenue.

"Hosting platform", a person who provides a service through any website, software, online-enabled application, mobile phone application or some other similar process which provides a means for: (i) an operator to advertise, list or offer the use of any accommodation subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the

payment of rent on any accommodation; and (iii) a person to arrange, book, reserve or rent a transient accommodation.

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

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

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

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

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

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

"Operator's agent", a person, including, but not limited to, a property manager, property management company or real estate agent who is not a hosting platform and on behalf of an operator of a bed and breakfast establishment, lodging house or transient accommodation: (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent.

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

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

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

furnished residential accommodation within any area zoned for residential or commercial use that is not a hotel, motel, lodging house or bed and breakfast establishment.

Section 2. This chapter shall not be construed to include: (i) lodging accommodations at federal, state or municipal institutions, except as provided for in clause (ii); (ii) lodging accommodations, including dormitories, at religious, charitable, philanthropic and public and private educational institutions; provided, however, that this exemption shall not apply to accommodations provided in a manner ancillary to the achievement of the religious, charitable, philanthropic or educational purposes of such institutions; and provided further, that lodging accommodations provided by a public or private college or university that are not student dormitories or faculty housing and that are available to the general public shall be considered ancillary to the educational purpose of such educational institutions; (iii) privately owned and operated convalescent homes for the aged, infirm, indigent or chronically ill; (iv) religious or charitable homes for the aged, infirm, indigent or chronically ill; (v) summer camps for children not more than18 years of age or individuals with developmental disabilities; provided, however, that such summer camp which offers its facilities off-season to individuals not less than 60 years of age for a period not to exceed 31 days in any calendar year shall not lose its exemption under this section; (vi) lodging accommodations provided to seasonal employees by employers; and (vii) tenancies at will or month to month leases.

For the purposes of this section, an individual with a developmental disability shall mean an individual who has a severe chronic disability which: (A) is attributable to a mental or physical impairment or combination of mental and physical impairments; (B) is likely to continue indefinitely; (C) results in substantial functional limitations in 3 or more of the following areas of major life activity: (1) self-care; (2) receptive and expressive language; (3)

learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency; and (D) reflects the individual's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

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

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

Section 4. A city or town which accepts this section may impose a local excise tax upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel located within that city or town by an operator at a rate of not more than 6 per cent of the total amount of rent for each such occupancy; provided, however, that the city of Boston is hereby authorized to impose such local excise upon the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel located within the city of Boston by an operator at the rate of not more than 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 $15 per day or its equivalent or if the accommodation is exempt under section 2. The operator shall pay the local excise tax imposed under this section to the commissioner 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, penalties or

forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has adopted this section in proportion to the amount of such sums received from the transfer of occupancy in each such city or town. This section shall only take effect in a city or town accepting this section by a majority vote of the: city council with the approval of the mayor, in the case of a city with a Plan A, Plan B or Plan F charter; city council, in the case of a city with a Plan C, Plan D or Plan E charter; annual town meeting or a special meeting called for that purpose in the case of a municipality with a town meeting form of government; or town council, in the case of a municipality with a town council form of government. This section shall take effect on the first day of the calendar quarter following 30 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 this section, may not revoke or otherwise amend the applicable local tax rate more often than once in a 12-month period.

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

Section 5. Reimbursement for the excise under this chapter shall be paid by the occupant of such a room to the operator and each operator shall add to the rent and shall collect from the occupant 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. Such excise shall be a debt from the occupant to the operator, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

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

Section 7. The amount of the excise collected by the operator from the occupant under 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 8. A person shall not operate a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel unless a certificate of registration has been issued to the person in accordance with section 67 of chapter 62C.

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

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

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

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

Section 11. No excise shall be imposed, pursuant to this chapter, upon the transfer of occupancy of a room in a hotel, lodging house, transient accommodation or motel if the occupant is an employee of the United States military traveling on official United States military orders

which encompass the date of that occupancy. Each operator shall maintain records as the commissioner shall require to substantiate exemptions claimed under this section.

Section 12. The operator may elect to allow a hosting platform or any operator's agent to collect rent or facilitate the collection or payment of rent on their behalf through a written agreement on an accommodation subject to the excise under this chapter. A hosting platform or operator's agent that enters into a written agreement with the operator to collect rent or facilitate the collection or payment of rent on behalf of the operator on an accommodation subject to the excise under this chapter shall: (i) apply for and obtain a certificate of registration from the commissioner in accordance with section 67 of chapter 62C; and (ii) assess, collect, report and remit the excise to the commissioner as described in sections 3, 5, 7, 8 and 9. The certificate of registration obtained from the commissioner under this subsection shall identify and be in the name of the individual operator, not the hosting platform or operator's agent.

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

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

SECTION 2. The commissioner may promulgate rules and regulations to implement and operate voluntary collection agreements under section 6 of chapter 64G of the General Laws within 6 months of the effective date of this act; provided, however, that the rules and regulations shall contain minimum standards for a hosting platform and an operator's agent to be eligible to enter into a voluntary collection agreement with the commissioner.

SECTION 3. Sections 1 to 12, inclusive, of chapter 64G of the General Laws, as appearing in section 1, shall be effective for contracts entered into on or after July 1, 2017.

SECTION 4. Section 1 shall be effective for tax years beginning on or after January 1, 2018.