

SENATE No. 2381

The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court
(2017-2018)
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SENATE, Thursday, March 29, 2018

The committee on Ways and Means, to whom was referred the House Bill regulating and insuring short-term rentals; reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2381.

For the committee,
Karen E. Spilka

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1 SECTION 1. Section 16 of chapter 62C, as appearing in the 2016 Official Edition, is
2 hereby amended by inserting after subsection (g) the following subsection:-

3 (g^{1/2}) Notwithstanding subsection (g), the department of revenue shall promulgate
4 regulations to minimize the administrative burden relative to filing returns under said subsection
5 (g) on operators who offer their accommodations to the public for at least 1 day in 5 separate
6 months or less in the taxable year. The regulations may authorize an operator to file a return only
7 for a month that the operator's accommodation is offered to the public.

8 SECTION 2. Chapter 64G of the General Laws is hereby amended by striking out
9 sections 1 to 6, inclusive, as so appearing, and inserting in place thereof the following 9
10 sections:-

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

13 "Bed and breakfast establishment", a private owner-occupied house where at least 1 room
14 or unit is rented, a breakfast is included in the rent and all accommodations are reserved in
15 advance.

16 “Commissioner”, the commissioner of revenue.

17 “Hosting platform”, a service through a digital platform, third-party website, software,
18 online-enabled application, mobile phone application or some other, similar electronic process
19 that allows: (i) an operator to advertise, list or offer the use of an accommodation subject to the
20 excise under this chapter in exchange for rent; (ii) an operator to collect the payment of rent on
21 an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

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

24 “Intermediary”, a person or entity, other than an operator, that facilitates the sale, use or
25 possession of an occupancy and charges a room charge to the general public; provided, however,
26 that the term “facilitates” shall include a person or entity that brokers, coordinates or in any other
27 way arranges for the purchase, sale, use or possession of occupancies by the general public; and
28 provided further, that the term “intermediary” shall include a hosting platform and operator’s
29 agent.

30 “Lodging house”, a house licensed or required to be licensed under section 23 of chapter
31 140 and where lodgings are rented to not less than 4 people who shall not be within the second
32 degree of kindred to the owner or operator of such lodging house.

33 “Motel”, a building or portion of a building in which a person is lodged for hire with or
34 without meals and that is licensed or required to be licensed under section 32B of chapter 140;
35 provided, however, that a “motel” shall not include a hotel or lodging house.

36 “Occupancy”, the use or possession or the right to the use or possession of a room in a
37 bed and breakfast establishment, hotel, lodging house, transient accommodation or motel
38 designed and normally used for sleeping and living purposes for a period of not more than 90
39 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant,
40 guest or licensee; provided, however, that “occupancy” shall include the right to the use or
41 possession of the furnishings or the services and accommodations, including breakfast in a bed
42 and breakfast establishment, accompanying the use and possession of such a room.

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

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

51 “Operator’s agent”, a person who on behalf of an operator of a bed and breakfast
52 establishment, hotel, motel, transient accommodation or lodging house: (i) manages the
53 operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered
54 for rent; provided, however, that an “operator’s agent” shall include, but not be limited to, a
55 property manager, property management company or real estate agent.

56 “Person”, an individual, partnership, trust or association, with or without transferable
57 shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver,

58 trustee, assignee or referee and any other person acting in a fiduciary or representative capacity,
59 whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

60 “Rent”, the total consideration paid by or on behalf of an occupant, including any service,
61 cleaning or other charge, to an operator, an intermediary collecting and remitting the excise on
62 behalf of an operator under section 13 or a room reseller for occupancy, valued in money,
63 whether received in money or otherwise, including all receipts, cash, credits and property or
64 services of any kind or nature.

65 “Room reseller”, a person having any right, permission, license or other authority from or
66 through an operator to reserve, convey or arrange transfer of occupancy of an accommodation
67 for rent, directly or indirectly.

68 “Transient accommodation”, an owner-occupied, tenant-occupied or non-owner occupied
69 property including, but not limited to, an apartment, house, cottage, condominium, time-share
70 unit or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast
71 establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii)
72 all accommodations are reserved in advance; provided, however, that a private owner-occupied
73 property shall be considered a single unit if leased or rented as such.

74 Section 2. This chapter shall not include: (i) lodging accommodations at federal, state or
75 municipal institutions; (ii) lodging accommodations, including dormitories, at religious,
76 charitable, educational and philanthropic institutions; provided, however, that the exemption
77 allowed shall not apply to accommodations provided by any such institution at a hotel or motel
78 generally open to the public and operated by the institution; (iii) privately-owned and operated
79 convalescent homes or homes for the aged, infirm, indigent or chronically ill; (iv) religious or

80 charitable homes for the aged, infirm, indigent or chronically ill; (v) summer camps for children
81 up to 18 years of age or developmentally disabled individuals; provided, however, that a summer
82 camp that offers its facilities off season to individuals 60 years of age or older for a period of not
83 more than 30 days in a calendar year shall not lose its exemption under this section; (vi) lodging
84 accommodations provided to seasonal employees by employers; (vii) alcohol and drug free
85 housing that is certified pursuant to section 18A of chapter 17; and (viii) tenancies at will or
86 month-to-month leases.

87 For the purposes of this section, “developmentally disabled individual” shall mean an
88 individual who has a severe chronic disability that: (i) is attributable to a mental or physical
89 impairment or combination of mental and physical impairments; (ii) is likely to continue
90 indefinitely; (iii) results in substantial functional limitations in not less than 3 of the following
91 areas of major life activity: (1) self-care; (2) receptive and expressive language; (3) learning; (4)
92 mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-
93 sufficiency; and (iv) reflects the individual’s need for a combination and sequence of special,
94 interdisciplinary or generic care, treatment or other services that are of lifelong or extended
95 duration and are individually planned and coordinated.

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

101 The operator or room reseller shall pay the excise to the commissioner at the time
102 provided for filing the return required under section 16 of chapter 62C.

103 Section 3A. A city or town that accepts this section may impose a local excise upon the
104 transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house,
105 transient accommodation or motel located within that city or town by an operator or room
106 reseller at a rate of not more than 6 per cent of the total amount of rent for each such occupancy;
107 provided, however, that the city of Boston may impose such local excise upon the transfer of
108 occupancy of a room in a bed and breakfast establishment, hotel, lodging house, transient
109 accommodation or motel located within the city by an operator or room reseller at the rate of not
110 more than 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be
111 imposed if the total amount of rent is less than \$15 per day or its equivalent or if the
112 accommodation is exempt under section 2. An operator or room reseller shall pay the local
113 excise imposed under this section to the commissioner at the same time and in the same manner
114 as the excise due to the commonwealth. All sums received by the commissioner under this
115 section as excise, penalties or forfeitures, interest, costs of suit and fines shall at least quarterly
116 be distributed, credited and paid by the state treasurer upon certification of the commissioner to
117 each city or town that has adopted this section in proportion to the amount of such sums received
118 from the transfer of occupancy in each such city or town. Acceptance of this section shall be: (i)
119 by a majority vote of the city council with the approval of the mayor in the case of a city with a
120 Plan A, Plan B or Plan F charter; (ii) by a majority vote of the city council in the case of a city
121 with a Plan C, Plan D or Plan E charter; (iii) by a majority vote of the annual town meeting or a
122 special meeting called for that purpose in the case of a municipality with a town meeting form of
123 government; or (iv) by a majority vote of the town council in the case of a municipality with a

124 town council form of government. This section shall take effect on the first day of the calendar
125 quarter following 30 days after its acceptance or on the first day of a later calendar quarter as the
126 city or town may designate. The city or town, in accepting this section, shall not revoke or
127 otherwise amend the applicable local tax rate more often than once in a 12-month period.

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

131 Section 3B. Notwithstanding sections 9 and 10 of chapter 152 of the acts of 1997, the
132 convention center financing fee imposed upon the transfer of a transient accommodation in the
133 cities of Boston, Cambridge, Springfield, Worcester, West Springfield and Chicopee shall revert
134 half to the General Fund and half to the city in which the transient accommodation was
135 transferred.

136 Section 4. Except as provided in section 13, reimbursement for the excise imposed under
137 this chapter shall be paid by the occupant of any such room to the operator and each operator
138 shall add to the rent and collect from the occupant the full amount of the excise imposed by this
139 chapter or an amount equal as nearly as possible or practical to the average equivalent thereof
140 and such excise shall be a debt from the occupant to the operator when so added to the rent and
141 shall be recoverable at law in the same manner as other debts.

142 Section 4A. Notwithstanding this chapter, where occupancy is transferred through the use
143 of a room reseller, the room reseller shall collect and pay to the commissioner the excise upon
144 the amount of rent paid by the occupant to the room reseller, less the amount of rent that the

145 reseller has paid to the operator. The operator shall collect and pay to the commissioner the
146 excise upon the amount of rent paid to the operator by the reseller or the occupant.

147 No assessment shall be made against an operator for an incorrect remittance of the excise
148 under this chapter by an unaffiliated room reseller and no assessment shall be made against a
149 room reseller for an incorrect remittance of the excise under this chapter by an unaffiliated
150 operator.

151 Section 5. The amount of the excise collected by the operator or the room reseller from
152 the occupant pursuant to this chapter shall be stated and charged separately from the rent and
153 shown separately on any record of the excise at the time the transfer of occupancy is made or on
154 any evidence of such transfer issued or used by the operator. A room reseller shall not be
155 required to disclose to the occupant the amount of tax charged by the operator. The room reseller
156 shall represent to the occupant that the separately stated taxes charged by the room reseller
157 include taxes charged by the operator.

158 Section 6. A person shall not operate a bed and breakfast establishment, hotel, lodging
159 house, transient accommodation or motel or operate as a room reseller unless a certificate of
160 registration has been issued to the person in accordance with section 67 of chapter 62C.

161 SECTION 3. Said chapter 64G is hereby further amended by striking out sections 7A and
162 7B, as so appearing, and inserting in place thereof the following 2 sections:-

163 Section 7A. An operator or room reseller who has paid to the commissioner an excise
164 pursuant to section 3 upon an account later determined to be worthless shall be entitled to an
165 abatement of the excise paid on the worthless account. A claim for abatement shall be filed not

166 later than April 15 annually and shall cover the amount of the excise on accounts determined to
167 be worthless in the prior calendar year.

168 An operator or room reseller who recovers an excise on an account determined to be
169 worthless and for which an application for abatement has been filed shall report and include the
170 same in a monthly return at the time of recovery.

171 Section 7B. An operator or room reseller who fails to pay to the commissioner money
172 required to be paid by this chapter shall be personally and individually liable therefor to the
173 commonwealth. As used in this section, the term “operator” or “room reseller” shall include an
174 officer or employee of a corporation or a member or employee of a partnership or a limited
175 liability company who, as such officer, employee or member, is under a duty to pay the taxes
176 imposed by this chapter.

177 An operator who misrepresents to an intermediary that the transfer of occupancy of the
178 operator’s property is exempt from the excise imposed by sections 3 and 3A shall be liable for
179 any unpaid excise under said sections 3 and 3A and shall be deemed to have committed an unfair
180 trade practice under chapter 93A in making such a misrepresentation to the intermediary.

181 SECTION 4. Said chapter 64G is hereby further amended by striking out section 12, as
182 so appearing, and inserting in place thereof the following 4 sections:-

183 Section 12. No excise shall be imposed under this chapter upon the transfer of occupancy
184 of a room in a hotel, lodging house, transient accommodation or motel if the occupant is an
185 employee of the United States military traveling on official United States military orders that
186 encompass the date of such occupancy. Each operator or room reseller shall maintain such
187 records as the commissioner shall require to substantiate exemptions claimed under this section.

188 Section 13. (a) An operator may elect to allow an intermediary to collect rent or facilitate
189 the collection or payment of rent on its behalf through a written agreement on an accommodation
190 subject to the excise under this chapter. An intermediary that enters into a written agreement with
191 the operator to collect rent or facilitate the collection or payment of rent on behalf of the operator
192 on an accommodation subject to the excise under this chapter shall: (i) apply for and obtain a
193 certificate of registration from the commissioner in accordance with section 67 of chapter 62C on
194 behalf of the operator; and (ii) assess, collect, report and remit the excise to the commissioner as
195 described for operators in sections 3, 3A, 5, 7A, 7B and 12. The certificate of registration
196 obtained from the commissioner pursuant to this subsection shall identify and be in the name of
197 the individual operator, not the intermediary.

198 (b) An intermediary collecting and remitting the excise on behalf of an operator shall
199 provide notification within a reasonable time to the operator that the excise has been collected
200 and remitted to the commissioner pursuant to section 3. The notification may be delivered in
201 hand or by mail or conveyed by electronic message, mobile or smart phone application or
202 another similar electronic process, digital media or communication portal. An operator shall not
203 be responsible for collecting and remitting the excise on a transaction for which the operator has
204 received notification from an intermediary that the excise has been collected and remitted to the
205 commissioner on their behalf.

206 (c) The commissioner may enter into a voluntary collection agreement with an
207 intermediary required to remit the excise pursuant to subsection (a) who is willing to assume
208 liability for the collection and remittance of the excise imposed under this chapter on behalf of
209 the operators that the intermediary represents. The intermediary shall not be liable for faults in
210 collecting or remitting the excise proximately caused by the hosting platform's or operator's

211 agent's reasonable reliance on representations made to it by the operator about the nature of the
212 property being rented, the duration of the occupancy or other similar misrepresentations made by
213 the operator to the hosting platform or operator's agent. The operator shall be liable for any
214 unpaid excise resulting from any such misrepresentations. An intermediary shall not be liable for
215 any over collection of the excise if the excise collected was remitted to the commissioner and the
216 over collection resulted from the intermediary's reasonable reliance on the operator's
217 representations about the nature of the property being rented or the nature of the occupancy or
218 whether such property was exempt from the excise. The operator shall be liable for monetary
219 damages to the occupant resulting from any such misrepresentations.

220 The commissioner may promulgate rules and regulations for assessing, reporting,
221 collecting, remitting and enforcing the room occupancy excise pursuant to this section.

222 Section 14. A city or town, by ordinance or bylaw, may regulate operators registered
223 pursuant to section 67 of chapter 62C and impose penalties for the violation of such an ordinance
224 or bylaw. An ordinance or bylaw may require registration, licensing or inspection and may
225 regulate the existence or location of operators.

226 SECTION 5. Section 3 shall take effect for transfers by room resellers and for
227 occupancies in transient accommodations that commence on or after January 1, 2019 and for
228 which contracts with occupants were entered into on or after November 1, 2018.