

HOUSE No. 01689

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

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 passage of the accompanying bill:

An Act relative to the modernization of the room occupancy excise.

PETITION OF:

NAME:

Sean Garballey

DISTRICT/ADDRESS:

23rd Middlesex

HOUSE No. 01689

By Mr. Sean Garballey of Arlington, petition (accompanied by bill, House, No. 01689) of Sean Garballey relative to the room occupancy excise tax. Joint Committee on Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the modernization of 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:

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

3

4 SECTION 1. Section 16 of chapter 62C of the General Laws, as appearing in the 2002
5 Official Edition, is hereby amended by inserting after the word “operator” in line 53 the
6 following words: -- or room reseller .

7 SECTION 2. Section 25 of chapter 62C of the General Laws, as so appearing, is hereby
8 amended by inserting after the word “operator” in line 6 the following words: -- or room
9 reseller.

10 SECTION 3. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby
11 amended by inserting after the word “operator” in line 2 the following words: -- or room reseller
12 .

13 SECTION 4. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby
14 amended by adding after paragraph (b) thereof the following paragraph:--

15 (b1/2) “Doing business in the commonwealth”, ownership or operation of a bed and breakfast
16 establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance
17 otherwise of a place of business in the commonwealth, the presence of an employee in the
18 commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for
19 transfer of occupancy of accommodations located in the commonwealth, solicitation in the
20 commonwealth by a reseller of a contract or other cooperative arrangement with an operator with
21 respect to accommodations located in the commonwealth, inspection in the commonwealth of
22 accommodations that may be the subject of a cooperative arrangement between an operator and a
23 reseller, or other exploitation of the market for accommodations or resale of accommodations
24 located in the commonwealth by any means whatsoever, including, but not limited to, salesmen,
25 solicitors or representatives in the commonwealth, whether such salesmen, solicitors or
26 representatives are employed by the operator or reseller, by a person affiliated with the operator
27 or the reseller by common ownership, or by any other party. This definition is intended to
28 extend the jurisdiction of the commonwealth over operators and resellers to the full extent
29 authorized by the constitution and the laws of the United States; provided, however, that nothing
30 in this paragraph shall be interpreted as authorizing assertion of jurisdiction over an operator or
31 reseller that lacks a direct physical presence in the commonwealth or a physical presence
32 attributed to it by virtue of activities conducted on its behalf by another person .

33 SECTION 5. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby
34 further amended by inserting after the word “operator”, in line 49 thereof, the following words: -
35 - or the room reseller.

36 SECTION 6. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby further
37 amended by inserting at the end thereof the following new subsection:-

38 (k) "Room Reseller" or “Reseller”, any person having any right, permission, license, or other
39 authority from or through an operator to reserve or arrange transfer of occupancy of
40 accommodations the transfer of which is subject to this chapter, such that the occupant pays all
41 or a portion of the rent to the reseller, but such term shall not include a tour operator.

42 SECTION 7. Chapter 64G of the General Laws, as so appearing, is hereby further amended by
43 striking Section 3 thereof and inserting in place thereof the following section: --

44 An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and
45 breakfast establishment, hotel, lodging house, or motel in this commonwealth by any operator or
46 room reseller doing business in the commonwealth at the rate of five per cent of the total amount
47 of rent for each such occupancy. No excises shall be imposed if the total amount of rent paid
48 by the occupant is less than fifteen dollars per day or its equivalent.

49 The operator or room reseller shall pay the excise to the commissioner at the time provided for
50 filing the return required by section sixteen of chapter sixty-two C.

51 SECTION 8. Section 3A of chapter 64G, as so appearing, is hereby amended by striking the
52 first three sentences thereof and inserting in their place the following three sentences:-

53 Any city or town which accepts the provisions of this section shall be authorized to impose a
54 local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast
55 establishment, hotel, lodging house or motel located within such city or town by any operator or
56 room reseller at a rate up to, but not exceeding, four per cent of the total amount of rent paid by
57 the occupant for each such occupancy; provided, however, that the city of Boston is hereby
58 authorized to impose such local excise upon the transfer of occupancy of any room in a bed and
59 breakfast establishment, hotel, lodging house or motel located within said city by any operator or
60 room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid
61 by the occupant for each such occupancy. No excise shall be imposed if the total amount of
62 rent paid by the occupant is less than fifteen dollars per day or its equivalent or if the
63 accommodation is exempt under the provisions of section two of this chapter. The operator or
64 room reseller shall pay the local excise tax imposed under the provisions of this section to the
65 commissioner at the same time and in the same manner as the excise tax due the commonwealth.

66 SECTION 9. Chapter 64G of the General Laws, as so appearing, is hereby further amended by
67 adding after Section 3A thereof the following section:--

68 Section 3B. Notwithstanding any other provision of this chapter, in cases in which occupancy is
69 transferred through the use of a room reseller, the application of the excise shall be as follows:

70 If the room reseller is required to register under Section 6 of this chapter to collect the excise,
71 the room reseller shall collect and pay to the commissioner the excise upon the amount of rent
72 paid by the occupant to the room reseller, less the amount of rent that the reseller has paid to the
73 operator.

74 Whether or not the room reseller is so registered, the operator shall collect and pay to the
75 commissioner the excise upon the amount of rent paid to the operator by the reseller or the
76 occupant.

77 SECTION 10. Chapter 64G of the General Laws, as so appearing, is hereby further amended by
78 striking section 4 thereof and inserting in place thereof the following section:--

79 Reimbursement for the excise imposed under sections 3 and 3A of this chapter shall be paid by
80 the occupant or the room reseller to the operator and by the occupant to the room reseller, as the
81 case may be, and each operator and room reseller doing business in the commonwealth shall add
82 to the rent and shall collect from the occupant or the room reseller the full amount of the excise
83 imposed, in accordance with the requirements of sections 3 and 3A of this chapter, and such
84 excise shall be a debt to the operator or room reseller, when so added to the rent, and shall be r
85 ecoverable at law in the same manner as other debts.

86 SECTION 11. Chapter 64G of the General Laws, as so appearing, is hereby further amended
87 by striking Section 5 thereof and inserting in place thereof the following section:--

88 The amount of the excise collected by the operator or the room reseller under the provisions of
89 this chapter shall be stated and charged separately from the rent and shown separately on any
90 record thereof at the time the transfer of occupancy is made, or on any evidence of such transfer
91 issued or used by the operator or the room reseller.

92 SECTION 12. Chapter 64G of the General Laws, as so appearing, is hereby further amended by
93 striking Section 6 thereof and inserting in place thereof the following section:--

94 No person shall operate a bed and breakfast establishment, hotel, lodging house or motel in this
95 commonwealth, or do business as a room reseller in the commonwealth, unless a certificate of
96 registration has been issued to him in accordance with Section 67 of chapter 62C.

97 SECTION 13. Section 7A of Chapter 64G of the General Laws, as so appearing, is hereby
98 amended by inserting after the word "operator" in line 1 the following words:-- or room reseller .

99 SECTION 14. Section 7A of Chapter 64G of the General Laws, as so appearing, is hereby
100 further amended by inserting after the word "operator" in line 7 the following words:-- or room
101 reseller .

102 SECTION 15. Chapter 64G of the General Laws, as so appearing, is hereby further amended by
103 striking Section 7B thereof and inserting in place thereof the following section:--

104 Every operator or room reseller who fails to pay to the commissioner any sums required to be
105 paid by this chapter shall be personally and individually liable therefor to the commonwealth.
106 The terms "operator" and "room reseller", as used in this section, include an officer or employee
107 of a corporation, or a member or employee of a partnership, who as such officer, employee or
108 member is under a duty to pay over the taxes imposed by this chapter.

109 SECTION 16. Section 12 of Chapter 64G of the General Laws, as so appearing, is hereby
110 amended by inserting after the word "operator" in line 5 the following words:-- and each room
111 reseller .

112 SECTION 17. The commissioner may promulgate rules and regulations necessary to
113 implement sections 1 through 16 hereof.

114 SECTION 18. This act shall be effective for transfers of occupancy taking place on or after
115 January 1, 2011