

**HOUSE . . . . . No. 2515**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Sean Garballey*

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*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 modernization of the room occupancy excise.

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PETITION OF:

NAME:

*Sean Garballey*

DISTRICT/ADDRESS:

*23rd Middlesex*

**HOUSE . . . . . No. 2515**

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By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 2515) of Sean Garballey relative to the room occupancy excise tax. Revenue.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2581 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

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           SECTION 1.     Section 16 of chapter 62C of the General Laws, as appearing in the  
2 2002 Official Edition, is hereby amended by inserting after the word “operator” in line 53 the  
3 following words: -- or room reseller .

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

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

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

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

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

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

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

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

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

47           The operator or room reseller shall pay the excise to the commissioner at the time  
48 provided for filing the return required by secti on sixteen of chapter sixty-two C.

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

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

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

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

70 If the room reseller is required to register under Section 6 of this chapter to collect the  
71 excise, the room reseller shall collect and pay to the commissioner the excise upon the amount of  
72 rent paid by the occupant to the room reseller, less the amount of rent that the reseller has paid  
73 to the 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  
78 amended by 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  
80 paid by the occupant or the room reseller to the operator and by the occupant to the room  
81 reseller, as the case may be, and each operator and room reseller doing business in the  
82 commonwealth shall add to the rent and shall collect from the occupant or the room reseller the  
83 full amount of the excise imposed, in accordance with the requirements of sections 3 and 3A of  
84 this chapter, and such excise shall be a debt to the operator or room reseller, when so added to  
85 the rent, and shall be recoverable at law in the same manner as other debts.

86 SECTION 11. Chapter 64G of the General Laws, as so appearing, is hereby further  
87 amended 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  
89 provisions of this chapter shall be stated and charged separately from the rent and shown  
90 separately on any record thereof at the time the transfer of occupancy is made, or on any  
91 evidence of such transfer 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  
93 amended by 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  
95 in this commonwealth, or do business as a room reseller in the commonwealth, unless a  
96 certificate of 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  
98 hereby amended by inserting after the word “operator” in line 1 the following words:-- or room  
99 reseller .

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

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

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

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

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

115           SECTION 18.   This act shall be effective for transfers of occupancy taking place on  
116 or after January 1, 2014.