

HOUSE No. 4287

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 5, 2018.

The committee on Financial Services to whom was referred the petition (accompanied by resolve, House, No. 3454) of Aaron Michlewitz, Brian Murray and Julian Cyr for legislation to establish a short term residential rental excise, reports recommending that the accompanying bill (House, No. 4287) ought to pass.

For the committee,

AARON MICHLEWITZ.

HOUSE No. 4287

The Commonwealth of Massachusetts

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

An Act regulating and insuring short-term rentals.

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.

2 Chapter 64 of the General Laws is hereby amended by adding after Chapter 64N the
3 following Chapter

4 CHAPTER 64 O: SHORT TERM RESIDENTIAL RENTAL EXCISE

5 Section 1. DEFINITIONS

6 In this Chapter, the following words and phrases shall have the following meaning,
7 unless the context requires otherwise:

8 “Business Entity,” a corporation, partnership, or other legal entity that is not a natural
9 person that owns or leases one or more residential units.

10

11 “Conversion or Convert,” a change of use from Residential Use to Tourist or Transient
12 Use, including, but not limited to, renting a Residential Unit as a Tourist or Transient Use.

13 “Department,” the Department of Revenue.

14 “Director,” the Director of the Department of Revenue.

15 “Hosting Platform,” a person or entity that provides a means through which an occupant
16 may offer a Residential Unit for Tourist or Transient Use. This service is provided through any
17 website, software, online-enabled application, mobile phone application or some other similar
18 process to advertise the Residential Unit through a website provided by the Hosting Platform and
19 provides a means for potential tourist or transient users to arrange Tourist or Transient Use and
20 payment, whether the tourist or transient pays rent directly to the Principal Occupant or to the
21 Hosting Platform.

22 “Interested Party,” a Resident of the Building in which the Tourist or Transient Use is
23 alleged to occur, any homeowner association associated with the Residential Unit in which the
24 Tourist or Transient Use is alleged to occur, the owner of the Residential Unit in which the
25 Tourist or Transient Use is alleged to occur, the relevant city or town, or the commonwealth.

26 “Investor Host,” any person who is the owner of, or lessee of, residential units who is
27 renting six or more residential units for tourist or transient use. A host shall be classified as an
28 Investor host if they do not employ a manager who is responsible for the upkeep and
29 maintenance of the units and is available either on-site or on call 24 hours a day and does not
30 maintain liability insurance in excess of one million dollars.

31 “Professionally Managed Host,” any person who is the owner of, or lessee of, residential
32 units who is renting three or more said residential units for tourist or transient use.

33 “Relevant City or Town,” the city or town where the Residence in question is located.

34 “Renter,” an individual who is engaging in a Short-Term Residential Rental for Tourist or
35 Transient Use.

36 “Residential Host,” any person who is the owner of, or lessee of, a residential unit or
37 units who is renting less than three said residential unit or units for tourist or transient use. The
38 host shall not offer more than one residential unit for tourist or transient use per relevant city or
39 town.

40 “Residential Unit or Residence,” a room or rooms, including a condominium or a room or
41 dwelling unit that forms part of a tenancy-in-common arrangement, in any building, or portion
42 thereof, which is designed, built, rented, leased, let or hired out to be occupied for Residential
43 Use, as defined by the relevant Housing Code.

44 “Residential Use,” any use for occupancy of a Residential Unit by an Occupant.

45 “Short-Term Residential Rental,” a Tourist or Transient Use where all of the following
46 conditions are met:

47 (a) the Residential Unit is offered for Tourist or Transient Use by the Investor,
48 Residential, or Professionally Managed Host of the Residential Unit on a hosting platform;

49 (b) the Host or business entity has registered the Residential Unit and maintains good
50 standing on the Department’s Short-Term Residential Rental Registry.

51 “Short-Term Residential Rental Registry or Registry,” a database of information
52 maintained by the Department that includes information regarding Hosts who are offering
53 Residential Units for Short-Term Residential Rental. The Registry shall be available for public
54 review to the extent required by law, except that, to the extent permitted by law, the Department
55 shall redact any individual names, tax data, from the records available for public review.

56 “Tourist or Transient Use,” any use of a Residential Unit for Occupancy for less than a
57 30-day term of tenancy, or occupancy for less than 30 days of a Residential Unit leased or owned
58 by a Business Entity, whether on a short-term or long-term basis, including any occupancy by
59 employees or guests of a Business Entity for less than 30 days where payment for the Residential
60 Unit is contracted for or paid by the Business Entity.

61 Section 2.

62 An excise is hereby imposed upon Renters of Short-Term Residential Rentals of a
63 Residence for Tourist or Transient use in this commonwealth, as set forth in Section 11 of this
64 Chapter at the rate of 4 per cent for the total amount of rent for each rental by a residential host,
65 as defined in Chapter 64O; of 5.7 per cent for the total amount of rent for each rental by a
66 professionally managed host, as defined in Chapter 64O; and of 8 per cent for the total amount of
67 rent for each rental by a investor host, as defined in Chapter 64O, if applicable. No excise shall
68 be imposed if the total amount of rent is less than fifteen dollars per day or its equivalent.

69 Section 3.

70 Any city or town which accepts the provisions of this section shall be authorized to
71 impose a local excise tax upon Renters of Short-Term Residential Rentals of a Residence for
72 Tourist or Transient Use, as set forth in Section 11 of this Chapter, of a residence within such

73 city or town at a rate up to, but not exceeding, 5 per cent for the total amount of rent for each
74 rental by a residential host; of 6 per cent for the total amount of rent for each rental by a
75 professionally managed host; No excise shall be imposed if the total amount of rent is less than
76 fifteen dollars per day or its equivalent. The hosting platform shall pay the local excise tax
77 imposed under the provisions of this section to the commissioner of the department of revenue at
78 the same time and in the same manner as the excise tax due to the commonwealth. All sums
79 received by the commissioner under this section as excise shall at least quarterly be distributed,
80 credited and paid by the state treasurer upon certification to the commissioner to each city or
81 town that has adopted the provisions of this section in proportion to the amount of such sums
82 received from the Short-Term Residential Rentals in each such city or town.

83 Any city or town which accepts the provisions of this section shall promulgate rules and
84 regulations requiring all Short-Term Residential rentals within the city or town to undergo a
85 safety inspection before said unit shall be offered for Tourist or Transient Use. The city or town
86 in question shall have 30 days after the host has registered the unit to inspect said unit. If the unit
87 is not inspected within 30 days the host may offer the unit for Tourist or Transient use on a
88 temporary basis. The cost of the inspections shall be charged to the hosts. After the initial safety
89 inspection cities and towns shall determine the level of frequency of any future inspections.

90 This section shall only take effect in a city or town accepting the provisions of this
91 section by a majority vote of the city council with approval of the mayor, in the case of a city
92 with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a city with
93 Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a special
94 meeting called for the purpose, in the case of a municipality with a town meeting form of
95 government; or by a majority vote of the town council, in the case of a municipality with a town

96 council form of government. The provisions of this section shall take effect on the first day of the
97 calendar quarter following thirty days after such acceptance, or on the first day of such later
98 calendar quarter as the city or town may designate. The city or town, in accepting the provisions
99 of this section, may not revoke or otherwise amend the applicable local tax rate more often than
100 once in any twelve month period.

101 The commissioner of the department of revenue shall make available to any city or town
102 requesting such information the total amount of tax collected under this section in the preceding
103 fiscal year in the city or town requesting this information.

104 Section 4.

105 It shall be a local option for all cities and towns within the commonwealth to classify
106 hosts within their jurisdiction as follows:

107 “Any city or town which accepts the provisions of this section shall be authorized to
108 impose a local excise tax upon Investor Host Renters of Short-Term Residential Rentals of a
109 Residence for Tourist or Transient Use, as set forth in Section 11 of this Chapter, of a residence
110 within such city or town at a rate up to, but not exceeding, 10 per cent for the total amount of
111 rent.

112 Any city or town which accepts the provisions of this section shall distribute half of the
113 funds received from investor hosts to programs addressing either local infrastructure needs or
114 low and moderate-income housing programs.

115 Any city or town which accepts the provisions of this section shall promulgate rules and
116 regulations requiring all Short-Term Residential rentals within the city or town to undergo a

117 safety inspection before said unit shall be offered for Tourist or Transient Use. The city or town
118 in question shall have 30 days after the host has registered the unit to inspect said unit. If the unit
119 is not inspected within 30 days the host may offer the unit for Tourist or Transient use on a
120 temporary basis. The cost of the inspections shall be charged to the hosts. After the initial safety
121 inspection cities and towns shall determine the level of frequency of any future inspections.

122 This section shall only take effect in a city or town accepting the provisions of this
123 section by a majority vote of the city council with approval of the mayor, in the case of a city
124 with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a city with
125 Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a special
126 meeting called for the purpose, in the case of a municipality with a town meeting form of
127 government; or by a majority vote of the town council, in the case of a municipality with a town
128 council form of government. The provisions of this section shall take effect on the first day of the
129 calendar quarter following thirty days after such acceptance, or on the first day of such later
130 calendar quarter as the city or town may designate. The city or town, in accepting the provisions
131 of this section, may not revoke or otherwise amend the applicable local tax rate more often than
132 once in any twelve month period.

133 Section 5.

134 It shall be a local option for all cities and towns within the commonwealth to restrict
135 Short-Term Residential Rentals of Residential Units in accordance with Section 11 of this
136 Chapter to Permanent Residents of the Residential Unit.

137 To demonstrate that the applicant is a Permanent Resident, the applicant shall provide the
138 Relevant City or Town with an Affidavit, signed under the pains and penalties of perjury, stating

139 that the Residential Unit in question is the applicant's Primary Residence as well as tax
140 documents showing the Residential Unit as the applicant's Primary Residence for home owners'
141 tax exemption purposes.

142 Section 5 of this Chapter shall take effect in a city or town upon its acceptance in the
143 following manner: by a majority vote of the city council with approval of the mayor, in the case
144 of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a
145 city a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a
146 special meeting called for the purpose, in the case of a municipality with a town meeting form of
147 government; or by a majority vote of the town council, in the case of a municipality with a town
148 council form of government.

149 Section 6

150 It shall be a local option for all cities and towns within the commonwealth to restrict the
151 number of days a host may rent out a Short-Term Residential Unit.

152 Section 6 of this Chapter shall take effect in a city or town upon its acceptance in the
153 following manner: by a majority vote of the city council with approval of the mayor, in the case
154 of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a
155 city with Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a
156 special meeting called for the purpose, in the case of a municipality with a town meeting form of
157 government; or by a majority vote of the town council, in the case of a municipality with a town
158 council form of government.

159 Section 7.

160 It shall be a local option for all cities and town within the commonwealth to require Hosts
161 to obtain a business license with the relevant local authority.

162 Section 7 of this Chapter shall take effect in a city or town upon its acceptance in the
163 following manner: by a majority vote of the city council with approval of the mayor, in the case
164 of a city with Plan A, B, or Plan F charter; by a majority vote of the city council, in the case of a
165 city with Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a
166 special meeting called for the purpose, in the case of a municipality with a town meeting form of
167 government; or by a majority vote of the town council, in the case of a municipality with a town
168 council form of government.

169 Section 8.

170 Reimbursement for the excise hereby imposed shall be paid by the Renter of such
171 Residence or Residences to the Hosts or Hosting Platform. Hosts and Hosting Platforms in this
172 commonwealth shall add to the rent and shall collect from the Renter the full amount of the
173 excise imposed by this chapter, and such excise shall be a debt from the Renter to the Host or
174 Hosting Platform, when so added to the rent, and shall be recoverable at law in the same manner
175 as other debts.

176 Section 9.

177 The amount of the excise collected by the Host or Hosting Platform from the renter under
178 the provisions of this Chapter shall be stated and charged separately from the rent and shown
179 separately on any record thereof at the time the transfer of occupancy is made, or on any
180 evidence of such transfer issued or used by the operator.

181 Section 10.

182 (a) Except as set forth in Section 11 of this Chapter, it shall be unlawful for:

183 1. any Hosts to offer a Residential Unit for rent for Tourist or Transient Use
184 on a hosting platform;

185 2. any Hosts to offer a Residential Unit for rent to a Business Entity on a
186 hosting platform that will allow the use of a Residential Unit for Tourist or Transient Use; or

187 3. any Business Entity to allow the use of a Residential Unit for Tourist or
188 Transient Use offered on a hosting platform.

189 (b) The Host and Business Entity, if any, shall retain and make available to the
190 Department and the Relevant City or Town records to demonstrate compliance with this Act,
191 upon written request as provided herein. Any Hosts offering his or her Residence as a Short-
192 Term Residential Rental shall retain and make available to the Department and the Relevant City
193 or Town records to demonstrate compliance with this Chapter, including, but not limited to,
194 records demonstrating Residence, and the number of days per calendar year the Residential Unit
195 has been rented for Short-Term Residential Use, including specific dates and the duration of each
196 stay.

197 (c) Upon filing of a written Complaint that a Host or Business Entity has engaged in
198 an alleged unlawful Conversion or that a Hosting Platform is not complying with the
199 requirements of this Act, the Relevant City or Town shall take reasonable steps necessary to
200 determine the validity of the Complaint. The Relevant City or Town may independently
201 determine whether a Host or Business Entity may be renting a Residential Unit for Tourist or

202 Transient Use in violation of this Chapter or whether a Hosting Platform has failed to comply
203 with the requirements of this Act.

204 To determine if there is a violation of this Act, the Relevant City or Town may initiate an
205 investigation of the subject property or Hosting Platform's allegedly unlawful activities. This
206 investigation may include, but is not limited to, an inspection of the subject property by the
207 Relevant City or Town and/or a request for any pertinent information from the Host, Business
208 Entity, owner, or Hosting Platform, such as leases, business records, or other relevant
209 documents. The Relevant City or Town shall have discretion to determine whether there is a
210 potential violation of this Act. Notwithstanding any other provision of this Chapter, any alleged
211 violation related to failure to comply with the requirements of the Business and Tax Regulations
212 Code shall be enforced by the Treasurer/Tax Collector under the provisions of that Code.

213 (d) The Relevant City or Town or the State Attorney General's Office may institute
214 civil proceedings for injunctive and monetary relief, including civil penalties, against a Host,
215 Business Entity, or Hosting Platform for violations of this Chapter at any time. Following the
216 filing of a Complaint by the Relevant City or Town or the State Attorney General's Office, any
217 Interested Party may institute civil proceedings for injunctive relief against an owner, host, or
218 Business Entity under this Chapter.

219 (e) If the Relevant City or Town or the State Attorney General's Office is the
220 prevailing party in any civil action under this Chapter, a Host or Business Entity in violation of
221 this Chapter or a Hosting Platform in violation of this Chapter may be liable for civil penalties of
222 not more than \$1,000 per day for the period of the unlawful activity. Other Interested Parties may
223 not seek monetary damages. If the Relevant City or Town, the Department, or any other

224 Interested Party, is the prevailing party, the Interested Party shall be entitled to the costs of
225 enforcing this Chapter, including reasonable attorneys' fees, pursuant to an order of the Court.
226 Any monetary award obtained by the Relevant City or Town or by the commonwealth in such a
227 civil action shall be divided with half of the monetary award given to the Department and half of
228 the monetary award given to the Relevant City or Town. Both the State and the Relevant City or
229 Town shall use said monetary awards for enforcement of this Chapter and, through the use of
230 these funds, shall reimburse other departments and agencies in the Relevant City or Town and in
231 the commonwealth for all costs and fees incurred in the enforcement of this Chapter.

232 (f) Any Host or Business Entity who rents a Residential Unit for Tourist or Transient
233 Use in violation of this Chapter shall be guilty of a misdemeanor. Any person convicted of a
234 misdemeanor hereunder shall be punishable by a fine of not more than \$1,000 or by
235 imprisonment of not more than six months, or by both. Each Residential Unit rented for Tourist
236 or Transient Use shall constitute a separate offense.

237 Section 11.

238 (a) Notwithstanding the restrictions set forth in this section, a Host may offer a
239 residential unit as a Short-Term Residential Rental if:

240 i. The Host complies with any and all applicable provisions of State and Federal
241 law, as well as the relevant municipal code, including but not limited to the requirements of the
242 Business and Tax Regulations Code by, among any other applicable requirements, collecting and
243 remitting all required transient occupancy taxes, and the occupancy requirements of the relevant
244 housing code;

245 ii. The Host maintains liability insurance appropriate to cover the Short-Term
246 Residential Rental Use in the aggregate of not less than \$1,000,000 or conducts each Short-Term
247 Residential Rental transaction through a Hosting Platform that provides equal or greater
248 coverage. Such coverage shall defend and indemnify the host and, as named additional
249 insured(s), any tenant(s) and owner(s) in the building for their bodily injury and property damage
250 arising from the Short-Term Residential Use;

251 iii. The Residential Unit is registered on the Short-Term Residential Rental Registry;

252 iv. Hosts shall maintain records that shows the number of days per calendar year the
253 Residential Unit has been rented as a Short-Term Residential Rental, These records shall be
254 provided to the Relevant City or Town.

255 v. For units subject to rent control provisions, the Host shall comply with the initial
256 rent limitation for subtenants and shall charge the Renter no more rent than the rent the host is
257 paying to any landlord per month; and

258 vi. The Host can demonstrate to the satisfaction of the Relevant City or Town that the
259 Residential Unit and the property on which it is located is not subject to any outstanding
260 building, electrical, plumbing, mechanical, fire, health, housing, police, or planning code
261 enforcement, including any notices of violation, notices to cure, orders of abatement, cease and
262 desist orders, or correction notices.

263 vii. A Host offering a Residential Unit for Short-Term Residential Rental shall post
264 inside the Residential Unit information regarding the location of all fire extinguishers, gas shut
265 off valves, fire exits, and fire alarms in the unit and building.

266 viii. Offering a Residential Unit for Short-Term Residential Rental, including but not
267 limited to advertising the Residential Unit’s availability, while not maintaining good standing on
268 the Registry shall constitute an unlawful conversion in violation of this Chapter and shall subject
269 the person or entity offering the unit in such a manner to the administrative penalties and
270 enforcement procedures, including civil penalties, of this Chapter.

271 Section 12.

272 (a) All Hosting Platforms shall provide the following information in a notice to any
273 user listing a Residential Unit located within the commonwealth through the Hosting Platform’s
274 service. The notice shall be provided prior to the user listing a Residential Unit or renting a
275 Residential Unit and shall include the following information: that this Act regulates Short-Term
276 Rental of Residential Units, and the transient occupancy tax obligations related to the rental.

277 (b) A Hosting Platform shall comply with the requirements of the Business and Tax
278 Regulations Code by, among other applicable requirements, collecting and remitting all required
279 Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability
280 related to a host’s, resident’s, or Business Entity’s failure to comply with the requirements of the
281 Business and Tax Regulations Code. A Hosting Platform shall maintain a record demonstrating
282 that the taxes have been remitted to the Department of Revenue and shall make this record
283 available to the Department of Revenue upon request.

284 (c) A Hosting Platform or Host shall not discriminate in who they rent the Short-
285 Term Residential Rental to on the basis of race, sex, ethnicity, sexual orientation, age, religion,
286 disability, or nationality.

287 (d) Any violation of a Hosting Platform’s responsibilities under this Chapter shall
288 subject the Hosting Platform to the administrative penalties and enforcement provisions of this
289 Act, including but not limited to payment of civil penalties of up to \$1,000 per day for the period
290 of the failure to comply, with the exception that any violation related to failure to comply with
291 the requirements of the Business and Tax Regulations Code shall be enforced by the Department
292 of Revenue under that code.

293 Section 13.

294 (a) The exception set forth in Section 11 of this Chapter provides an exception only
295 to the requirements established in this Act. It does not confer a right to lease, sublease, or
296 otherwise offer a residential unit for Short-Term Residential Use where such use is not otherwise
297 allowed by law, a homeowners association agreement or requirements, a rental agreement, or any
298 other restriction, covenant, requirement, or enforceable agreement.

299 (b) Notwithstanding any other provision of this Chapter, nothing in this Chapter shall
300 relieve an individual, Business Entity, or Hosting Platform of the obligations imposed by any and
301 all applicable provisions of state or municipal law, including but not limited to those obligations
302 imposed by the Business and Tax Regulations Code. Further, nothing in this Chapter shall be
303 construed to limit any remedies available under any and all applicable provisions of state and
304 municipal law.

305 (c) Notwithstanding any provisions of this chapter, nothing in this chapter shall apply
306 to ‘Bed and Breakfast homes’ or ‘Bed and Breakfast establishments’ as defined in Section 1 of
307 Chapter 64G of the Massachusetts General Laws.

308 Section 14.

309 No excise shall be imposed, pursuant to this Chapter, upon the rental of a Short-Term
310 Rental of a Residential Unit if the Renter is an employee of the United States military traveling
311 on official United States military orders which encompass the date of said rental. Each Host and
312 Hosting Platform shall maintain such records as the commissioner shall require to substantiate
313 exemptions claimed under this section.

314 SECTION 2.

315 Said Chapter 175 is hereby amended by adding, after section 4D, the following section.

316 Section 4E. Insurers that write homeowners and renters insurance may exclude any
317 and all coverage afforded under the policy issued to a homeowner or lessee for any claim
318 resulting from a short-term residential rental under chapter 64N of the general laws.

319 Insurers that exclude the coverage described in this section shall not have a duty to
320 defend or indemnify any claim expressly excluded by a policy. Nothing shall preclude an insurer
321 from providing coverage for short-term residential rentals if the insurer chooses to do so by
322 contract or endorsement.

323 Any Host who has homeowners insurance shall be required to provide notice to all
324 insurers that the occupant intends to use the residential unit in question as a short-term residential
325 rental.

326 It shall be required that the Hosting Platform provide notice to any potential Hosts that
327 standard homeowners or renters insurance may not cover Hosts for damage or injury to a third
328 party related to short-term rental activities.

329 Any policy forms intended to cover Hosts from liability exposures associated with short-
330 term rentals, whether they are being provided by the Hosting Platforms or the Hosts themselves,
331 shall be placed on file with the Massachusetts Division of Insurance.

332 SECTION 3.

333 The Department shall establish the Short-Term Residential Rental Registry and all cities
334 and towns within the Commonwealth shall establish a system for evaluating applicants no later
335 than December 31, 2018.