

HOUSE No. 4327

House bill No. 4314, as changed by the committee on Bills in the Third Reading, and as amended and passed to be engrossed by the House. March 22, 2018.

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. Section 6 of chapter 14 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following 2 clauses:-

3 11. Shall establish and maintain a short-term rental registry to record the name of each
4 host and the corresponding address of each residential unit offered for short-term rental under
5 chapter 64O. The commissioner may charge a reasonable fee for such registration.

6 12. Shall maintain on the department’s website an easily searchable and regularly
7 updated list of addresses of all residential units offered for short-term rental registered in the
8 short-term rental registry established in clause 11, excluding the names of the hosts of said
9 properties.

10 SECTION 1A. Chapter 29C of the General Laws, as appearing in the 2016 Official
11 Edition, is hereby amended by inserting after section 18 the following new sections:—

12 Section 19. There shall be established and set up on the books of the trust a separate fund
13 to be known as the Cape Cod and Islands Water Protection Fund, referred to in this section as the
14 fund. Except as otherwise specifically provided in this section, the provisions of this chapter
15 shall be applicable to the fund. There shall be credited to the fund revenue from appropriations or
16 other monies authorized by the general court and specifically designated to be credited to the
17 fund, including but not limited to any investment income earned on the fund's assets and all
18 other sources, each source being tracked separately for accounting purposes as of June 30 of each
19 year. The trust shall hold the fund in an account or accounts separate from other funds of the
20 trust. Proceeds of the fund shall not be used to offset or otherwise replace contract assistance
21 funds nor shall they be used to offset or otherwise replace reserve funds used for pool financing.
22 The trust shall apply and disburse amounts credited to the fund, without further appropriation, to
23 provide additional subsidies and other assistance, which may include principal forgiveness, to
24 local governmental units and other eligible borrowers in the payment of debt service costs on
25 loans and other forms of financial assistance made by the trust for water pollution abatement
26 projects in Barnstable, Dukes and Nantucket counties upon approval of an areawide waste
27 management plan under section 208 of the federal Clean Water Act in said counties that is
28 certified, on or after June 1, 2015, by the governor or the governor's designee, referred to in this
29 section as a 208 plan, or a suitable equivalent as established by the department of environmental
30 protection, respectively, for each county. Any such projects shall be consistent with an approved
31 208 plan, as determined pursuant to paragraph (d) of section 6 of this chapter and may include
32 projects utilizing innovative and alternative Title V technologies that result in nutrient reduction
33 for marine and fresh waters. In the case of projects in the towns of Nantucket, Edgartown,
34 Tisbury and Oak Bluffs subject to the approval of a 208 plan, or suitable equivalent as

35 established by the department of environmental protection, and the towns of Barnstable,
36 Falmouth, Chatham and Provincetown, the fund shall also provide subsidies and assistance as
37 aforesaid with respect to debt incurred by such towns apart from the trust prior to the
38 establishment of the fund. Amounts credited to the fund shall be expended or applied, in a
39 manner determined by, and only with the approval of the Cape Cod and Islands Water Protection
40 Fund Management Board established under section 20 of this chapter, in addition to any
41 approvals required under this chapter. From amounts deposited in the fund, the trust shall
42 transfer to the department of environmental protection ten per cent of the annual revenue
43 deposited into the fund, for the purposes of contracting with a single regional planning agency or
44 non-profit corporation to evaluate and report on the efficacy of adaptive management measures
45 to reduce nitrogen pollution of coastal waterways undertaken pursuant to a 208 plan, to monitor
46 the water quality of areas subject to said study and to support further assessment and water
47 quality modeling to further refine said study. Any amounts remaining in the fund at the end of a
48 fiscal year shall be carried forward into the following fiscal year and shall remain available for
49 application and disbursement without further appropriation. Any municipality included in the
50 fund under this section may opt to withdraw from the fund no sooner than one year after the
51 effective date of this act by a majority vote of its legislative body; provided, however, that a
52 municipality may not withdraw from the fund during the term of any financial assistance award
53 from the fund to said municipality. Any municipality that has withdrawn from the fund and
54 votes, by majority vote of its legislative body, to return to the fund shall not receive money from
55 the fund until at least two years from the date of its vote to do so.

56 Section 20. There is hereby established a Cape Cod and Islands Water Protection Fund
57 Management Board, referred to in this section as the management board, consisting of 1 person

58 to be appointed by each board of selectmen or town council in each of the municipalities within
59 an areawide waste management plan approved under section 208 of the federal Clean Water Act
60 in Barnstable, Dukes and Nantucket counties, that is certified, on or after June 1, 2015, by the
61 governor or the governor's designee, referred to in this section as a 208 plan; provided,
62 however, that the appointees by the boards of selectmen or town councils shall be either
63 members of their respective appointing authority, its town manager or administrator or other
64 municipally employed professional staff. Each municipality within Barnstable County shall have
65 representation on the management board, and the executive director of the Cape Cod
66 Commission shall serve as an ex-officio member. Each municipality in Dukes County shall have
67 a representative, the executive director of the Martha's Vineyard Commission shall serve as an
68 ex-officio member, the town manager of Nantucket shall be a member and the Chair of the
69 Nantucket County Commissioners shall serve as an ex-officio member on the management
70 board, upon approval of a 208 plan. Each member of the management board shall serve for a
71 term of 3 years and until a successor is appointed and qualified, and each member of the
72 management board shall be eligible for reappointment. Each member of the management board
73 appointed to fill a vacancy on the management board shall be appointed for the unexpired term
74 of the vacant position. The members of the management board shall select a member to serve as
75 chairperson and vice-chairperson for a term established by vote of the management board. The
76 Cape Cod Commission, in consultation with the Martha's Vineyard Commission, shall provide
77 administrative and technical support to said management board and may be compensated for its
78 associated costs by vote of the management board. The management board duties are limited to
79 determining the method for subsidy allocation and to ensuring that monies from the Cape Cod

80 and Islands Water Protection Fund are spent only for the purposes listed in section 19 of this
81 chapter.

82 SECTION 2. Section 16 of chapter 62C of the General Laws, as so appearing, is hereby
83 amended by inserting after subsection (g) the following subsection:-

84 (g1/2) Every host, or by agreement, hosting platform, as defined in section 1 of chapter
85 64 O, subject to taxation under said chapter 64O, shall file a return with the commissioner for
86 each calendar quarter. The commissioner may by regulation require returns under this section to
87 be filed on an annual rather than a quarterly basis or on such other basis as the commissioner
88 may determine and to have different filing periods for different groups of hosts or hosting
89 platforms. Every such return shall be filed within 20 days after the expiration of the period
90 covered thereby.

91 SECTION 3. Section 21 of said chapter 62C, as so appearing, is hereby amended by
92 striking out, in line 162, the words “and chapter 64L” and inserting in place thereof the following
93 words:-, chapter 64L and chapter 64O.

94 SECTION 4. The General Laws are hereby amended by inserting after chapter 64N the
95 following chapter:-

96 CHAPTER 64O

97 SHORT-TERM RENTAL EXCISE

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

100 “Commissioner”, the commissioner of the department of revenue.

101 “Department”, the department of revenue.

102 “Host”, an investor host, a professionally managed host, or a residential host.

103 “Hosting platform”, a person or entity that provides a service through which hosts may
104 offer a residential unit for short-term rental to an occupant through a website, software, online-
105 enabled application, mobile phone application or other similar advertising process, and for which
106 the person or entity collects or receives, directly or indirectly through an agent or intermediary, a
107 fee.

108 “Investor host”, whoever rents between 3 and 5 residential units for short-term rental.

109 “Occupant”, a person who, for consideration, uses, possesses or has a right to use or
110 possess a residential unit offered for short-term rental.

111 “Professionally managed host”, whoever rents 6 or more residential units for short-term
112 rental.

113 “Property manager”, an individual who is responsible for the upkeep and maintenance of
114 residential units and is available either on-site or on-call 24 hours per day.

115 “Residential host”, whoever rents 2 or fewer residential units for short-term rental.

116 “Rent”, the consideration paid or payable by an occupant to a host for the occupancy of a
117 residential unit for short-term rental; provided, however, that if a separate fee is charged for
118 services, goods or commodities, that fee shall not be included in rent.

119 “Residential unit”, a room, group of rooms or other living or sleeping space for
120 the lodging of occupants; a single-family dwelling, multi-family dwelling or residential dwelling

121 unit in a multi-unit structure; or a condominium, cooperative, timeshare or similar joint property
122 ownership arrangement, including vacation rentals.

123 “Short-term rental”, the rental of a residential unit for a duration of less than 28
124 consecutive days for a fee; provided, however, that “short-term rental” shall not include the
125 rental of those accommodations that are defined in or covered under section 1 of chapter 64G.

126 Section 2. An excise is hereby imposed upon an occupant of a residential unit offered for
127 short-term rental for the total amount of rent for each short-term rental, at the rate of 4 per cent
128 by a residential host; 5.7 per cent by an investor host; and 8 per cent by a professionally managed
129 host; provided further, that an additional excise at the rate of 2.75 percent shall be imposed on an
130 occupant of a residential unit offered for short-term rental within a municipality that is a member
131 of the Cape and Islands Water Protection Trust Fund as established by section 19 of chapter 29C.
132 No excise shall be imposed if the total amount of rent is less than \$25 per day.

133 Section 3. (a) Any city or town may impose a local excise tax upon an occupant for the
134 total amount of rent for each short-term rental at a rate of up to, but not exceeding, 5 per cent by
135 a residential host; 6 per cent by an investor host; and 10 per cent by a professionally managed
136 host. No excise shall be imposed if the total amount of rent is less than \$25 per day.

137 This subsection shall only take effect in a city or town accepting the provisions of this
138 section by a majority vote of the city council with approval of the mayor, in the case of a city
139 with Plan A, Plan B or Plan F charter; by a majority vote of the city council, in the case of a city
140 with Plan C, Plan D or Plan E charter; by a majority vote of the annual town meeting or a special
141 meeting called for that purpose, in the case of a municipality with a town meeting form of
142 government; or by a majority vote of the town council, in the case of a municipality with a town

143 council form of government. This section shall take effect on the first day of the calendar quarter
144 following 30 days after such acceptance, or on the first day of such later calendar quarter as the
145 city or town may designate. The city or town, in accepting the provisions of this section, may not
146 revoke or otherwise amend the applicable local tax rate more often than once in any 12 month
147 period.

148 (b) Any city or town which accepts subsection (a) shall enact ordinances or by-laws
149 requiring all residential units offered for short-term rental within the city or town to undergo a
150 safety inspection before said residential units shall be rented. The city or town shall have 60 days
151 after the address of a residential unit is listed on the department's website, as required under
152 section 6 of chapter 14, to inspect said unit. If the residential unit is not inspected within 60 days,
153 the host may offer the residential unit for short-term rental on a temporary basis. Any city or
154 town that has a safety inspection program in place as of the effective date of this act may deem
155 any previously completed inspections of residential units to be in compliance with this
156 requirement. The cost of the inspection shall be charged to and paid by the hosts. After the initial
157 safety inspection, cities and towns shall determine the frequency of any subsequent inspections.

158 (c) Any city or town which accepts subsection (a) may require a host to demonstrate that
159 a residential unit is not subject to any outstanding building, electrical, plumbing, mechanical,
160 fire, health, housing or planning code enforcement, including any notices of violation, notices to
161 cure, orders of abatement, cease and desist orders or correction notices.

162 (d) Any city or town which accepts the provisions of subsection (a) shall distribute an
163 amount equal to 50 per cent of the excise tax collected by professionally managed hosts pursuant
164 to this section to programs addressing either local infrastructure needs or low- and moderate-

165 income housing programs; provided however, that not less than 25 per cent of such excise tax
166 collected by professionally managed hosts shall be distributed to low- and moderate-income
167 housing programs.

168 Section 4. Any city or town, whether or not such city or town has accepted section 3, may
169 enact ordinances or bylaws under this chapter.

170 Any city or town, whether or not such city or town has accepted section 3, may establish
171 penalties for failure to comply with ordinances or by-laws enacted by said city or town under this
172 chapter. Any city or town that suspends or terminates a host's right to operate a short-term rental
173 for a violation of any ordinance or bylaw shall notify the commissioner of said suspension or
174 termination.

175 Any city or town, whether or not such city or town has accepted section 3, may restrict
176 short-term rentals, including but not limited to, a restriction on the number of days hosts may
177 rent out residential units, a requirement that hosts obtain a business licenses and a requirement
178 that each residential unit is the host's primary residence.

179 Section 5. Any excise tax imposed pursuant to sections 2 and 3 shall be paid by the
180 occupant. Hosts, or, by agreement, hosting platforms, shall add to the rent and shall collect at the
181 same time and in the same manner from the occupant the full amount of the excise tax. Any
182 excise tax shall be stated and charged separately from the rent and shown separately on any
183 record thereof at the time the transfer of occupancy is made, or on any evidence of such transfer
184 issued or used by the host or hosting platform. Hosts, or by agreement, hosting platforms, shall
185 pay the excise to the commissioner at the time provided for filing the return required by section
186 16 of chapter 62C.

187 Hosts, or by agreement, hosting platforms shall pay any local excise tax imposed under
188 section 3 to the commissioner at the same time and in the same manner as the state excise tax
189 imposed under section 2. All sums received by the commissioner shall be distributed, credited
190 and paid at least quarterly by the state treasurer upon certification of the commissioner to each
191 city or town that has adopted the provisions of section 3 in proportion to the amount of such
192 sums received from the short-term rentals in each such city or town.

193 Hosts, or by agreement, hosting platforms shall pay any additional excise tax imposed
194 under section 2 for short-term rentals within a municipality that is a member of the Cape and
195 Islands Water Protection Trust Fund to the commissioner at the same time and in the same
196 manner as the state excise tax. All such sums received by the commissioner shall be distributed,
197 credited and paid at least quarterly by the state treasurer upon certification of the commissioner
198 to the Cape and Islands Water Protection Trust Fund.

199 The commissioner shall make available to any city or town requesting such information
200 the total amount of room occupancy tax collected pursuant to section 3 in the preceding fiscal
201 year in the city or town requesting the information.

202 Section 6. Hosts shall comply with any and all applicable municipal, state and federal
203 laws, including but not limited to the collection and remittance of required excise taxes.

204 Professionally managed hosts shall employ a property manager for each residential unit
205 and maintain \$1,000,000 or more in liability insurance offered for short-term rental.

206 Hosts shall retain and, upon receipt of written request, make available to the department
207 or to the city or town, short-term rental records, including, but not limited to, those records
208 demonstrating a host's place of primary residence and the number of days per calendar year a

209 residential unit has been rented for short-term rental, including the specific dates and the duration
210 of each stay.

211 Hosts shall register each residential unit with the short-term rental registry maintained by
212 the commissioner pursuant to section 6 of chapter 14.

213 Hosts shall be required to provide notice to all insurers of the host's intention to use the
214 residential unit as a short-term rental.

215 Hosts shall post inside the residential unit information regarding the location of all fire
216 extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.

217 Nothing in this chapter shall confer a right to lease, sublease or otherwise offer a
218 residential unit for short-term rental where such use is prohibited by a homeowner's association
219 agreement or requirements, a rental agreement or any other restriction, covenant, requirement or
220 enforceable agreement.

221 Section 7. Prior to any host listing a residential unit for short-term rental through a
222 hosting platform, the hosting platform shall ensure that the host has registered the residential unit
223 with the short-term rental registry maintained by the commissioner under section 6 of chapter 14
224 and shall provide notice to the host that this chapter regulates short-term rentals and establishes
225 state and local excise tax obligations.

226 Hosting platforms that execute the financial transaction between hosts and occupants
227 shall maintain liability insurance of not less than \$1,000,000 to cover each residential unit
228 offered for short-term rental. Such coverage shall defend and indemnify the host and any tenants

229 and owners in the building for bodily injury and property damage arising from the short-term
230 rental.

231 Hosting platforms that execute the financial transaction between hosts and occupants
232 shall collect and remit any taxes required by this chapter. Hosting platforms shall maintain
233 records of any taxes collected that have been remitted to the commissioner and shall make these
234 records available to the department upon request.

235 Hosting platforms shall provide notice to all potential hosts that standard homeowners or
236 renters insurance may not cover damage or injury to a third-party related to short-term rentals.

237 Hosting platforms and hosts shall not discriminate on the basis of race, sex, gender
238 identity, ethnicity, sexual orientation, age, religion, disability or nationality.

239 Section 8. For residential units subject to rent control provisions, hosts shall charge no
240 more than the prorated maximum amount allowed.

241 Section 9. No excise shall be imposed, pursuant to this chapter, for a short-term rental if
242 the occupant is an employee of the United States military traveling on official United States
243 military orders, which encompass the date of said occupancy. Each host and hosting platform
244 shall maintain such records to substantiate exemptions claimed under this section.

245 Section 10. The provisions of chapters 186 and 239 shall not apply to short-term rentals.

246 SECTION 5. Chapter 175 of the General Laws is hereby amended by inserting after
247 section 4E the following section:-

248 Section 4F. Insurers that write homeowners and renters insurance may exclude any and
249 all coverage afforded under a policy issued to a homeowner or lessee for any claim resulting
250 from a short-term rental under chapter 64O.

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

255 SECTION 6. Cities and towns shall conduct initial inspections on short-term rental units
256 listed on the registry, as required under section 3 of chapter 64O of the General Laws, not later
257 than 6 months after the city or town accepts the provisions of said section 3 of said chapter 64O.

258 SECTION 7. Section 1 shall take effect on January 31, 2019.

259 SECTION 8. Sections 2, 3 and 4 shall take effect 1 year after the effective date of this
260 act; provided, however, that the department of revenue shall establish rules and regulations for
261 the collection and remittance of taxes pursuant to section 2 and section 3 of chapter 64O of the
262 General Laws, inserted by section 3 of this act, on or before January 31, 2019.

263 SECTION 9. The Commissioner shall create and make available on the Department’s
264 website an electronic checklist of the residential host requirements established by this act and
265 through regulations.

266 SECTION 10. Section 1 of chapter 40U is hereby amended by deleting the definition of
267 “Unpaid charge,” and inserting in place thereof the following words:—

268 “Unpaid charge”, an unpaid fine incurred as a result of a violation of a rule, regulation,
269 order, ordinance or by-law regulating the housing, sanitary or municipal snow and ice removal
270 requirement or related to the use of property for short-term rental use.