

SENATE No. 1523

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 clarifying occupancy excise and internet hotel room resellers.

PETITION OF:

NAME:

Mark C. Montigny

Denise Provost

DISTRICT/ADDRESS:

Second Bristol and Plymouth

27th Middlesex

SENATE No. 1523

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 1523) of Mark C. Montigny and Denise Provost for legislation to clarify occupancy excise and internet hotel room resellers. Revenue.

The Commonwealth of Massachusetts

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

An Act clarifying occupancy excise and internet hotel room resellers.

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

1 an Act clarifying occupancy excise applies to internet room resellers

2 SECTION 1. Section 1 of chapter 64G of the General Laws, as appearing in the 2012
3 Official Edition, is hereby amended by inserting after paragraph (b) thereof the following
4 paragraph:-

5 (b1/2) "Doing business in the commonwealth", ownership or operation of a bed and
6 breakfast establishment, hotel, lodging house or motel that is located in the commonwealth,
7 maintenance otherwise of a place of business in the commonwealth, the presence of an employee
8 in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of
9 orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in
10 the commonwealth by a reseller of a contract or other cooperative arrangement with an operator
11 with respect to accommodations located in the commonwealth, inspection in the commonwealth
12 of accommodations that may be the subject of a cooperative arrangement between an operator

13 and a reseller, or other exploitation of the market for accommodations or resale of
14 accommodations located in the commonwealth by any means whatsoever, including, but not
15 limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen,
16 solicitors or representatives are employed by the operator or reseller, by a person affiliated with
17 the operator or the reseller by common ownership, or by any other party. This definition is
18 intended to extend the jurisdiction of the commonwealth over operators and resellers to the full
19 extent authorized by the Constitution and the laws of the United States.

20 SECTION 2. Said section 1 of said chapter 64G, as so appearing, is hereby further
21 amended by inserting after the word "operator", in line 49, the following words:- or the room
22 reseller.

23 SECTION 3. Said section 1 of said chapter 64G, as so appearing, is hereby further
24 amended by adding the following paragraphs:-

25 (k) "Room reseller" or "Reseller", any person having any right, permission, license, or
26 other authority from or through an operator to reserve or arrange transfer of occupancy of
27 accommodations the transfer of which is subject to this chapter, such that the occupant pays all
28 or a portion of the rent to the reseller. The term "Room Reseller" or "Reseller" includes, but is
29 not limited to, sellers of travel packages as defined in this chapter.

30 (l) "Travel package," a room or rooms bundled with 1 or more separate components such
31 as air transportation, car rental or similar items and charged to the customer or occupant for a
32 single retail price.

33 SECTION 4. Said chapter 64G is hereby further amended by striking out section 3 and
34 inserting in place thereof the following section:

35 Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or
36 rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth
37 by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of
38 the total amount of rent for each occupancy. No excise shall be imposed if the total amount of
39 rent paid by the occupant is less than \$15 per day or its equivalent. The operator or room reseller
40 shall pay the excise to the commissioner at the time provided for filing the return required by
41 section 16 of chapter 62C.

42 The value of the transfer of any room or rooms bundled as part of a travel package may
43 be determined from the room reseller's books and records that are kept in the regular course of
44 business including, but not limited to, non-tax purposes.

45 SECTION 5. The first paragraph of section 3A of said chapter 64G, as appearing in the
46 2010 Official Edition, is hereby amended by striking out the first, second and third sentences and
47 inserting in place thereof the following 3 sentences:- A city or town that accepts this section may
48 impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and
49 breakfast establishment, hotel, lodging house or motel located within the city or town by any
50 operator or room reseller at a rate up to, but not exceeding, 6 per cent of the total amount of rent
51 paid by the occupant for the occupancy, but the city of Boston may impose a local excise upon
52 the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house
53 or motel located within the city by any operator or room reseller at the rate of up to but not
54 exceeding 6.5 per cent of the total amount of rent paid by the occupant for the occupancy. No
55 excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day
56 or its equivalent or if the accommodation is exempt under section 2. The operator or room

57 reseller shall pay the local excise tax imposed under this section to the commissioner at the same
58 time and in the same manner as the excise tax due the commonwealth.

59 SECTION 6. Said chapter 64G is hereby further amended by striking out sections 4 to 6,
60 as appearing in the 2010 Official Edition, and inserting in place thereof the following 4 sections:

61 Section 3B. Notwithstanding any other provision of this chapter, in cases in which
62 occupancy is transferred through the use of a room reseller, the application of the excise shall be
63 as follows: If the room reseller is required to register under section 6 to collect the excise, the
64 room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid
65 by the occupant to the room reseller, less the amount of rent that the reseller has paid to the
66 operator. Whether or not the room reseller is so registered, the operator shall collect and pay to
67 the commissioner the excise upon the amount of rent paid to the operator by the reseller or the
68 occupant.

69 No assessment shall be made against an operator on the basis of an incorrect remittance
70 of the excise under this chapter by an unaffiliated room reseller and no assessment shall be made
71 against a room reseller on the basis of an incorrect remittance of the excise under this chapter by
72 an unaffiliated operator.

73 Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid
74 by the occupant or the room reseller to the operator and by the occupant to the room reseller, as
75 the case may be, and each operator and room reseller doing business in the commonwealth shall
76 add to the rent and shall collect from the occupant or the room reseller the full amount of the
77 excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the

78 operator or room reseller, when so added to the rent, and shall be recoverable at law in the same
79 manner as other debts.

80 Section 5. The amount of the excise collected by the operator or the room reseller under
81 this chapter shall be stated and charged separately from the rent and shown separately on any
82 record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer
83 issued or used by the operator or the room reseller. A room reseller shall not be required to
84 disclose to the occupant the amount of tax charged by the operator. The reseller shall represent to
85 the occupant that the separately stated taxes charged by the reseller include taxes charged by the
86 operator.

87 Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging
88 house or motel in this commonwealth, or do business as a room reseller in the commonwealth,
89 unless a certificate of registration has been issued to that person in accordance with section 67 of
90 chapter 62C.

91 SECTION 7. Section 7A of said chapter 64G, as appearing in the 2010 Official Edition,
92 is hereby amended by inserting after the word "operator", in line 1 and in line 7, the following
93 words: or room reseller .

94 SECTION 8. Said chapter 64G is hereby further amended by striking out section 7B and
95 inserting in place thereof the following section:

96 Section 7B. Every operator or room reseller who fails to pay to the commissioner any
97 sums required to be paid by this chapter shall be personally and individually liable for those
98 amounts to the commonwealth. The terms "operator" and "room reseller", as used in this section,

99 include an officer or employee of a corporation, or a member or employee of a partnership, who
100 as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

101 SECTION 9. Section 12 of said chapter 64G, as appearing in the 2010 Official Edition,
102 is hereby amended by inserting after the word "operator", in line 5, the following words: and
103 each room reseller.

104 SECTION 10. For purposes of the convention center surcharge imposed by section 9 of
105 chapter 152 of the acts of 1997, as amended, the term "operator" shall mean "operator or room
106 reseller.""

107 SECTION 11. Section 95 of chapter 173 of the acts of 2008 is hereby repealed