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SENATE BILL NO. 751

Offered January 22, 2016

A *BILL to amend and reenact § 15.2-2288.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2288.7, by adding in Title 55 a chapter numbered 13.4, consisting of sections numbered 55-248.53 through 55-248.57, and by adding a section numbered 58.1-3719.2, relating to establishing the Limited Residential Lodging and Short-term Rental Lodging Act; penalty.*

Patron—DeSteph

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That 15.2-2288.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2288.7, by adding in Title 55 a chapter numbered 13.4, consisting of sections numbered 55-248.53 through 55-248.57, and by adding a section numbered 58.1-3719.2 as follows:

§ 15.2-2288.1. Localities may not require a special use permit for certain residential uses.

No local ordinance shall require as a condition of approval of a subdivision plat, site plan, or plan of development, or issuance of a building permit, that a special exception, special use, or conditional use permit be obtained for the development and construction of residential dwellings at the use, height and density permitted by right under the local zoning ordinance. Nothing herein shall restrict the use of the special exception, special use, or conditional use permit process on application of a property owner for (i) a cluster or town center as an optional form of residential development at a density greater than that permitted by right, or otherwise permitted by local ordinance; (ii) use in an area designated for steep slope mountain development; (iii) use as a utility facility to serve a residential development; or (iv) nonresidential uses including but not limited to home businesses, home occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, *short-term rentals of lodging in residential and commercial units*, and shelters established for the purpose of providing human services to the occupants thereof.

§ 15.2-2288.7. Special exception provisions for short-term rentals.

Any local ordinance requiring the use of the special exception, special use, or conditional use permit for short-term rental lodging shall require that (i) such units be registered as short-term rental lodging with the locality; (ii) the owner provide, at least annually, evidence to the locality of collection and remittance of all applicable state and local taxes related to such rental as required by law; (iii) short-term rental lodging not generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his residence; (iv) there be no accessory signs signifying the property as used for short-term rental lodging; (v) guests of short-term lodgers be allowed only between the hours of 8:00 a.m. and 12:00 a.m.; (vi) short-term lodgers be notified of the trash and recycle collection days for the property and any applicable rules and regulations pertaining to leaving or storing trash on the exterior of the property, and proper containers be made available to the short-term lodgers; (vii) short-term lodgers be notified of any applicable local noise ordinances and that violation of any such ordinance may result in fines and penalties; (viii) the short-term lodging operator or his designee provide contact information to a short-term lodger for the purpose of responding to complaints regarding the condition or operation of the unit; (ix) the short-term lodging operator post or provide within each unit a clearly visible list of emergency information, including emergency numbers, emergency exit information, and the location of fire extinguishers or pull fire alarms in each unit offered for short-term lodging purposes and the common areas of the building; (x) the short-term lodging operator ensure that each unit is equipped with functioning smoke and fire detection systems and carbon monoxide alarms as required by applicable law and codes for the unit; (xi) the short-term lodging operator ensure that he has no less than \$500,000 of liability insurance covering the short-term lodging use or that each short-term lodging use is conducted through a hosting platform that provides equal or greater coverage for such use; and (xii) there shall be penalties for a failure to register the short-term rental lodging unit. Only units that are in compliance with the local ordinance may be made as short-term rental lodging units as defined in § 55-248.53.

CHAPTER 13.4.**LIMITED RESIDENTIAL LODGING AND SHORT-TERM RENTAL LODGING ACT.****§ 55-248.53. Definitions.**

As used in this chapter, unless the context requires a different meaning:

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SB751

59 "Applicable taxes" means any state or local tax imposed on a booking transaction provided pursuant
60 to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, § 58.1-1742, or Article 6 (§ 58.1-3819 et seq.) of
61 Chapter 38 of Title 58.1. "Applicable taxes" includes any transaction tax on a booking transaction
62 established by city or town charter or otherwise pursuant to § 15.2-1104, 58.1-3826, or 58.1-3840, so
63 long as such tax is uniform upon operators and other subjects of the same class, within the territorial
64 limits of the city or town levying the tax, or the tax permitted pursuant to § 58.1-3719.2 on short-term
65 rentals.

66 "Booking transaction" means any transaction in which there is a charge to a limited lodger or
67 short-term lodger by an operator for the occupancy of any dwelling, sleeping, or lodging
68 accommodations.

69 "Hosting platform" means any person or entity that facilitates reservations or collects payments for a
70 booking transaction, including a booking transaction for limited residential lodging or short-term rental
71 lodging, on behalf of or for an operator through an online digital platform.

72 "Department" means the Department of Taxation.

73 "Limited lodger" means a person who occupies a residential dwelling unit for the purpose of limited
74 residential lodging.

75 "Limited residential lodging" means the accessory or secondary use of a residential dwelling unit or
76 a portion thereof by a limited residential lodging operator to provide room or space that is suitable or
77 intended for occupancy by a limited lodger for dwelling, sleeping, or lodging purposes, for a period of
78 fewer than 30 consecutive days, in exchange for a charge to the transient for the occupancy, provided
79 only that (i) the primary use of the residential dwelling unit shall remain as a household living unit and
80 (ii) any applicable taxes required to be collected and remitted for each booking transaction are
81 collected and remitted either by the limited residential lodging operator directly or by a hosting
82 platform that has registered and entered into an agreement with the Department pursuant to subsection
83 C of § 55-248.56 for such collection and remission.

84 "Limited residential lodging operator" means an operator who is the primary resident of a
85 residential dwelling unit offered for limited residential lodging purposes.

86 "Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered for a
87 charge to limited lodgers or short-term lodgers, whether in the capacity of owner, lessee, sublessee,
88 mortgagee in possession, licensee, or any other possessory capacity, and includes a limited residential
89 lodging operator and a short-term lodging operator.

90 "Primary resident" means either (i) the owner of the dwelling unit that is entitled to a homestead
91 exclusion pursuant to § 34-4 or (ii) a tenant (a) who has lived in the dwelling unit for at least 60 days
92 and (b) who treats the dwelling unit as his primary residence.

93 "Short-term lodger" means a person who is not a limited lodger and occupies any residential or
94 commercial unit for the purpose of short-term rental lodging.

95 "Short-term lodging operator" means an operator who (i) is not a limited residential lodging
96 operator and (ii) operates a short-term rental that is subject to the provisions of § 58.1-3719.2.

97 "Short-term rental lodging" means the accessory or secondary use of a residential or commercial
98 dwelling unit or a portion thereof by a short-term lodging operator to provide room or space that is
99 suitable for, intended for, or used for occupancy by short-term lodgers.

100 **§ 55-248.54. Preemption of certain state and local law.**

101 A. Except for units subject to tax pursuant to § 58.1-3719.2, and notwithstanding any other provision
102 of law, general or special, subject only to compliance with the provisions of this chapter, any dwelling
103 unit may be used for limited residential lodging and any limited residential lodging shall be deemed
104 consistent with residential use, shall be authorized in any zoning district established pursuant to Article
105 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 allowing residential use, and shall not be deemed a
106 hotel, motel, bed and breakfast inn, lodging house, or any other commercial enterprise.

107 B. Notwithstanding any other provision of law, general or special, except as expressly provided in
108 this chapter, the provisions of this chapter shall supersede and preempt any state or local law or
109 regulation that attempts to regulate limited residential lodging, however described or delineated, and
110 except as provided in § 58.1-3719.2, no state or local tax, penalty, fee, license, permit, or other
111 limitation or requirement, however described or delineated, shall be applicable to any limited residential
112 lodging or hosting platform activity as set forth in this chapter.

113 C. Except as provided in § 58.1-3917.2 and notwithstanding any other provision of law, general or
114 special, neither the conduct of limited residential lodging by a limited residential lodging operator on
115 fewer than 90 cumulative days of a calendar year nor the conduct of a hosting platform pursuant to this
116 chapter shall constitute a business for purposes of § 58.1-3700.1, or any local ordinances adopted
117 pursuant thereto, or be subject to the fee or tax authorized by Chapter 37 (§ 58.1-3700 et seq.) of Title
118 58.1.

119 D. Notwithstanding any other provision of law, general or special, the Commonwealth or any
120 political subdivision of the Commonwealth, including any county, city, or town, shall not impose any

applicable tax that is not uniform upon operators, and other subjects of the same class, within the territorial limits of the jurisdiction levying such tax.

§ 55-248.55. Optional local regulation of limited residential lodging activity.

A. To help ensure that limited residential lodging shall not be a detriment to the character and livability of the surrounding neighborhood, any locality may enact an ordinance to regulate limited residential lodging that consists of any one or more of the following provisions:

1. Limited residential lodging shall not generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his residence;

2. There shall be no accessory signs signifying the property as used for limited residential lodging;

3. Guests of limited lodgers shall be allowed only between the hours of 8:00 a.m. and 12:00 a.m.;

4. Limited lodgers shall be notified of the trash and recycle collection days for the property and any applicable rules and regulations pertaining to leaving or storing trash on the exterior of the property, and proper containers shall be made available to the limited lodgers;

5. Limited lodgers shall be notified of any applicable local noise ordinances and that violation of any such ordinance may result in fines and penalties;

6. The limited residential lodging operator or his designee shall provide contact information to a limited lodger for the purpose of responding to complaints regarding the condition or operation of the residential dwelling unit;

7. The limited residential lodging operator shall post or provide within the residential dwelling unit a clearly visible list of emergency information, including emergency numbers, emergency exit information, and the location of fire extinguishers or pull fire alarms in the residential dwelling unit offered for limited residential lodging purposes and the common areas of the building;

8. The limited residential lodging operator shall ensure that the residential dwelling unit is equipped with functioning smoke and fire detection systems and carbon monoxide alarms as required by applicable law and codes for the residential dwelling unit; or

9. The limited residential lodging operator shall ensure that he has no less than \$500,000 of liability insurance covering the limited residential lodging use or that each limited residential lodging use is conducted through a hosting platform that provides equal or greater coverage for such use.

B. The penalty for violation of any local ordinance established pursuant to this section shall not exceed \$200 per violation.

C. No unit to provide limited residential lodging or short-term rental lodging shall be posted on a hosting platform unless the operator can demonstrate to the hosting platform that it is in compliance with this chapter and other applicable tax and zoning requirements. A hosting platform that includes units that fails to demonstrate compliance with this chapter and other applicable tax and zoning requirements shall be subject to a \$50 per day penalty, payable to the locality in which the unit is located, for each day the unit is listed on the hosting platform.

D. Any short-term rental lodging operator shall be subject to the requirements of § 15.1-2288.7.

§ 55-248.56. Collection and remittance of certain taxes; registration with Department; audit.

A. Except as provided in subsection C of § 55-248.54, limited residential lodging shall be subject only to applicable taxes.

B. Except as provided in subsection D, any operator who engages in limited residential lodging or short-term rental lodging shall register with the Department and shall collect and remit to the appropriate authority any applicable taxes on any booking transaction that may be required pursuant to subsection A.

C. Any hosting platform may register with the Department for the collection and remission of applicable taxes on any booking transaction facilitated by the hosting platform on behalf of an operator within the territorial limits of any one or more jurisdictions within the Commonwealth authorized to collect such applicable taxes and may enter into any agreement with the Department related to such collection and remission.

D. Any hosting platform that has registered with the Department pursuant to subsection C shall, with respect to each booking transaction facilitated by the hosting platform on behalf of an operator within the territorial limits of a jurisdiction for which such hosting platform has registered to collect and remit applicable taxes, collect any applicable taxes and remit the total amount so collected to the Department on a monthly basis along with a schedule, on an aggregate basis, listing the total amounts owed to the Commonwealth and to each applicable and respective jurisdiction within the Commonwealth for the relevant period. After the direct costs of administering this section are recovered by the Department, the provisions of subsections D, E, and F of § 58.1-605 shall be applicable to any remaining funds so remitted to the Department, mutatis mutandis.

When the hosting platform remits the amounts owed to the appropriate authority, it shall provide the tax identification number associated with each operator who collected and remitted applicable taxes if the operator does not remit such amounts directly to the appropriate authority pursuant to subsection B.

182 No operator shall be responsible for collecting or remitting any applicable taxes on any booking
183 transaction for which it has received notice from a hosting platform that such hosting platform has or
184 will be collecting and remitting such applicable taxes. Any such notice shall itself be proof sufficient
185 regarding any liability of an operator for such taxes.

186 E. Except as provided in subsection D, information provided to or obtained by the Department
187 pursuant to this chapter, including information contained in a return filed by a hosting platform,
188 information on underlying transactions, or information relating to an audit or investigation, shall be
189 considered confidential and shall not be disclosed without the written consent of the hosting platform or
190 unless in accordance with the provisions of any agreement between the hosting platform and the
191 Department.

192 F. Applicable taxes payable by a registered hosting platform in accordance with this section shall be
193 subject to audit only by the Department or its authorized agent. Any such audit shall be conducted on
194 the basis of returns and supporting documents filed by the hosting platform with the Department and
195 shall not be conducted directly or indirectly on any individual operator or limited lodger to whom
196 rooms, lodgings, dwellings, or accommodations are furnished in exchange for a charge for occupancy.
197 Audits of a registered hosting platform for applicable taxes shall be conducted solely on the basis of the
198 operator tax identification number and data provided by the operator and shall not require the
199 production of any personally identifiable information relating to the limited lodger or the short-term
200 lodger to whom rooms, lodgings, dwellings, or accommodations are furnished in exchange for a charge
201 for occupancy.

202 The commissioner of the revenue, director of finance, or other similar collector of county, city, or
203 town taxes may conduct an audit of applicable taxes payable by a registered hosting platform pursuant
204 to this section only for operators subject to tax pursuant to § 58.1-3719.2.

205 G. Notwithstanding any other provision of law, general or special, any hosting platform that has
206 registered with the Department that fails to file a return required or pay the full amount of applicable
207 tax due as required herein shall be subject to the following:

208 1. A penalty to be added to the tax in the amount of \$500, if the failure to file a return is for not
209 more than one month, with an additional penalty of \$1,000 for each additional month, or fraction
210 thereof, during which the failure continues, not to exceed five percent of the applicable tax due in the
211 aggregate. Such penalty shall apply whether or not any tax is due for the period for which such return
212 was required. If such failure is due to providential or other good cause shown to the satisfaction of the
213 Department, such return with or without remittance may be accepted exclusive of penalties;

214 2. A penalty to be added to the tax in the amount of three percent if the failure to pay the full
215 amount of applicable tax due is for not more than one month, with an additional three percent for each
216 additional month, or fraction thereof, during which the failure continues, not to exceed 15 percent in the
217 aggregate; and

218 3. In the case of a false or fraudulent return where willful intent exists to defraud the
219 Commonwealth of any applicable tax due pursuant to this section, or in the case of a willful failure to
220 file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of 50
221 percent of the amount of the proper tax.

222 H. All penalties and interest imposed by this section shall be payable by the hosting platform and
223 collectible by the Department in the same manner as if they were a part of the tax imposed. Interest at
224 a rate determined in accordance with § 58.1-15 shall accrue on the tax until the same is paid.

225 **§ 55-248.57. Recordkeeping; inspection.**

226 A. The limited residential lodging operator shall maintain records for a minimum of three years
227 demonstrating primary residency and the dates of any limited residential lodging use along with the
228 number of limited lodgers per any such activity. A limited residential lodging operator shall maintain
229 such records and make them available to the Department or locality, or its authorized agents, only in
230 response to a written request by the Department or locality to investigate and resolve a complaint or
231 respond to an incident alleging any violation of this chapter.

232 B. The short-term lodging operator shall maintain records for a minimum of three years
233 demonstrating the dates of any short-term rental lodging use along with the number of short-term
234 lodgers per any such activity. A short-term lodging operator shall maintain such records and make them
235 available to the Department or locality to investigate and resolve a complaint or respond to an incident
236 alleging any violation of this chapter.

237 **§ 58.1-3719.2. Local license tax on limited residential lodging operators and short-term lodging**
238 **operators.**

239 Notwithstanding any other provision of this chapter, no county, city, or town shall levy any license
240 tax on a limited residential lodging operator, as defined in § 55-248.53, unless the total sales of such
241 operator exceed \$4,000 per year. If the total sales of a limited residential lodging operator exceed
242 \$4,000 per year, then such operator shall be deemed to be a short-term rental lodging operator as
243 defined in § 55-248.53 and the rate levied on sales over \$4,000 per year shall not be greater than 20

244 *cents per \$100 of sales of short-term rentals.*