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SENATE BILL NO. 416

Offered January 13, 2016

Prefiled January 12, 2016

A *BILL to amend the Code of Virginia by adding in Title 55 a chapter numbered 13.4, consisting of sections numbered 55-248.53 through 55-248.57, relating to establishing the Limited Residential Lodging Act; penalty.*

Patrons—Vogel and Ebbin; Delegate: Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 55 a chapter numbered 13.4, consisting of sections numbered 55-248.53 through 55-248.57, as follows:

CHAPTER 13.4.**LIMITED RESIDENTIAL LODGING ACT.****§ 55-248.53. Definitions.**

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

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

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

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

"Department" means the Department of Taxation.

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

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

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

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

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

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

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

B. Notwithstanding any other provision of law, general or special, except as expressly provided in this chapter, the provisions of this chapter shall supersede and preempt any state or local law or regulation that attempts to regulate limited residential lodging, however described or delineated, and no

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59 state or local tax, penalty, fee, license, permit, or other limitation or requirement, however described or
60 delineated, shall be applicable to any limited residential lodging or hosting platform activity as set forth
61 in this chapter.

62 C. Notwithstanding any other provision of law, general or special, neither the conduct of limited
63 residential lodging by a limited residential lodging operator on fewer than 90 days of a calendar year
64 nor the conduct of a hosting platform pursuant to this chapter shall constitute a business for purposes
65 of § 58.1-3700.1, or any local ordinances adopted pursuant thereto, or be subject to the fee or tax
66 authorized by Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1.

67 D. Notwithstanding any other provision of law, general or special, the Commonwealth or any
68 political subdivision of the Commonwealth, including any county, city, or town, shall not impose any
69 applicable tax that is not uniform upon operators, and other subjects of the same class, within the
70 territorial limits of the jurisdiction levying such tax.

71 **§ 55-248.55. Optional local regulation of limited residential lodging activity.**

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

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

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

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

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

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

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

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

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

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

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

99 **§ 55-248.56. Collection and remittance of certain taxes; registration with Department; audit.**

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

102 B. Except as provided in subsection D, any limited residential lodging operator who engages in
103 limited residential lodging shall collect and remit to the appropriate authority any applicable taxes on
104 any booking transaction that may be required pursuant to subsection A.

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

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

119 No operator shall be responsible for collecting or remitting any applicable taxes on any booking
120 transaction for which it has received notice from a hosting platform that such hosting platform has or

will be collecting and remitting such applicable taxes. Any such notice shall itself be proof sufficient regarding any liability of an operator for such taxes.

E. Information provided to or obtained by the Department pursuant to this chapter, including information contained in a return filed by a hosting platform, information on underlying transactions, or information relating to an audit or investigation, shall be considered confidential and shall not be disclosed without the written consent of the hosting platform or unless in accordance with the provisions of any agreement between the hosting platform and the Department. Notwithstanding any provision of law to the contrary, such information shall not be subject to disclosure pursuant to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be provided to any other agency of the Commonwealth or political subdivision thereof.

F. Applicable taxes payable by a registered hosting platform in accordance with this section shall be subject to audit only by the Department or its authorized agent. Any such audit shall be conducted on the basis of returns and supporting documents filed by the hosting platform with the Department and shall not be conducted directly or indirectly on any individual operator or limited lodger to whom rooms, lodgings, dwellings, or accommodations are furnished in exchange for a charge for occupancy. Audits of a registered hosting platform for applicable taxes shall be conducted on an anonymous numbered account basis and shall not require the production of any personally identifiable information relating to any booking transaction or individual operator or limited lodger to whom rooms, lodgings, dwellings, or accommodations are furnished in exchange for a charge for occupancy.

No commissioner of the revenue, director of finance, or other similar collector of county, city, or town taxes may conduct an audit of applicable taxes payable by a registered hosting platform pursuant to this section.

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

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

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

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

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

§ 55-248.57. Recordkeeping; inspection.

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