HOUSE DOCKET, NO. 3205 FILED ON: 1/18/2013

HOUSE . . . . . No. 2602

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes

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 passage of the accompanying:

An Act relative to hotel rooms booked online.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Russell E. Holmes	*6th Suffolk*
Martin J. Walsh	*13th Suffolk*

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HOUSE . . . . . No. 2602

By Mr. Holmes of Boston, a petition (accompanied by bill, House, No. 2602) of Russell E. Holmes and Martin J. Walsh relative to the room occupancy tax for hotel rooms booked online. Revenue.

The Commonwealth of Massachusetts

An Act relative to hotel rooms booked online.

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

SECTION 1. Section 1 of chapter 64G of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after paragraph (b) thereof the following paragraph:-

(b1/2) "Doing business in the commonwealth", ownership or operation of a bed and breakfast establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the commonwealth, the presence of an employee in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative arrangement with an operator with respect to accommodations located in the commonwealth, inspection in the commonwealth of accommodations that may be the subject of a cooperative arrangement between an operator and a reseller, or other exploitation of the market for accommodations or resale of accommodations located in the commonwealth by any means whatsoever, including, but not limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen, solicitors or representatives are employed by the operator or reseller, by a person affiliated with the operator or the reseller by common ownership, or by any other party. This definition is intended to extend the jurisdiction of the commonwealth over operators and resellers to the full extent authorized by the Constitution and the laws of the United States.

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

or the room reseller.

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

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

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

SECTION 4. Said chapter 64G of the General Laws is hereby further amended by striking out section 3 in its entirety and inserting in place thereof the following section: -

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

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

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

SECTION 6. Said chapter 64G of the General Laws is hereby further amended by

inserting after section 3A the following new section:-

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

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

SECTION 7. Said chapter 64G of the General Laws is hereby further amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the operator or room reseller, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

SECTION 8. Said chapter 64G of the General Laws is hereby further amended by striking out section 5 and inserting in place thereof the following section:-

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

SECTION 9. Said chapter 64G of the General Laws is hereby further amended by striking out section 6 and inserting in place thereof the following section:-

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

106 SECTION 10. Section 7A of said chapter 64G, as appearing in the 2010 Official
107 Edition, is hereby amended by inserting after the word "operator", in line 1 and in line 7, the
108 following words:-
109 or room reseller
110
111 SECTION 11. Said chapter 64G, as so appearing, is hereby further amended by striking out
112 section 7B and inserting in place thereof the following section:-
113 Section 7B. Every operator or room reseller who fails to pay to the commissioner any sums
114 required to be paid by this chapter shall be personally and individually liable for those amounts
115 to the commonwealth. The terms "operator" and "room reseller", as used in this section, include
116 an officer or employee of a corporation, or a member or employee of a partnership, who as an
117 officer, employee or member is under a duty to pay over the taxes imposed by this chapter.
118
119
120 SECTION 12. Section 12 of said chapter 64G, as appearing in the 2010 Official Edition, is
121 hereby amended by inserting after the word "operator", in line 5, the following words:-
122 and each room reseller
123
124 SECTION 13. For purposes of the convention center surcharge imposed by section 9 of
125 chapter 152 of the acts of 1997, as amended, the term "operator" shall mean "operator or room
126 reseller."
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128 SECTION 14. Subsections (V) to (EE), inclusive, shall take effect on August 1, 2013.
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