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HOUSE BILL NO. 812

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws)

(Patron Prior to Substitute—Delegate Peace)

House Amendments in [] — February 3, 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.

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, § 58.1-1742, or Article 6 (§ 58.1-3819 et seq.) of Chapter 38 of Title 58.1 and any transaction tax imposed on a booking transaction established by city or town charter or otherwise pursuant to § 15.2-1104 or 58.1-3840, 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 occupant by an operator for the occupancy of any dwelling, sleeping, or lodging accommodations.

"Hosting platform" means any person or entity that is not an operator and that facilitates reservations or collects payments for any booking transaction on behalf of 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 for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy, provided only that (i) the primary use of the residential dwelling unit shall remain as a household living unit, (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, and (iii) such use does not include simultaneous occupancy by more than one party under separate contracts.

"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 occupants, 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 residential dwelling unit [~~that~~ who occupies the dwelling unit as his principal place of residence and domicile and who] is entitled to a homestead exclusion pursuant to § 34-4 or (ii) a tenant (a) who has lived in the residential dwelling unit for at least 60 days and (b) who treats the residential dwelling unit as such tenant's [~~primary residence~~ principal place of residence and domicile] .

§ 55-248.54. Use of residential dwelling unit by primary resident for limited residential lodging; record keeping; inspection.

A. Notwithstanding any other provision of law, general or special, and subject to compliance with the provisions of this chapter, any residential dwelling unit may be used for limited residential lodging. Any such limited residential lodging shall (i) be deemed consistent with residential use, (ii) 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 (iii) not be deemed a hotel, motel, bed and breakfast inn, lodging house, or any other commercial enterprise.

B. The limited residential lodging operator shall maintain records for a minimum of four years demonstrating primary residency and the dates of any limited residential lodging use along with the

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60 number of limited lodgers per any such activity.

61 C. A limited residential lodging operator shall only be required to make the records required under
62 subsection B available in response to a valid legal process served by the Department or locality with
63 the authority to enforce any ordinance enacted pursuant to § 55-248.56, which process shall provide an
64 opportunity for pre-enforcement review.

65 **§ 55-248.55. Preemption of certain state and local law.**

66 A. Notwithstanding any other provision of law, general or special, and except as expressly provided
67 in this chapter, this chapter shall supersede and preempt:

68 1. Any state or local law that imposes or purports to impose any additional regulation or obligation
69 on or otherwise restricts or prohibits:

70 a. The operation of a limited residential lodging operator by virtue of the fact that such operator's
71 residential dwelling unit is being used for limited residential lodging purposes; or

72 b. The use of a residential dwelling unit for limited residential lodging purposes; and

73 2. Any local law that imposes or purports to impose any additional regulation or obligation on, or
74 otherwise restricts or prohibits the operation of, a hosting platform that collects and remits any
75 applicable taxes pursuant to § 55-248.57.

76 B. Notwithstanding any other provision of law, general or special, neither the conduct of limited
77 residential lodging by a limited residential lodging operator on fewer than 45 days of a calendar year
78 nor the conduct of a hosting platform pursuant to this chapter shall constitute a business for purposes
79 of § 58.1-3700.1, or any local ordinances adopted pursuant thereto, or be subject to the fee or tax
80 authorized by Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1.

81 C. Notwithstanding any other provision of law, general or special, the Commonwealth or any
82 political subdivision of the Commonwealth, including any county, city, town, or other jurisdiction, shall
83 not impose any applicable tax that is not uniform upon operators, and other subjects of the same class,
84 within the territorial limits of the jurisdiction levying such tax.

85 D. The provisions of this chapter shall not be applied to limit or otherwise impinge upon contracts
86 or agreements between or among individuals or private entities relating to the use of real property,
87 including the provisions of condominium instruments of a condominium created pursuant to the
88 Condominium Act (§ 55-79.39 et seq.), the declaration of a common interest community as defined in
89 § 55-528, or the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate
90 Cooperative Act (§ 55-424 et seq.).

91 **§ 55-248.56. Optional local regulation of limited residential lodging activity; notice.**

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

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

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

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

99 4. Limited lodgers and guests of limited lodgers shall comply with all on-street parking restrictions;

100 5. The maximum number of adults permitted at a limited residential lodging unit at any one time
101 shall not exceed twice the number of sleeping rooms plus four;

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

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

107 8. The limited residential lodging operator or his designee shall provide contact information to a
108 limited lodger for the purpose of allowing the limited lodger to contact the limited lodging operator or
109 his designee regarding issues or complaints relating to the residential dwelling unit;

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

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

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

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

122 C. Any hosting platform that has registered with the Department for the collection and remission of
123 applicable taxes pursuant to § 55-248.57 shall provide notice to any limited residential lodging operator
124 utilizing the hosting platform's digital platform for the purpose of providing limited residential lodging,
125 that such operator should review any applicable state and local laws prior to listing a limited
126 residential lodging unit for occupancy pursuant to this chapter.

127 **§ 55-248.57. Collection and remittance of certain taxes; registration with Department; audit.**

128 A. Except as provided in subsection C of § 55-248.55, limited residential lodging shall be subject
129 only to applicable taxes.

130 B. Except as provided in subsection D, any limited residential lodging operator who engages in
131 limited residential lodging shall obtain a taxpayer identification number from the Department and shall
132 collect and remit to the appropriate authority any applicable taxes on any booking transaction that may
133 be required pursuant to subsection A.

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

139 D. Any hosting platform that has registered with the Department pursuant to subsection C shall, with
140 respect to each booking transaction facilitated by the hosting platform on behalf of an operator within
141 the territorial limits of a jurisdiction for which such hosting platform has registered to collect and remit
142 applicable taxes, collect any applicable taxes and remit the total amount so collected to the Department
143 on a monthly basis along with a schedule, on an aggregate basis, listing the total amounts owed to the
144 Commonwealth and to each applicable and respective jurisdiction within the Commonwealth for the
145 relevant period. After the direct costs of administering this section are recovered by the Department, the
146 remaining revenues shall be distributed by the Tax Commissioner in the same manner as the applicable
147 taxes are distributed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, § 58.1-1742, and Articles
148 6 (§ 58.1-3819 et seq.) and 8 (§ 58.1-3840 et seq.) of Chapter 38 of Title 58.1, mutatis mutandis.

149 No operator shall be responsible for obtaining a taxpayer identification number from the Department
150 or for collecting or remitting any applicable taxes on any booking transaction when it has received
151 notice from a hosting platform that such hosting platform has or will be collecting and remitting such
152 applicable taxes. Any such notice shall itself be proof sufficient regarding the absence of any operator
153 liability for such applicable taxes for the time period covered by the notice.

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

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

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

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

177 1. A penalty in the amount of \$500 for failure to file a return within one month of the due date, with
178 an additional penalty of \$1,000 for each additional month, or fraction thereof; thereafter during the
179 period in which the failure continues, a penalty not to exceed the lesser of five percent of the tax due on
180 such return or \$10,000 in the aggregate. Such penalty shall apply whether or not any tax is due for the
181 period for which such return was required. If such failure is due to providential or other good cause
182 shown to the satisfaction of the Department, such return with or without remittance may be accepted

183 *exclusive of penalties;*

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

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

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

195 *I. The Department of Taxation may develop procedures or guidelines for implementation of the*
196 *provisions of this chapter. Any such procedures or guidelines shall be exempt from the provisions of the*
197 *Administrative Process Act (§ 2.2-4000 et seq.).*

198 **2. That the provisions of this act shall become effective on September 1, 2016.**

199 **3. That no limited residential lodging operator shall be required to obtain a taxpayer identification**
200 **number pursuant to subsection B of § 55-248.56 of the Code of Virginia, as created by this act,**
201 **prior to November 1, 2016.**

202 **4. That the Housing Commission shall convene a work group with representation from the hotel**
203 **industry, hosting platform providers, local government, state and local tax officials, property**
204 **owners, and other interested parties to explore issues related to expansion of the framework set**
205 **forth in this act related to the registration, land use, tax, and other issues of public interest**
206 **associated with the short-term rental of dwelling and other units that are not a person's principal**
207 **residence. The work group shall take into consideration existing structures governing the activities**
208 **of bed and breakfast inns, vacation rentals, and other transient occupancy venues. The work**
209 **group shall complete its work by December 1, 2016, with the goal of developing draft legislation**
210 **for consideration by the 2017 Session of the General Assembly.**