

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1081

(Senators Astle and Feldman)

Budget and Taxation

Business Regulation - Limited Residential Lodging

This bill incorporates “limited residential lodging” into the existing regulatory framework for other lodging establishments, including licensure, taxation, building codes, and antidiscrimination provisions. Specific requirements are established for both an innkeeper that offers limited residential lodging through a hosting platform and for a hosting platform operator.

Fiscal Summary

State Effect: General fund revenues increase beginning in FY 2019 from additional sales and use tax and business license fees collected under the bill. The amount cannot be reliably estimated at this time but may be significant. Penalty provisions are not anticipated to materially affect State revenues. State agencies can generally integrate the bill’s requirements into existing operations.

Local Effect: Local government revenues increase beginning in FY 2019 from accommodation taxes and business license fees collected under the bill. The amount cannot be reliably estimated at this time but may be significant. Penalty provisions are not anticipated to materially affect local government revenues. It is assumed that local law enforcement agencies can enforce the bill with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Limited residential lodging” means the use of a residential dwelling unit, including any single-family house or dwelling; multifamily house or dwelling, condominium, or cooperative; or any portion of the unit by an innkeeper to provide accommodations to transient guests for sleeping or lodging purposes in exchange for a charge or fee imposed in a booking transaction. A limited residential lodging unit is included in the definition of lodging establishment, thereby making all existing laws for a lodging establishment apply to a limited residential lodging unit.

“Hosting platform” means an Internet-based digital entity that advertises the availability of limited residential lodging units for rent and receives compensation for providing advertising, facilitating reservations, or collecting payments for booking transactions on behalf of an innkeeper that is the owner, operator, manager, or keeper of a limited residential lodging unit. A hosting platform operator is a person that owns or operates a hosting platform.

Requirements for Innkeepers

An innkeeper may not use a hosting platform to offer a limited residential lodging unit to the public unless (1) the innkeeper is licensed by the Comptroller under Title 11, Subtitle 7 of the Tax-General Article and (2) the use of the limited residential lodging unit for limited residential lodging is in accordance with the applicable laws of the local jurisdiction in which the limited residential lodging unit is located.

After determining that an innkeeper is in violation of these requirements, a State law enforcement agency, a county, or a municipality may (1) order the innkeeper to cease and desist from using a hosting platform to offer a limited residential lodging unit to the public until the innkeeper complies with the requirements; (2) file an injunction in a court of competent jurisdiction; and (3) issue a civil citation and impose a penalty of a \$500 fine for a first violation, \$1,000 for a second violation, and \$2,500 for each subsequent violation.

These requirements may not be construed to limit the power of a local government to regulate limited residential lodging activities or impose penalties for violations of local law.

Requirements for Hosting Platforms

A hosting platform operator that participates in or facilitates booking transactions of a limited residential lodging unit must:

- be licensed by the Comptroller under Title 11, Subtitle 7 of the Tax-General Article; and
- be registered in good standing with the State Department of Assessments and Taxation (SDAT) to do business in the State.

A hosting platform operator may not participate in or facilitate a booking transaction for a limited residential lodging unit on behalf of an innkeeper if:

- the innkeeper is not licensed by the Comptroller as required by the bill; or
- the hosting platform has received notice from a local jurisdiction that the use of the limited residential lodging unit is in violation of a zoning law or other local law.

A hosting platform operator must keep specified transaction records for each booking transaction, including the address, the amount paid, and the amount of taxes collected. The records must be maintained and made available during the course of any enforcement action to the Comptroller; the Department of Labor, Licensing, and Regulation (DLLR); a State law enforcement agency; a county; or a municipality.

After determining that a hosting platform is in violation of the above requirements, DLLR, a State law enforcement agency, a county, or a municipality may issue a civil citation and impose a penalty of a \$2,500 fine for a first violation, \$5,000 for a second violation, and \$7,500 for each subsequent violation. Each day that a hosting platform operator operates without being licensed and registered under the bill is a separate violation. Each booking transaction in violation of the other above requirements is a separate violation.

On application by the Comptroller, DLLR, or a State law enforcement agency, a court of competent jurisdiction may issue an injunction to restrain any hosting platform from violating the above requirements.

Local Governments

Local governments are explicitly authorized to regulate the activities of an innkeeper engaged in limited residential lodging or adopt other regulations to protect the health, safety, and welfare of residents and travelers staying in limited residential lodging.

Notwithstanding any other provision of law, a local jurisdiction may notify (1) an innkeeper that the use of a limited residential lodging unit for limited residential lodging is in violation of a zoning law or other local law or (2) a hosting platform operator for an innkeeper that operates a limited residential lodging unit in violation of a zoning law or other local law. The notice may be served on the resident agent designated by the hosting platform operator.

Current Law/Background:

Regulation of Limited Residential Lodging

There is no statewide law regarding limited residential lodging offered to the public through a hosting platform. At the local level, a limited number of jurisdictions regulate similar types of short-term residential transactions, primarily through licensing.

Traditionally, local laws allow homeowners to exercise their property rights by renting a portion or all of their home for 30 consecutive days or more at a time, in conformance with local zoning or other requirements. A home rental for less than 30 consecutive days (“short-term”), such as for visitors to a special local event or as an alternative travel accommodation, is the type of rental that has become an issue in recent years for many areas, including cities and vacation destinations.

State and Local Accommodation Taxes

The State sales and use tax of 6% is imposed on an accommodation. Separately, hotel rental taxes are currently authorized in all counties and Baltimore City.

Senate Bill 190 of 2015, which was the subject of a successful veto override in the 2016 session (Chapter 3 of 2016), clarified that the State sales and use tax applies to the sale or use of hotel accommodations facilitated by an accommodations intermediary – a person, other than the hotel, who facilitates the sale or use of an accommodation and charges a buyer the taxable price for the accommodation.

Business Licenses

A State business license is required for most businesses in Maryland. State business licenses can be obtained from the clerks of the circuit court in the county where the business is located. Prior to contacting the local clerk of the court to apply for a business license, first-time license applicants must register with SDAT. Registration with the department includes filing information to form the legal entity of the business.

Hosting Platforms

Property owners who wish to offer all or a portion of their homes for temporary rental for a charge frequently utilize online hosting platforms that enable the property owner to list and describe the property being offered for rental and that allow tourists and other transients to arrange for the rental of the property and payment of the booking. Examples include Airbnb, HomeAway, and VRBO (vacation rental by owner).

State Effect: General fund revenues increase beginning in fiscal 2019 from additional sales and use tax and business license fees collected under the bill. The amount of the revenue associated with the sales and use tax depends on the number of transactions that occur and the taxable value of these transactions and, thus, cannot be reliably estimated at this time. As a point of reference, State sales taxes collected from hotel and motel room rentals, as well as apartment and cottage rentals, totaled \$100.4 million in fiscal 2015. Additional business licenses issued under the bill are not anticipated to materially affect general fund revenues. Penalty provisions are not anticipated to materially affect State revenues.

It is assumed that the bill is largely enforced through existing means for other lodging establishments, *i.e.*, mostly through licensing and local code/law enforcement. Under this assumption, DLLR does not play an active role in enforcement or regulation of limited residential lodging under the bill. However, if that is not the case, then DLLR requires several additional administrative and legal staff to enforce laws outside of its typical purview. Other State agencies, including the Comptroller and SDAT, can generally integrate the bill's requirements into existing operations.

Local Effect: Local government revenues increase beginning in fiscal 2019 from additional hotel taxes and business license fees collected under the bill. The amount of the revenue associated with hotel taxes depends on the number of transactions that occur and the taxable value of these transactions and, thus, cannot be reliably estimated at this time. Local governments generally retain 92% of business license fees issued by local clerks of the court. The amount of any revenue increase cannot be reliably estimated at this time. Penalty provisions are not anticipated to materially affect local government revenues. It is assumed that local law enforcement agencies can enforce the bill with existing resources.

Small Business Effect: The bill requires many individual homeowners who currently rent their properties through a hosting platform to become a "small business" through licensing and registration. These businesses must remit State and local taxes on the value of the accommodation provided to the extent that they are not currently doing so and comply with any other relevant State or local law or regulation.

Additional Information

Prior Introductions: SB 463 of 2017, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: Although not designated as a cross file, HB 1604 (Delegate Frick – Economic Matters) is identical.

Information Source(s): Comptroller's Office; Department of Labor, Licensing, and Regulation; Maryland Department of Planning; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Association of Counties; Montgomery County; City of Takoma Park; Department of Legislative Services

Fiscal Note History: First Reader - April 4, 2018
md/mcr

Analysis by: Stephen M. Ross

Direct Inquiries to:

(410) 946-5510

(301) 970-5510