

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 163

FISCAL  
NOTE

BY SENATORS BLAIR AND MARONEY

[Introduced January 9, 2020; referred  
to the Committee on Government Organization; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §7-18-3 and §7-18-4 of the Code of West Virginia, 1931, as  
 2 amended, all relating to municipal or county taxation of hotel rooms booked through a  
 3 marketplace facilitator; defining terms; providing for collection and remittance of the tax  
 4 imposed by any municipality or county; requiring the marketplace facilitator separately  
 5 state the tax on all bills, invoices, accounts, books of account, and records relating to  
 6 occupancy or use of a hotel room; and deeming all taxes collected be held in trust by the  
 7 marketplace facilitator until remitted.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 18. HOTEL OCCUPANCY TAX.**

### **§7-18-3. Definitions.**

1 For the purposes of this article:

2 ~~(a)~~ "Consideration paid" or "consideration" means the amount received in money, credits,  
 3 property, or other consideration for or in exchange for the right to occupy a hotel room as herein  
 4 defined.

5 ~~(b)~~ "Consumer" means a person who pays the consideration for the use or occupancy of  
 6 a hotel room. The term "consumer" does not mean the government of the United States of  
 7 America, its agencies, or instrumentalities, or the government of the State of West Virginia or  
 8 political subdivisions thereof.

9 ~~(c)~~ "Hotel" means any facility, building, or buildings, publicly or privately owned (including  
 10 a facility located in a state, county, or municipal park), in which the public may, for a consideration,  
 11 obtain sleeping accommodations. The term includes, but is not limited to, boarding houses, hotels,  
 12 motels, inns, courts, condominiums, lodges, cabins, and tourist homes. The term "hotel" includes  
 13 state, county, and city parks offering accommodations as herein set forth. The term "hotel" does  
 14 not mean a hospital, sanitarium, extended care facility, nursing home, or university or college  
 15 housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a  
 16 total of 10 days in a calendar year, nor any tent, trailer, or camper campsites: *Provided, That*

17 where a university or college housing unit provides sleeping accommodations for the general  
18 nonstudent public for a consideration, the term “hotel” does, if otherwise applicable, apply to those  
19 accommodations for the purposes of this tax.

20 (d) “Hotel operator” means the person who is proprietor of a hotel, whether in the capacity  
21 of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy,  
22 receiver, executor or in any other capacity. Where the hotel operator performs his or her functions  
23 through a managing agent of any type or character other than an employee, the managing agent  
24 is a hotel operator for the purposes of this article and has the same duties and liabilities as his or  
25 her principal. Compliance with the provisions of this article by either the principal or the managing  
26 agent is, however, considered to be compliance by both.

27 (e) “Hotel room” means any room or suite of rooms or other facility affording sleeping  
28 accommodations to the general public and situated within a hotel. The term “hotel room” does not  
29 include:

30 (1) A banquet room, meeting room, or any other room not primarily used for, or in  
31 conjunction with, sleeping accommodations; or

32 (2) Sleeping accommodations rented on a month-to-month basis or other rental  
33 arrangement for 30 days or longer at the inception at a boarding house, condominium, cabin,  
34 tourist home, apartment, or home.

35 (3) Sleeping accommodations rented by a hotel operator to those persons  
36 directly employed by the hotel operator for the purposes of performing duties in support of the  
37 operation of the hotel or related operations.

38 “Marketplace facilitator” means a person or entity that facilitates the sale of goods and  
39 services by advertising goods and services for sale in a physical or electronic forum and collects  
40 payments from the purchaser on behalf of the seller either directly or indirectly.

41 (f) “Person” means any individual, firm, partnership, joint venture, association, syndicate,  
42 social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust,

43 business trust, trustee, committee, estate, executor, administrator, or any other group or  
 44 combination acting as a unit.

45 ~~(g)~~ “State park” means any state-owned facility which is part of this state's park and  
 46 recreation system established pursuant to this code. For purposes of this article, any recreational  
 47 facility otherwise qualifying as a “hotel” and situated within a state park is considered to be solely  
 48 within the county in which the building or buildings comprising the facility are physically situated,  
 49 notwithstanding the fact that the state park within which the facility is located may lie within the  
 50 jurisdiction of more than one county.

51 ~~(h)~~ “Tax,” “taxes”, or “this tax” means the hotel occupancy tax authorized by this article.

52 ~~(i)~~ “Taxing authority” means a municipality or county levying or imposing the tax authorized  
 53 by this article.

54 ~~(j)~~ “Taxpayer” means any person liable for the tax authorized by this article.

**§7-18-4. Consumer to pay tax; hotel or hotel operator not to represent that it will absorb  
 tax; accounting by hotel and marketplace facilitators.**

1 (a) The consumer shall pay to the hotel operator the amount of tax imposed by any  
 2 municipality or county hereunder, which tax shall be added to and shall constitute a part of the  
 3 consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible  
 4 as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes  
 5 paid by consumers. The hotel operator shall separately state the tax authorized by this article on  
 6 all bills, invoices, accounts, books of account, and records relating to consideration paid for  
 7 occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder  
 8 with the proceeds of the rental of hotel accommodations unless the taxing authority shall, by  
 9 ordinance, order, regulation, or otherwise require in writing the hotel operator to segregate such  
 10 taxes collected from such proceeds. The taxing authority’s claim shall be enforceable against,  
 11 and shall be superior to, all other claims against the moneys so commingled excepting only claims  
 12 of the state for moneys held by the hotel pursuant to the provisions of §11-15-1 *et seq.* of this

13 code. All taxes collected pursuant to the provisions of this article shall be deemed to be held in  
14 trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter  
15 provided.

16 (b) Where a hotel or hotel operator contracts with a marketplace facilitator to offer the use  
17 or occupancy of a hotel room, through an electronic medium, platform, or marketplace, including,  
18 but not limited to, a website operated by the marketplace facilitator, and the marketplace facilitator  
19 collects receipts from the consumer for the transaction on behalf of the hotel or hotel operator,  
20 then such marketplace facilitator shall be responsible, on behalf of the hotel or hotel operator, for  
21 the collection and remittance of the tax imposed by any municipality or county hereunder. The  
22 marketplace facilitator shall separately state the tax authorized by this article on all bills, invoices,  
23 accounts, books of account, and records relating to consideration paid for the occupancy or use  
24 of a hotel room. All taxes collected pursuant to the provisions of this article shall be deemed to  
25 be held in trust by the marketplace facilitator, on behalf of the hotel or hotel operator, until the  
26 same has remitted by the marketplace facilitator to the taxing authority as hereinafter provided.

27 ~~(b)~~ (c) A hotel or hotel operator shall not represent to the public in any manner, directly or  
28 indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an  
29 element in the price to be collected from the consumer.

NOTE: The purpose of this bill is to provide for the collection of the hotel occupancy tax by marketplace facilitators.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.