

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 270

FISCAL
NOTE

BY SENATORS MAYNARD AND WOODRUM

[Introduced February 12, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §7-18-3 and §7-18-4 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated §7-18-
 3 4a, all relating to taxation of hotel rooms booked through a marketplace facilitator; defining
 4 marketplace facilitator; providing for collection and remittance of the hotel occupancy tax
 5 imposed by any municipality or county by certain marketplace facilitators; making
 6 marketplace facilitators satisfy certain economic nexus requirements responsible for
 7 collection and remittance of the tax imposed by any county or municipality; requiring the
 8 marketplace facilitator to separately state the tax on all bills, invoices, accounts, books of
 9 account, and records relating to consideration paid for the occupancy or use of a hotel
 10 room; deeming all taxes collected be held in trust by the marketplace facilitator until
 11 remitted; establishing procedures, timelines, and requirements for the remittance of hotel
 12 occupancy taxes by marketplace facilitators; providing for the administration, enforcement
 13 and collection of such taxes by the State Tax Commissioner; providing criminal penalties
 14 for violations; providing rule-making authority; and permitting marketplace facilitators and
 15 hotels or hotel operators to enter into agreements regarding fulfillment of the requirements
 16 of the chapter.

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 directly
 36 employed by the hotel operator for the purposes of performing duties in support of the operation
 37 of the hotel or related operations.

38 “Marketplace facilitator” shall have the same meaning as stated in §11-15A-1(b)(8) of this
 39 code.

40 (f) “Person” means any individual, firm, partnership, joint venture, association, syndicate,
 41 social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust,
 42 business trust, trustee, committee, estate, executor, administrator, or any other group or
 43 combination acting as a unit.

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

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

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

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

**§7-18-4. Consumer to pay tax; collection of tax by marketplace facilitators; hotel, or hotel
 operator or marketplace facilitator 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) *Economic nexus and duty of certain marketplace facilitators to collect tax.* - Where a
17 hotel or hotel operator contracts with a marketplace facilitator to offer the use or occupancy of a
18 hotel room, such marketplace facilitator shall be responsible, on behalf of the hotel or hotel
19 operator, for the collection and remittance of the tax imposed by any municipality or county
20 pursuant to this article when:

21 (1) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf
22 or on behalf of one or more hotels or hotel operators equal to or exceeding \$100,000 in gross
23 revenue for an immediately preceding calendar year, or a current calendar year; or

24 (2) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf
25 or on behalf of one or more hotels or hotel operators in 200 or more separate transactions for an
26 immediately preceding calendar year or a current calendar year.

27 For purposes of §7-18-4 of this code, a marketplace facilitator meeting the requirements
28 of this subsection is deemed to be an agent of any hotel or hotel operator making retail sales
29 through the marketplace facilitator's physical or electronic marketplace.

30 (c) Collection and remittance of tax by marketplace facilitators. – Where a marketplace
31 facilitator is responsible for the collection and remittance of the tax imposed pursuant to §7-18-
32 4(b) of this code, the marketplace facilitator shall separately state the tax authorized by this article
33 on all bills, invoices, accounts, books of account, and records relating to consideration paid for
34 the occupancy or use of a hotel room. All taxes collected pursuant to the provisions of this article
35 shall be deemed to be held in trust by the marketplace facilitator, on behalf of the hotel or hotel
36 operator, until the same has been remitted by the marketplace facilitator to the State Tax
37 Department. All taxes collected by the marketplace facilitator pursuant to this article shall be due
38 and payable in monthly installments on or before the 15th day of the calendar month next
39 succeeding the month in which the tax accrued: *Provided*, That for credit sales in which the tax
40 authorized by this article is not collected by the marketplace facilitator at the time of such sales,
41 such tax shall not, for purposes of this article, be regarded as having accrued until the date on
42 which it is either received by the marketplace facilitator or upon the expiration of the 30-day
43 payment period set forth in §7-18-6 of this code, whichever shall first occur. The marketplace
44 facilitator shall, on or before the 15th day of each month, prepare and deliver to the State Tax
45 Department a return for the preceding month, in the form prescribed by the State Tax Department.
46 Such form shall include all information necessary for the computation, collection and subsequent
47 distribution of the tax as the State Tax Department may require. A remittance for the amount of
48 the tax due shall accompany each return. Each return shall be signed by the marketplace
49 facilitator or his or her duly authorized agent.

50 (d) *Effective date.* –The amendments to this section enacted during the 2021 Regular
51 Legislative Session shall apply to sales by a marketplace facilitator made on and after January 1,
52 2022.

53 (~~b~~) (e) A hotel, or hotel operator or marketplace facilitator shall not represent to the public
54 in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is
55 not to be considered an element in the price to be collected from the consumer.

§7-18-4a. State administration of tax collected and remitted by marketplace facilitators.

1 (a) Notification to Tax Commissioner. – Any county or municipality that imposes a hotel
2 occupancy tax pursuant to §7-18-1 *et seq.* of this code or changes the rate of such taxes shall
3 notify the Tax Commissioner at least 180 days before the effective date of the imposition of the
4 tax or any change in the rate of such taxes: *Provided*, That for any county or municipal hotel
5 occupancy tax in effect as of the amendments to this article enacted during the 2021 Regular
6 Legislative Session, the county or municipality shall notify the Tax Commissioner as to the
7 imposition of the tax and the rate of taxes within 60 days of the effective date of the amendments
8 to this article.

9 (b) State level administration of taxes. – The Tax Commissioner is responsible for
10 administering, collecting and enforcing any hotel occupancy tax collections imposed upon a
11 marketplace facilitator pursuant to §7-18-4(c) of this code and distributing said taxes to the
12 appropriate taxing jurisdictions: *Provided*, That nothing in this section shall be construed to
13 interfere with the ability of a marketplace facilitator and a hotel or hotel operator to enter into an
14 agreement regarding fulfillment of the requirements of §7-18-1 *et seq.* of this code. The Tax
15 Commissioner shall conduct, or others may be authorized to conduct on his or her behalf, all
16 audits of marketplace facilitators for compliance with the hotel occupancy tax laws of this state
17 and its local jurisdiction.

18 (c) Administrative Procedures. – Each and every provision of the West Virginia Tax
19 Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code applies to the taxes
20 collected pursuant to §7-18-4(c) of this code, except as otherwise expressly provided in this
21 section, with like effect as if that act were applicable only to the taxes imposed pursuant to §7-18-
22 4(c) and were set forth in extenso in this article.

23 (d) Criminal penalties. – Each and every provision of the West Virginia Tax Crimes and
24 Penalties Act set forth in §11-9-1 *et seq.* of this code applies to the taxes collected pursuant to
25 §7-18-4(c) of this code with like effect as if that act were applicable only to the taxes imposed

26 pursuant to §7-18-4(c) and were set forth in extenso in this article.

27 (e) Record keeping. – In addition to other applicable record keeping requirements, the Tax
28 Commissioner may require a marketplace facilitator to provide or make available to the Tax
29 Commissioner any information the commissioner determines is reasonably necessary to enforce
30 the provisions §7-18-1 et seq. of this code. Such information may include documentation of sales
31 made through the marketplace facilitator’s physical or electronic marketplace, including whether
32 or not the use and occupancy tax paid was for a hotel room located within the corporate limits of
33 a municipality or located outside of the corporate limits and within the limits of a particular county.
34 The Tax Commissioner may prescribe by procedural rule, as provided for in §29A-3-1 et seq. of
35 this code, the form and manner for providing this information along with any other information as
36 may be necessary to implement the provisions of this section.

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.