

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 163

SENATORS BLAIR AND MARONEY, *original sponsor*

[Passed March 4, 2020; in effect 90 days from

passage]

1 AN ACT to amend and reenact §7-18-3 and §7-18-4 of the Code of West Virginia, 1931, as
2 amended, all relating to taxation of hotel rooms booked through a marketplace facilitator;
3 defining “marketplace facilitator”; providing for collection and remittance of the tax imposed
4 by any municipality or county by a marketplace facilitator; making the marketplace
5 facilitators responsible for collection and remittance of the tax imposed by any municipality
6 or county; requiring the marketplace facilitator to separately state the tax on all bills,
7 invoices, accounts, books of account, and records relating to consideration paid for the
8 occupancy or use of a hotel room; deeming all taxes collected be held in trust by the
9 marketplace facilitator until remitted; and permitting marketplace facilitators and hotels or
10 hotel operators to enter into agreements regarding fulfillment of the requirements of the
11 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
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 (f) "Marketplace facilitator" shall have the same meaning as stated in §11-15A-1(b)(8) of
39 this code.

40 (g) "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 (h) "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 (i) "Tax", "taxes", or "this tax" means the hotel occupancy tax authorized by this article.

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

53 (k) "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, such marketplace facilitator shall be responsible, on behalf of the
18 hotel or hotel operator, for the collection and remittance of the tax imposed by any municipality or
19 county hereunder. The marketplace facilitator shall separately state the tax authorized by this
20 article on all bills, invoices, accounts, books of account, and records relating to consideration paid
21 for the occupancy or use of a hotel room. All taxes collected pursuant to the provisions of this
22 article shall be deemed to be held in trust by the marketplace facilitator, on behalf of the hotel or
23 hotel operator, until the same has been remitted by the marketplace facilitator to the State Tax
24 Division as hereinafter provided. Nothing in this subsection shall be construed to interfere with
25 the ability of a marketplace facilitator and a hotel or hotel operator to enter into an agreement
26 regarding fulfillment of the requirements of this chapter.

27 (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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2020.

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Governor