

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 270

BY SENATORS MAYNARD AND WOODRUM

[Originating in the Committee on Government
Organization; reported on February 19, 2021]

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 taxation of hotel rooms booked through a marketplace facilitator;
3 defining “marketplace facilitator”; providing for collection and remittance of the hotel
4 occupancy tax imposed by any municipality or county by certain marketplace facilitators;
5 making marketplace facilitators satisfying certain economic nexus requirements
6 responsible for collection and remittance of the tax imposed by any county or municipality;
7 requiring the marketplace facilitator to separately state the tax on all bills, invoices,
8 accounts, books of account, and records relating to consideration paid for the occupancy
9 or use of a hotel room; deeming all taxes collected be held in trust by the marketplace
10 facilitator until remitted; and permitting marketplace facilitators and hotels or hotel
11 operators to enter into agreements regarding fulfillment of the requirements 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 the proprietor of a hotel, whether in the
21 capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in
22 bankruptcy, receiver, executor, or in any other capacity. Where the hotel operator performs his or
23 her functions through a managing agent of any type or character other than an employee, the
24 managing agent is a hotel operator for the purposes of this article and has the same duties and
25 liabilities as his or her principal. Compliance with the provisions of this article by either the principal
26 or the managing 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-; or

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

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

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

53 ~~(j)~~ (k) "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~~ those taxes shall have been remitted to the taxing authority as
15 hereinafter 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 hotel 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 hotel 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 this section, a marketplace facilitator meeting the requirements of this
28 subsection is deemed to be an agent of any hotel or hotel operator making retail sales through
29 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
32 subsection (b) of this section, the marketplace facilitator shall separately state the tax authorized
33 by this article on all bills, invoices, accounts, books of account, and records relating to
34 consideration paid for the occupancy or use of a hotel room. All taxes collected pursuant to the

35 provisions of this article shall be deemed to be held in trust by the marketplace facilitator, on
36 behalf of the hotel or hotel operator, until those taxes have been remitted by the marketplace
37 facilitator to the taxing authority in accordance with §7-18-10 of this code: *Provided*, That nothing
38 in this section shall be construed to interfere with the ability of a marketplace facilitator and a hotel
39 or hotel operator to enter into an agreement regarding fulfillment of the requirements of §7-18-1
40 *et seq.* of this code.

41 (d) *Effective date.* — The amendments to this section enacted during the regular session
42 of the Legislature, 2021, shall apply to sales by a marketplace facilitator made on and after
43 January 1, 2022.

44 (~~b~~) (e) A hotel, ~~or~~ hotel operator, or marketplace facilitator shall not represent to the public

45 in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is

46 not considered an element in the price to be collected from the consumer.