

SENATE BILL 1086

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7; Title 13; Title 56; Title 62; Title 66;
Title 67 and Title 68, relative to short-term rental
units.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by adding the following
new chapter:

66-38-101. This chapter shall be known and may be cited as the "Short-Term Rental
Unit Act."

66-38-102. As used in this chapter:

- (1) "Local governing body" means the legislative body of a municipal,
metropolitan, or county government;
- (2) "Local law" means an ordinance, resolution, regulation, rule, or other
requirement of any type enacted, maintained, or enforced by a local governing body;
- (3) "Online short-term rental unit marketplace" means any person or entity that
provides a digital platform for compensation, through which a third party offers to rent a
short-term rental unit to an occupant;
- (4) "Residential dwelling" means a house or building used or designed to be
used as an abode or home of a person, family, or household;
- (5) "Short-term rental unit" means a residential dwelling, including a single-family
dwelling or a unit in a multi-unit building, such as an apartment building, condominium,
cooperative, or time-share, that is rented wholly or partially for a fee for a period of less
than thirty (30) continuous days; and

(6) "Short-term rental unit provider" means any person or entity engaged in renting a short-term rental unit to an occupant.

66-38-103.

(a) A short-term rental unit provider, or an online short-term rental unit marketplace on the short-term rental unit provider's behalf, must maintain at least five hundred thousand dollars (\$500,000) in liability insurance or coverage to cover damage done or suffered by any person renting the unit from the short-term rental unit provider.

(b) A short-term rental unit provider must comply with all requirements regarding fire sprinklers, smoke alarms, and carbon monoxide alarms set out in title 68, chapter 120.

66-38-104.

(a) Except as otherwise provided in this section, a local governing body shall not:

(1) Prohibit the use of property as a short-term rental unit; or

(2) Restrict the use of or otherwise regulate a short-term rental unit based on the short-term rental unit's classification, use, or occupancy.

(b) Notwithstanding subsection (a), a local governing body may:

(1) Enact, maintain, or enforce a local law that regulates property used as a short-term rental unit if the local governing body demonstrates by clear and convincing evidence that the primary purpose of the local law is the least restrictive means to protect the public's health and safety; or

(2) Apply a local law that regulates land use to a short-term rental unit in the same manner as other residential dwellings. This subdivision (b)(2) includes local laws concerning residential use and other zoning matters, noise, property maintenance, and nuisance.

(c) Notwithstanding subsection (a), a local governing body may limit or prohibit the use of a short-term rental unit to prohibit or restrict the:

- (1) Housing of sexual offenders;
- (2) Operating a residential treatment facility licensed under title 33, chapter 2, part 4 or similar facility;
- (3) Selling of illegal drugs;
- (4) Selling of beer or alcoholic beverages or other activity that requires a permit or license under title 57; or
- (5) Operation as an adult-oriented establishment pursuant to title 7, chapter 51.

SECTION 2. Tennessee Code Annotated, Section 7-4-101(a)(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) "Hotel" means any structure, or any portion of any structure, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes a:

- (A) Hotel, inn, tourist court, tourist camp, tourist cabin, or motel;
- (B) Short-term rental unit, as defined by § 67-11-101, if the municipality in which the short-term rental unit is located complies with § 7-4-102(d); and
- (C) Any place in which rooms, lodgings, or accommodations are furnished to transients for a consideration;

SECTION 3. Tennessee Code Annotated, Section 7-4-102, is amended by adding the following new subsection:

(d) A municipality may levy the tax described in subsections (a), (b), and (c) on a short-term rental unit provider, as defined by § 67-11-101, if the tax:

- (1) Is levied in the same amount and manner for operators of hotels that are not short-term rental units, as defined by § 67-11-101, as it is for operators of hotels that are short-term rental unit providers; and

(2) On and after January 1, 2019, is collected and remitted subject to the conditions set out in title 67, chapter 11, which allow an online short-term rental unit marketplace, as defined by § 67-11-101, to collect and remit the tax.

SECTION 4. Tennessee Code Annotated, Section 67-4-1401(2), is amended by deleting the subdivision and substituting instead the following:

(4) "Hotel" means any structure, or any portion of any structure, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes a:

(A) Hotel, inn, tourist court, tourist camp, tourist cabin, or motel;

(B) Short-term rental unit, as defined by § 67-11-101, if the municipality in which the short-term rental unit is located complies with § 67-4-1402(d); and

(C) Any place in which rooms, lodgings, or accommodations are furnished to transients for a consideration;

SECTION 5. Tennessee Code Annotated, Section 67-4-1402, is amended by adding the following new subsection:

(d) A municipality may levy the tax described in this section on a short-term rental unit provider, as defined in § 67-11-101, if the tax:

(1) Is levied in the same amount and manner for operators of hotels that are not short-term rental units, as defined by § 67-11-101, as it is for operators of hotels that are short-term rental unit providers; and

(2) On and after January 1, 2019, is collected and remitted subject to the conditions set out in title 67, chapter 11, which allow an online short-term rental unit marketplace, as defined by § 67-11-101, to collect and remit the tax.

SECTION 6. Tennessee Code Annotated, Title 67, Chapter 4, Part 14, is amended by adding the following new section:

(a) This section applies to any city, town, or county in this state, including any county having a metropolitan form of government.

(b) Any tax authorized to be levied by any city, town, or county on the privilege of occupancy of a hotel pursuant to any ordinance, resolution, or private act, enacted or modified prior to, on, or after, January 1, 2019, must:

(1) Be levied in the same amount and manner for operators of hotels as it is for short-term rental unit providers, as defined by § 67-11-101; and

(2) On and after January 1, 2019, be collected and remitted subject to the conditions set out in chapter 11 of this title, which allow an online short-term rental unit marketplace, as defined by § 67-11-101, to collect and remit the tax.

(c) To the extent there is a conflict between this section and any private act, resolution, or ordinance that imposes a tax on the privilege of occupancy in a hotel, this section shall govern. The legislative body of any city or town, by ordinance, or county, by resolution, is authorized to modify the provisions of any ordinance or resolution enacted prior to January 1, 2019, that conflict with this section.

SECTION 7. Tennessee Code Annotated, Section 67-4-702(a)(25), is amended by adding the language "but does not include a short-term rental unit, as defined by § 67-11-101" between the language "owner" and before the semicolon.

SECTION 8. Tennessee Code Annotated, Section 67-4-702(a)(14), is amended by deleting the language "to consumers;" and substituting instead the language "to consumers, but does not include an online short-term rental unit marketplace, as defined by § 67-11-101;".

SECTION 9. Tennessee Code Annotated, Section 67-4-708(3)(C)(xii), is amended by deleting the subdivision and substituting instead the following:

Operators of residential and nonresidential buildings except short-term rental unit providers, as defined by § 67-11-101, hotels, motels, and rooming houses;

SECTION 10. Tennessee Code Annotated, Section 67-4-708(3)(C), is amended by deleting the language "(3)(C)(i)-(xvi)" wherever it may appear and substituting instead the language "(3)(C)(i)-(xvii)", and is further amended by adding the following new, appropriately designated subdivision:

Services rendered by an online short-term rental unit marketplace, as defined by § 67-11-101;

SECTION 11. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following appropriately designated subdivision:

() "Online short-term rental unit management company" means a person or entity who, for consideration, manages an online short-term rental unit, as defined by § 67-11-101;

SECTION 12. Tennessee Code Annotated, Section 67-6-205(c)(1), is amended by deleting the language "inn" and substituting instead the language "short-term rental unit provider, as defined by § 67-11-101, online short-term rental unit management company, inn", and is further amended by adding the following language:

On or after January 1, 2019, any tax collected on a short-term rental unit provider, as defined by § 67-11-101, or an online short-term rental unit management company, must be collected and remitted subject to the conditions set out in title 67, chapter 11, which allow an online short-term rental unit marketplace, as defined by § 67-11-101, to collect and remit the tax;

SECTION 13. Tennessee Code Annotated, Section 67-6-501(d), is amended by designating the existing language as subdivision (1), deleting the language "this subsection (d)" and substituting instead the language "this subdivision (d)(1)", and adding the following new subdivision (2):

(2) When a short-term rental unit provider, as defined by § 67-11-101, utilizes a short-term rental unit management company to manage a short-term rental unit, as defined by § 67-11-101, owned by the short-term rental unit provider, the tax levied by this chapter on the sales price of such unit is imposed on, and must be remitted by, the short-term rental unit management company to the commissioner. This subdivision (d)(2) does not prohibit the short-term rental unit management company from collecting the tax from the consumer as provided in § 67-6-502.

SECTION 14. Tennessee Code Annotated, Title 67, is amended by adding the following new chapter:

67-11-101. As used in this chapter:

- (1) "Department" means the department of revenue;
- (2) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings, or accommodations in a short-term rental unit;
- (3) "Online short-term rental unit marketplace" means any person or entity that provides a digital platform for compensation, through which a third party offers to rent a short-term rental unit to an occupant;
- (4) "Residential dwelling" means a house or building used or designed to be used as an abode or home of a person, family, or household;
- (5) "Short-term rental unit" means a residential dwelling, including a single-family dwelling or a unit in a multi-unit building, such as an apartment building, condominium, cooperative, or time-share, that is rented wholly or partially for a fee;
- (6) "Short-term rental unit provider" means any person or entity engaged in renting any short-term rental unit offered through an online short-term rental unit marketplace;

(7) "Short-term rental unit transaction" means any transaction in which there is a charge to an occupant by a short-term rental unit provider for the occupancy of any short-term rental unit;

(8) "Sales price" has the same meaning as provided in § 67-6-102; but does not include a separately stated service fee imposed by an online short-term rental unit marketplace on a short-term rental unit transaction; and

(9) "Transient" means any person who exercises occupancy or is entitled to occupancy of any short-term rental unit for a period of less than thirty (30) continuous days.

67-11-102.

(a) Any online short-term rental unit marketplace may register with the commissioner for the collection and remittance of all of the following taxes with respect to their imposition on the sales price of a short-term rental unit:

(1) Title 7, chapter 4, part 1;

(2) Title 7, chapter 4, part 2;

(3) Title 67, chapter 4, part 14;

(4) Any tax on the occupancy of a room provided by any hotel, motel, or similar establishment to a transient for a consideration, where the tax is imposed pursuant to a private act; and

(5) Title 67, chapter 6.

(b) An election pursuant to subsection (a) is effective only if the online short-term rental unit marketplace makes an election to remit all taxes set out in subdivisions (a)(1), (a)(3), (a)(4), and (a)(5). An election made pursuant to subsection (a) must be made in a manner prescribed by the department. Except as otherwise provided by this chapter, any online short-term rental unit marketplace making the election pursuant to subsection

(a) is subject to this chapter in the same manner as if the online short-term rental unit marketplace were directly engaged in renting short-term rental units to occupants for tax collection and remittance purposes only.

(c) No short-term rental unit provider is subject to taxes set out in subdivisions (a)(1), (a)(3), (a)(4), and (a)(5) with respect to any short-term rental unit transaction for which the short-term rental unit provider has received written notice or documentation from an online short-term rental unit marketplace that the online short-term rental unit marketplace has paid or will pay the taxes. Any notice received pursuant to this subsection (c) is sufficient proof that the online short-term rental unit marketplace and not the short-term rental unit provider is liable for the taxes that the online short-term rental unit marketplace elected to remit.

67-11-103. The tax collected pursuant to this chapter must be collected and remitted by the online short-term rental unit marketplace, and administered by the department, in the same manner as provided by chapter 6 of this title with respect to the sales and use tax.

67-11-104. For purposes of this chapter:

(1) Any online short-term rental unit marketplace that has made an election pursuant to § 67-11-102 shall, with respect to each short-term rental unit transaction facilitated by the online short-term rental unit marketplace, collect and remit the taxes set out in § 67-11-102(a), even if such sale is occasional or isolated as contemplated by § 67-6-102(8)(B). The online short-term rental unit marketplace shall report its taxes monthly and remit the aggregate total amounts for each respective jurisdiction for each month; and

(2) Taxes payable by an online short-term rental unit marketplace in accordance with § 67-11-102(a) are subject to audit only by the commissioner at the commissioner's sole discretion. Audits of an online short-term rental unit marketplace shall be

conducted solely on the basis of the tax identification number associated with each online short-term rental unit marketplace and shall not be conducted directly or indirectly on any individual short-term rental unit provider or any transient to whom short-term rental units are furnished. An audit described in this subdivision (2) must be conducted on the basis of returns filed by the online short-term rental unit marketplace with the commissioner, and if requested by the online short-term rental unit marketplace, must include all tax types for which the online short-term rental unit marketplace has made an election pursuant to § 67-11-102(a) to collect and remit; and

(3) If an online short-term rental unit marketplace is required to disclose any personally identifiable information relating to any short-term rental unit provider or transient to whom a short-term rental unit is furnished, such information is confidential pursuant to § 67-1-1702.

67-11-105. No online short-term rental unit marketplace shall advertise or state in any manner, whether directly or indirectly, that the taxes set out in § 67-11-102(a)(1)-(5), or any part of the tax, will be assumed or absorbed by the short-term rental unit provider; that it will not be added to the occupancy; or that, if added, any part will be refunded.

67-11-106. Online short-term rental unit marketplaces that collect the taxes set out in § 67-11-102(a) are subject to the administration and enforcement provisions in chapter 6, parts 4 and 5 of this title.

67-11-107. Taxes collected pursuant to this chapter shall be distributed on a monthly basis by the department to the applicable local governing body in which the short-term rental unit was located and the tax was collected. The department may deduct an administration fee of one and one hundred twenty-five thousandths percent (1.125%) of the collected tax to cover its expenses of administering the collection and distribution of the tax.

67-11-108. The department has the power to make and publish reasonable rules promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, not inconsistent with this chapter, other laws, or the constitution of this state or the United States, for the enforcement of this chapter and the collection of revenues under this chapter.

SECTION 15. Tennessee Code Annotated, Section 68-14-302(6), is amended by adding the following language to the end of the subdivision:

"hotel" does not include a short-term rental unit, as defined by § 67-11-101;

SECTION 16. Tennessee Code Annotated, Section 68-120-101(i), is amended by deleting the last sentence and substituting instead the following:

For purposes of this subsection (i), "hospitality services" means offering sleeping accommodations to transients for less than thirty (30) nights per stay and includes a short-term rental unit as defined by § 66-38-102.

SECTION 17. Tennessee Code Annotated, Section 68-120-112(a)(4)(B), is amended by deleting the language "inns" and substituting instead the language "inns, short-term rental units as defined by § 66-11-101,".

SECTION 18. Tennessee Code Annotated, Section 68-120-112(d)(2), is amended by adding the following sentence to the end of the subdivision:

The short-term rental unit provider, as defined by § 67-11-101, is responsible for performance of maintenance, repairs, and tests as are necessary to ensure that every smoke alarm and carbon monoxide alarm required in the short-term rental unit, as defined by § 67-11-101, is operational at all times.

SECTION 19. Tennessee Code Annotated, Section 68-120-112, is amended by adding the following new subsection:

(1) This section applies only to buildings:

(A) That existed before January 1, 2016; or

(B) Being used as a short-term rental unit, as defined by § 67-11-101, that existed before July 1, 2017.

(2) Smoke alarms and carbon monoxide alarms shall be installed and maintained in accordance with the applicable building construction safety standards as provided in § 68-120-101 in buildings constructed on or after:

(A) January 1, 2016; or

(B) July 1, 2017, if the building is being used as a short-term rental unit, as defined by § 67-11-101.

SECTION 20. Except for the provision labeled § 67-11-101, Section 14 of this act shall take effect January 1, 2019, the public welfare requiring it; all other sections in this act, including the provision labeled § 67-11-101, shall take effect upon becoming a law, the public welfare requiring it.