NCSL

NATIONAL CONFERENCE of STATE LEGISLATURES

LegisBrief

A QUICK LOOK INTO IMPORTANT ISSUES OF THE DAY

SEPT. 2018 | VOL. 26, NO. 35

More States Taking Action On Short-Term Rentals

BY SAVANNAH GILMORE

They go by a variety of names: vacation rentals, transient accommodations, home sharing, Airbnbs. Whatever you call them, short-term rental properties have experienced significant growth over the past decade. They not only make up a sizable portion of today's lodging industry, they also affect multiple public policy issues ranging from regulation to taxation.

Action on short-term rentals is continually taking place across the states and it does not appear it will subside anytime soon.

State Action

■ **Regulation.** Short-term rental regulations—such as local zoning restrictions, registration requirements and banning short-term rentals completely—vary widely, with many states leaving the decision-making to municipalities.

However, some states have limited local authority on the issue: Arizona, Florida, Idaho, Indiana, Tennessee and Wisconsin have enacted legislation prohibiting short-term rental bans. And several states protect localities' abilities to do so in certain circumstances, while Wisconsin only restricts banning rentals of seven consecutive days or more.

In New York, individuals are banned from renting out non-owner-occupied apartments for fewer than 30 days, and in 2016, the state reinforced the ban by enacting legislation that prohibits any advertising of these units as short-term vacation rentals. Reports, however, have found that these rentals continue to exist.

Did You Know?

- A 2016 Pew Research Center report found roughly 1 in 10 American adults had stayed overnight at a private residence that was booked using a home-sharing site.
- According to a separate 2016 Pew Research Center report, 1 percent of Americans had earned money in the last year from an online vacation rental platform.
- There may be significant differences in regulations based on whether a short-term rental is the owner's primary residence.

One proposed approach, not yet enacted, is state-level registration requirements for short-term vacation rentals, as introduced during Vermont's 2018 legislative session with SB 204. Additionally, the Massachusetts General Court passed HB 4841, which would have created a state-level short-term rental registry. However, Governor Charlie Baker (R) returned the bill with several proposed amendments following the conclusion of the formal session.

Although there are no general statewide registration requirements, other than for tax purposes in some states, some bills require short-term rental owners to comply with specific regulations. Washington, for example, enacted HB 1757 in 2017, which expanded statutory language to include transient accommodations as property subject to reporting hazardous chemical contamination to the Department of Health. And, in 2017, Virginia enacted SB 1578, authorizing localities to create registration requirements for short-term rentals.

■ **Taxation.** Another significant short-term rental issue is the proper tax collection and remittance of sales and/or lodging taxes at state and local levels. A report examining Airbnb, released by New York's state attorney general's office, found New York City hosts were liable for more than $33 million in taxes from 2010 to 2014, not including fines or penalties. The report found "few" hosts had filed necessary paperwork with the city to collect and remit these taxes, resulting in a large amount of unpaid occupancy taxes. Additionally, a lack of proper reporting related to short-term rental income has made it difficult to collect accurate amounts for personal income tax purposes.

According to the Bloomberg Tax 2018 Survey of State Tax Departments, 25 states place the obligation on the owners of short-term rental accommodations to collect sales tax, while 14 states place it on the third-party facilitator. More than 20 states include any fees paid to the facilitator in the taxable price of the rentals.

A collection method spearheaded by Airbnb, in which the company has entered into voluntary contract agreements with departments of revenue to collect and remit taxes on hosts' behalves, has become increasingly popular.

But this approach hasn't worked with all rental platforms. According to Vermont's 2017 Short-Term Rental Working Group Report, the Department of Taxes tried to enter into a similar agreement with HomeAway, the parent company of VRBO. But since the site does not hold any financial transactions, short-term rental owners are still responsible for collecting and remitting taxes and fees to the state. However, primarily due to changes in state law, HomeAway began collecting and remitting state taxes in Idaho, Oregon and Washington in 2018.

And, it's worth noting, while these contract agreements have been praised for increasing feasibility of hosts' tax collection, they also have been criticized for not being transparent. A former Montana Department of Revenue director authored a report, supported by the American Hotel and Lodging Association, that criticized these agreements' lack of accountability on the accurate payment of lodging taxes. This was because the contracts he examined gave substantial control of the payment and audit process to Airbnb. According to the report, these agreements generally protect lodging operators from being identified to public agencies.

Federal Action

Although no federal legislation has been enacted in direct response to the rise of short-term rentals, there are specific laws that relate to the federal protection of short-term rental marketplace platforms. According to the 2017 League of California Cities report, these laws include the Communications Decency Act, which protects online rental marketplace platforms from being held liable for "information provided by another content provider." Another law cited in the report is the Stored Communications Act, which complicates the ability of government entities to impose requirements for online rental marketplace platforms to disclose transaction information.

Do you know your hosts?

There are two distinct types of short-term rental hosts:

■ **The Greeters:** Primary residence hosts are homeowners who live in the residence and offer rooms or parts of the home as short-term rentals.

■ **The Unseen:** Non-owner-occupied short-term vacation rentals are apartments and homes where the host is not present during a stay.

Additional Resources

- Pew Research Center, "Shared Collaborative and On Demand: The New Digital Economy," May 2016
- Pew Research Center, "Gig Work, Online Selling and Home Sharing," November 2016
- NCSL, "Principles for the Taxation of Online Travel Companies and Short-Term Rental Marketplaces," November 2017

NCSL Contact

Savannah Gilmore
303-856-1425

National Conference of State Legislatures | William T. Pound, Executive Director

7700 East First Place, Denver, Colorado 80230, **303-364-7700** | 444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001, **202-624-5400**

www.ncsl.org | The information contained in this LegisBrief does not necessarily reflect NCSL policy.