STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. FAHY, L. ROSENTHAL, LEVENBERG, BURDICK, SIMON, KELLES, WOERNER, CLARK, SHIMSKY, SIMONE, GUNTHER, LUNSFORD, PAULIN, THIELE, GALLAGHER, STIRPE, JACOBSON, BARRETT, LUPARDO, SHRESTHA -- Multi-Sponsored by -- M. of A. DAVILA -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Housing in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law and the tax law, in relation to short-term residential rental of private dwellings in certain municipalities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property law is amended by adding a new article 12-D to read as follows:

ARTICLE 12-D

SHORT-TERM RESIDENTIAL RENTAL UNITS

Section 447-a. Definitions.
447-b. Short-term residential rental units; regulation.
447-c. Registration.
447-d. Exceptions.
447-e. Penalties.
447-f. Enforcement.
447-g. Data sharing.

§ 447-a. Definitions. For the purposes of this article, the following terms shall have the following meanings:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1. "Short-term residential rental unit" means an entire dwelling unit, or a room, group of rooms, other living or sleeping space, or any other space within a dwelling, made available for rent by guests for less than thirty consecutive days, where the unit is offered for tourist or transient use by the short-term rental host of the residential unit.

2. "Short-term rental host" means a person or entity in lawful possession of a short-term rental unit who rents such unit to guests in accordance with this article.

3. "Booking service" means a person or entity who, directly or indirectly:

(a) provides one or more online, computer or application-based platforms that individually or collectively can be used to:

(i) list or advertise offers for short-term rentals, and

(ii) either accept such offers, or reserve or pay for such rentals; and

(b) charges, collects or receives a fee for the use of such a platform or for provision of any service in connection with a short-term rental. A booking service shall not be construed to include a platform that solely lists or advertises offers for short-term rentals.

§ 447-b. Short-term residential rental units; regulation. 1. A short-term rental host may operate a dwelling unit as a short-term residential rental unit provided such dwelling unit:

(a) is registered in accordance with section four hundred forty-seven-c of this article;

(b) is not used to provide single room occupancy as defined by subdivision forty-four of section four of the multiple residence law and subdivision sixteen of section four of the multiple dwelling law;

(c) includes a conspicuously posted evacuation diagram identifying all means of egress from the unit and the building in which it is located;

(d) includes a conspicuously posted list of emergency phone numbers for police, fire, and poison control;

(e) has a working fire-extinguisher;

(f) is insured by an insurer licensed to write insurance in this state or procured by a duly licensed excess line broker pursuant to section two thousand one hundred eighteen of the insurance law for at least the value of the dwelling, plus a minimum of three hundred thousand dollars coverage for third party claims of property damage or bodily injury that arise out of the operation of a short-term rental unit. Notwithstanding any other provision of law, no insurer shall be required to provide such coverage;

(g) is not subject to the emergency tenant protection act of nineteen seventy-four, the rent stabilization law of nineteen sixty-nine, the emergency housing rent control law, the local emergency housing rent control act or otherwise regulated or supervised by a federal, state, or local agency pursuant to any other law or rule or an agreement with such federal, state, or local agency;

(h) is in compliance with any additional health and safety requirements established by the municipality; and

(i) is not otherwise prohibited from operating as a short-term rental unit by federal, state, or local law, rules, and regulations.

2. Occupancies of a short-term rental unit shall be subject to taxes and fees pursuant to articles twenty-eight and twenty-nine of the tax law and applicable local laws.

3. Short-term rental hosts shall maintain records related to guest stays for two years following the end of the calendar year in which an individual rental stay occurred, including the date of each stay and

number of guests, the cost for each stay, including relevant tax, and records related to their registration as short-term rental hosts with the department of state. As a requirement for registration under section four hundred forty-seven-c of this article, hosts shall provide these records to the department of state on an annual basis. The department shall share this report with county, city, town, or village governments and shall make such reports available to local municipal enforcement agencies upon request. Where the booking service is the short-term rental host, the short-term rental host may be exempt from providing such report provided that the booking service includes all necessary information required of a short-term rental host in the report required pursuant to subdivision four of this section.

4. Booking services shall develop and maintain a report related to short-term rental unit guest stays that the booking service has facilitated in the state for two years following the end of the calendar year in which an individual rental stay occurred. The report shall include the dates of each stay and the number of guests, the cost for each stay, including relevant tax, the physical address, including any unit designation, of each short-term rental unit booked, the full legal name of each short-term rental unit's host, and each short-term rental unit's registration number. In the event a booking service does not adhere to subdivision two of section four hundred forty-seven-c of this article, or more information is deemed necessary by the department of state, the department may access this report and all relevant records from a booking service in response to valid legal process. The department shall share this report and records with county, city, town, or village governments and shall make such reports available to local municipal enforcement agencies when lawfully requested. Reports and any records provided to generate such reports shall not be made publicly available without the redaction of the full legal name of each short-term rental unit's host, the street name and number of the physical address of any identified short-term rental unit and the unit's registration number.

5. It shall be unlawful for a booking service to collect a fee for facilitating booking transactions for short-term residential rental units located in this state if the booking service has not verified with the department of state, or in cities with a population over one million with such city, the short-term rental unit and its owner or tenant have been issued a current, valid registration by the department of state.

6. The provisions of this article shall apply to all short-term residential rental units in the state; provided, however, that a municipality that has its own short-term residential rental unit registry as of the effective date of this article may continue such registry and all short-term residential rental units in such municipality shall be required to be registered with the department of state. In a city with a population over one million, all short-term residential rental units shall only register with such city as provided in a local law, rule, or regulation. Municipalities with short-term residential rental unit registries as of the effective date of this article shall maintain the authority to manage such registries and to collect fines for violations related to the registration of short-term residential rental units with such municipal registry. A city with a population over one million that has a short-term residential rental registry shall provide information on short-term residential rental units registered within such municipality to the department of state, on a quarterly basis of each calendar year, in order for the department to maintain a current database of all short-term residential units registered within the

state. Municipalities with short-term residential rental unit registries as of the effective date of this article may establish registration requirements and regulations in such municipality in addition to the requirements of this section. The department of state shall share the report required pursuant to subdivision three of this section with municipalities with short-term residential rental unit registries upon request. No municipality shall create its own short-term rental residential rental unit registry after the effective date of this article.

§ 447-c. Registration. 1. Short-term rental hosts shall be required to register a short-term residential rental unit with the department of state.

(a) Registration with the department of state shall be valid for two years, after which time the short-term rental host may renew the registration in a manner prescribed by the department of state. The department of state may revoke the registration of a short-term rental host upon a determination that the short-term rental host has violated any provision of this article at least three times in two calendar years, and may determine that the short-term rental host shall be ineligible for registration for a period of up to twelve months from the date of such determination or at the request of a municipality when such municipality requests such revocation due to illegal occupancy. Listing or offering a dwelling unit, or portion thereof, as a short-term residential rental unit without current, valid registration shall be unlawful and shall make persons who list or offer such unit ineligible for registration for a period of twelve months from the date a determination is made that a violation has occurred.

(b) A short-term rental host shall include their current, valid registration number on all offerings, listings or advertisements for short-term rental guest stays.

(c) A tenant, or other person that does not own a unit that is used as a short-term rental unit but is in lawful possession of a short-term residential rental unit, shall not qualify for registration if they are not the permanent occupant of the dwelling unit in question and have not been granted permission in writing by the owner for its short-term rental. Proof of written consent by the owner shall be provided to and verified by the department of state or any municipality with its own registration system before the issuing or renewal of a registration number.

(d) The department of state shall make available to booking services the data necessary to allow booking services to verify the registration status of a short-term residential rental unit and that the unit is associated with the short-term rental host who registered the unit.

(e) The short-term rental host shall pay application and renewal registration fees in an amount to be established by the department of state.

(f) Such registration fee shall include a fee for the use of the electronic verification system in an amount to be established by the department of state which shall not exceed the cost to build, operate, and maintain such system.

2. It shall be unlawful for a booking service to collect a fee for facilitating booking transactions for short-term residential rental units located in this state without such booking service first registering with the department of state. Accordingly, booking services shall adhere to the following, in addition to other regulations established by the department, as conditions of such registration:

(a) Booking services shall provide to the department on a quarterly basis, in a form and manner to be determined by the department, the report developed and maintained by the booking service in accordance with subdivision four of section four hundred forty-seven-b of this article. The department shall share this report with county, city, town, or village governments and shall make such reports available to local municipal enforcement agencies when lawfully requested.

(b) A booking service shall provide agreement in writing to the department that it will:

(i) Obtain written consent from all short-term rental hosts intending to utilize their platform, for short-term residential rental units located in this state, for the disclosure of the information pursuant to subdivision four of section four hundred forty-seven-b of this article, in accordance with paragraph (a) of this subdivision; and

(ii) Furnish the information identified pursuant to subdivision four of section four hundred forty-seven-b of this article, in accordance with paragraph (a) of this subdivision.

3. The department of state shall set a fee for booking service registration with the department.

§ 447-d. Exceptions. This article shall not apply to:

1. Incidental and occasional occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent for personal reasons, such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy; or

2. A municipality which does not allow short-term residential rentals; provided, however, that such municipality shall request an exception from this article; or

3. Temporary housing or lodging permitted by the department of health.

§ 447-e. Penalties. 1. Any booking service which collects a fee related to booking a unit as a short-term rental where such unit is not registered in accordance with this article shall be fined in accordance with subdivisions four and five of this section. The secretary of state or their designee may also seek an injunction from a court of competent jurisdiction prohibiting the collection of any fees relating to the offering or renting of the unit as a short-term residential rental.

2. Any person who offers a short-term residential rental unit without registering with the department of state, or any person who offers an eligible short-term residential rental unit as a short-term rental while the unit's registration on the short-term residential rental unit registry is suspended, shall be fined in accordance with subdivisions four and five of this section.

3. Any person who fails to comply with any notice of violation or other order issued pursuant to this article by the department of state for a violation of any provision of this article shall be fined in accordance with subdivisions four and five of this section.

4. A short-term rental host that violates the requirements of this article shall receive a warning notice issued, without penalty, by the department of state upon the first and second violation. The warning notice shall detail actions to be taken to cure the violation. For a third violation a fine up to two hundred dollars shall be imposed. For each subsequent violation, a fine of up to five hundred dollars per day shall be imposed. Upon the issuance of a violation, a seven-day period to cure the violation shall be granted. During such cure period, no further fines shall be accumulated against the short-term rental host,

except where a new violation is related to a different short-term rental unit.

5. A booking service that violates the requirements of this article shall be issued a fine of up to five hundred dollars per day, per violation, until such violation is cured.

6. In a municipality that has its own registration system, the municipality may establish and effectuate its own penalty system.

§ 447-f. Enforcement. 1. The provisions of this article may be enforced in accordance with article eight of the multiple dwelling law or article eight of the multiple residence law, as applicable in the municipality where the short-term residential unit is located.

2. The department of state may enter into agreements with a booking service for assistance in enforcing the provisions of this section, including but not limited to an agreement whereby the booking service agrees to remove a listing from its platform that is deemed ineligible for use as a short-term residential rental unit under the provisions of this article, and whereby the booking service agrees to prohibit a short-term rental host from listing any listing without a valid registration number.

3. The attorney general shall be authorized to bring an action for a violation of this article for any such violations occurring in the state, regardless of the registration system in place within the applicable jurisdiction.

4. A municipality shall be entitled to bring an action for a violation of this article for any such violations of this article occurring in the municipality, and may notify the attorney general.

§ 447-g. Data sharing. Booking services shall provide to the department of state, on a monthly basis, an electronic report, in a format determined by the department of state of the listings maintained, authorized, facilitated or advertised by the booking service within the state for the applicable reporting period. The report shall include the registration number, and a breakdown of where the listings are located, whether the listing is for a partial unit or a whole unit, and shall include the number of nights each unit was reported as occupied during the applicable reporting period. The department of state shall provide such report to all municipalities where listings are located on a monthly basis, provided, the department of state shall only provide to each municipality the part of the report with information on listings in such municipality.

§ 2. Subdivision (c) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, paragraphs 2, 3, 4 and 6 as amended by section 2 and paragraph 8 as added by section 3 of part AA of chapter 57 of the laws of 2010, and paragraph 5 as amended by chapter 575 of the laws of 1965, is amended to read as follows:

(c) When used in this article for the purposes of the tax imposed under subdivision (e) of section eleven hundred five of this article, and subdivision (a) of section eleven hundred four of this article, the following terms shall mean:

(1) Hotel. A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, boarding house or club, whether or not meals are served, and short-term rental units.

(2) Occupancy. The use or possession, or the right to the use or possession, of any room in a hotel. "Right to the use or possession" includes the rights of a room remarketer as described in paragraph eight of this subdivision.

(3) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. "Right to use or possess" includes the rights of a room remarketer as described in paragraph eight of this subdivision.

(4) Operator. Any person operating a hotel. Such term shall include a room remarketer and such room remarketer shall be deemed to operate a hotel, or portion thereof, with respect to which such person has the rights of a room remarketer.

(5) Permanent resident. Any occupant of any room or rooms in a hotel for at least ninety consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

(6) Rent. The consideration received for occupancy, including any service or other charge or amount required to be paid as a condition for occupancy, valued in money, whether received in money or otherwise and whether received by the operator [~~or~~]**, a booking service,** a room remarketer or another person on behalf of [~~either~~] **any** of them.

(7) Room. Any room or rooms of any kind in any part or portion of a hotel, which is available for or let out for any purpose other than a place of assembly.

(8) Room remarketer. A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by the room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefor, shall be the "rights of a room remarketer". A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer. **This term does not include a booking service unless such service otherwise meets this definition.**

(9) Short-term rental unit. A short-term residential unit as defined in section four hundred forty-seven-a of the real property law which is registered with the department of state or a municipal registration system, which includes but is not limited to title twenty-six of the administrative code of the city of New York.

(10) Booking service. (i) A person or entity who, directly or indirectly:

(A) provides one or more online, computer or application-based platforms that individually or collectively can be used to:

(I) list or advertise offers for rental of a short-term rental unit, or space in a short-term rental unit, a type of a hotel as defined in paragraph one of this subdivision, and

(II) either accept such offers, or reserve or pay for such rentals; and

(B) charges, collects or receives a fee from a customer or host for the use of such a platform or for provision of any service in connection with the rental of a short-term rental unit, or space in a short-term rental unit, a type of a hotel as defined in paragraph one of this subdivision. For the purposes of this section, "customer" means an individual or organization that purchases a stay at a short-term rental.

(ii) A booking service shall not include a person or entity who facilitates bookings of hotel rooms solely on behalf of affiliated persons or entities, including franchisees, operating under a shared hotel brand.

(iii) A booking service shall not include a person or entity who facilitates bookings of hotel rooms and does not collect and retain the

rent paid for such occupancy, as defined by paragraph six of this subdivision.

§ 3. Subdivision (e) of section 1105 of the tax law is amended by adding a new paragraph 3 to read as follows:

(3) The rent for every occupancy of a room or rooms in a short-term rental unit, or space in a short-term rental unit, a type of a hotel offered for rent through a booking service, as defined in paragraph ten of subdivision (c) of section eleven hundred one of this article, regardless of whether it is furnished, limited to a single family occupancy, or provides housekeeping, food, or other common hotel services, including, but not limited to, entertainment or planned activities.

§ 4. Subdivision 1 of section 1131 of the tax law, as amended by section 2 of part G of chapter 59 of the laws of 2019, is amended to read as follows:

(1) "Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; every operator of a hotel; [~~and~~] every marketplace provider with respect to sales of tangible personal property it facilitates as described in paragraph one of subdivision (e) of section eleven hundred one of this article; and booking services unless relieved of such obligation pursuant to paragraph three of subdivision (m) of section eleven hundred thirty-two of this part. Said terms shall also include any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article, or has so acted; and any member of a partnership or limited liability company. Provided, however, that any person who is a vendor solely by reason of clause (D) or (E) of subparagraph (i) of paragraph (8) of subdivision (b) of section eleven hundred one of this article shall not be a "person required to collect any tax imposed by this article" until twenty days after the date by which such person is required to file a certificate of registration pursuant to section eleven hundred thirty-four of this part.

§ 5. Section 1132 of the tax law is amended by adding a new subdivision (m) to read as follows:

(m) (1) A booking service shall be required to (i) collect from the occupants the applicable taxes arising from such occupancies; (ii) comply with all the provisions of this article and article twenty-nine of this chapter and any regulations adopted pursuant thereto; (iii) register to collect tax under section eleven hundred thirty-four of this part; and (iv) retain records and information as required by the commissioner and cooperate with the commissioner to ensure the proper collection and remittance of tax imposed, collected, or required to be collected under this article and article twenty-nine of this chapter.

(2) In carrying out the obligations imposed under this section, a booking service shall have all the duties, benefits, and entitlements of a person required to collect tax under this article and article twenty-nine of this chapter with respect to the occupancies giving rise to the tax obligation, including the right to accept a certificate or other documentation from an occupant substantiating an exemption or exclusion from tax, as if such booking service were the operator of the hotel with respect to such occupancy, including the right to receive the refund

authorized by subdivision (e) of this section and the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part.

(3) An operator of a hotel is not a person required to collect tax for purposes of this part with respect to taxes imposed upon occupancies of hotels if:

(i) the operator of the hotel can show that the occupancy was facilitated by a booking service who is registered to collect tax pursuant to section eleven hundred thirty-four of this part; and

(ii) the operator of the hotel accepted from the booking service a properly completed certificate of collection in a form prescribed by the commissioner certifying that the booking service has agreed to assume the tax collection and filing responsibilities of the operator of the hotel; and

(iii) any failure of the booking service to collect the proper amount of tax with respect to such occupancy was not the result of the operator of the hotel providing incorrect information to the booking service, whether intentional or unintentional.

This provision shall be administered in a manner consistent with subparagraph (i) of paragraph one of subdivision (c) of this section as if a certificate of collection were a resale or exemption certificate for purposes of such subparagraph, including with regard to the completeness of such certificate of collection and the timing of its acceptance by the operator of the hotel; provided however, that with regard to any occupancies sold by an operator of the hotel that are facilitated by a booking service who is affiliated with such operator, the operator shall be deemed liable as a person under a duty to act for such booking service for purposes of subdivision one of section eleven hundred thirty-one of this part.

(4) The commissioner may, in the commissioner's discretion develop standard language, or approve language developed by a booking service, in which the booking service obligates itself to collect the tax on behalf of all the operators of hotels.

(5) In the event an operator of a hotel is a room remarketer, and all other provisions of this subdivision are met such that a booking service is obligated to collect tax, and does in fact collect tax as evidenced by the books and records of such booking service, then the provisions of subdivision (e) of section eleven hundred nineteen of this article shall be applicable.

§ 6. Paragraph 4 of subdivision (a) of section 1136 of the tax law, as amended by section 5 of part G of chapter 59 of the laws of 2019, is amended to read as follows:

(4) The return of a vendor of tangible personal property or services shall show such vendor's receipts from sales and the number of gallons of any motor fuel or diesel motor fuel sold and also the aggregate value of tangible personal property and services and number of gallons of such fuels sold by the vendor, the use of which is subject to tax under this article, and the amount of tax payable thereon pursuant to the provisions of section eleven hundred thirty-seven of this part. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon. The return of a marketplace seller shall exclude the receipts from a sale of tangible personal property facilitated by a marketplace provider if, in regard to such sale: (A) the marketplace seller has timely received in good faith a properly completed certificate of collection from the marketplace provider or the marketplace

provider has included a provision approved by the commissioner in the publicly-available agreement between the marketplace provider and the marketplace seller as described in subdivision one of section eleven hundred thirty-two of this part, and (B) the information provided by the marketplace seller to the marketplace provider about such tangible personal property is accurate. **The return of a short-term rental host shall exclude the rent from occupancy of a short-term rental unit facilitated by a booking service if, in regard to such sale: (A) the short-term rental host has timely received in good faith a properly completed certificate of collection from the booking service or the booking service has included a provision approved by the commissioner in the publicly-available agreement between the booking service and the short-term rental host as described in subdivision (m) of section eleven hundred thirty-two of this part, and (B) the information provided by the short-term rental host to the booking service about such rent and such occupancy is accurate.**

§ 7. Section 1142 of the tax law is amended by adding a new subdivision 16 to read as follows:

16. To publish a list on the department's website of booking services whose certificates of authority have been revoked and, if necessary to protect sales tax revenue, provide by regulation or otherwise that a short-term rental unit operator will be relieved of the requirement to register and the duty to collect tax on the rent for occupancy of a short-term rental facilitated by a booking service provider only if, in addition to the conditions prescribed by paragraph two of subdivision (m) of section eleven hundred thirty-two and paragraph six of subdivision (a) of section eleven hundred thirty-four of this part being met, such booking service is not on such list at the commencement of the quarterly period covered thereby.

§ 8. Subpart A of part 1 of article 29 of the tax law is amended by adding a new section 1200 to read as follows:

§ 1200. Definition. For the purposes of this article "hotel" shall mean a building or portion of such building which is regularly used and kept open as such for the lodging of guests, including: (a) an apartment hotel, (b) a motel, (c) a boarding house or club, whether or not meals are served, and (d) short-term residential rental units as defined in subdivision one of section four hundred forty-seven-a of the real property law.

§ 9. Notwithstanding any other provisions of law to the contrary, a county, city, town, or village government may enact a local law prohibiting or further limiting the listing or use of dwelling units, or portions thereof, as short-term residential rental units.

§ 10. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 11. This act shall take effect on the one hundred twentieth day after it shall have become a law.