

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 350

FISCAL  
NOTE

BY SENATORS TARR AND ROBERTS

[Introduced February 18, 2021; referred  
to the Committee on the Government Organization]

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 certain requirements.

*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 (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 shall have been remitted to the taxing authority as hereinafter  
15 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 §7-18-4 of this code, a marketplace facilitator meeting the requirements  
28 of this subsection is deemed to be an agent of any hotel or hotel operator making retail sales  
29 through 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 §7-18-  
32 4(b) of this code, the marketplace facilitator shall separately state the tax authorized by this article  
33 on all bills, invoices, accounts, books of account, and records relating to consideration paid for  
34 the occupancy or use of a hotel room. All taxes collected pursuant to the provisions of this article

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

40 (d) *Effective date.* — These amendments to this section enacted during the 2021 Regular  
41 Legislative Session shall apply to sales by a marketplace facilitator made on and after January 1,  
42 2022.

43 ~~(b)~~ (e) A hotel, ~~or~~ hotel operator, or marketplace facilitator shall not represent to the public  
44 in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is  
45 not considered an element in the price to be collected from the consumer.

NOTE: The purpose of this bill is to provide for the collection and remittance of the hotel occupancy tax by certain marketplace facilitators.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.