A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 6‑1‑2100 SO AS TO PROVIDE DEFINITIONS RELATED TO LODGING MARKETPLACES; BY ADDING SECTION 6‑1‑2110 SO AS TO PROHIBIT A GOVERNING BODY FROM PROHIBITING SHORT‑TERM RENTALS EXCEPT UNDER CERTAIN CIRCUMSTANCES; BY AMENDING SECTION 6‑1‑510, RELATING TO DEFINITIONS CONCERNING LOCAL ACCOMMODATIONS TAXES, SO AS TO INCLUDE OPERATORS OF LODGING MARKETPLACES IN THE DEFINITION OF LOCAL ACCOMMODATIONS TAX; BY AMENDING SECTION 6‑1‑520, RELATING TO THE IMPOSITION OF LOCAL ACCOMMODATIONS TAX, SO AS TO PROVIDE THAT LOCAL GOVERNING BODIES IMPOSING A LOCAL ACCOMMODATIONS TAX MUST NOTIFY THE DEPARTMENT OF REVENUE AND THE STATE TREASURER; BY AMENDING SECTION 6‑1‑570, RELATING TO REMITTING TAX TO A LOCAL GOVERNING BODY, SO AS TO PROVIDE THAT LOCAL ACCOMMODATIONS TAXES MUST BE COLLECTED, REMITTED, AND ADMINISTERED IN THE SAME MANNER AS IN SECTION 12‑36‑920; BY AMENDING SECTION 6‑1‑620, RELATING TO DEFINITIONS RELATED TO THE BEACH PRESERVATION ACT, SO AS TO INCLUDE RENTALS FACILITATED BY A LODGING MARKETPLACE IN THE DEFINITION OF BEACH PRESERVATION FEE; BY AMENDING SECTION 6‑1‑630, RELATING TO BEACH PRESERVATION FEES, SO AS TO PROVIDE THAT THE LOCAL GOVERNING BODY ISSUING A TAX PURSUANT TO THIS SECTION MUST NOTIFY THE DEPARTMENT OF REVENUE AND THE STATE TREASURER; BY AMENDING SECTION 6‑1‑650, RELATING TO NOTICE OF DROPPED RENTAL PROPERTY, SO AS TO EXEMPT LODGING MARKETPLACES; BY AMENDING SECTION 5‑7‑30, RELATING TO POWERS CONFERRED UPON MUNICIPALITIES, SO AS TO PROVIDE THAT ANY TAXES IMPOSED UPON LODGING ACCOMMODATIONS BE COLLECTED AND ADMINISTERED BY THE DEPARTMENT OF REVENUE IN THE SAME MANNER AS IN SECTION 12‑36‑920; BY AMENDING SECTION 12‑36‑70, RELATING TO THE DEFINITION OF “RETAILER” AND “SELLER”, SO AS TO PROVIDE THAT A PERSON OPERATING AS A LODGING MARKETPLACE BE CONSIDERED A “RETAILER” OR “SELLER”; BY ADDING SECTION 12‑36‑72 SO AS TO PROVIDE A DEFINITION FOR A LODGING MARKETPLACE; BY AMENDING SECTION 12‑36‑920, RELATING TO THE TAX ON ACCOMMODATIONS FOR TRANSIENTS, SO AS TO PROVIDE THAT TRANSACTIONS BY LODGING MARKETPLACES ARE SUBJECT TO THE SEVEN PERCENT SALES TAX; AND BY REPEALING SECTION 12‑36‑922 RELATING TO ACCOMMODATIONS TAX RETURN INFORMATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 6 of the S.C. Code is amended by adding:

Article 10

Lodging Marketplaces

Section 6‑1‑2100. For purposes of this article:

(1) “Effectively prohibit” means the local governing body acts or fails to act in a manner that results in the property owner, lodging operator, or tenant being prevented from using the owner’s property as a short‑term rental unit after reasonable compliance with generally applicable laws.

(2) “Local governing body” means the governing body of a city, municipality, county, or other political subdivision of this State that has authority to enact a zoning ordinance, resolution, regulation, rule, or other requirement of any type regarding land use in its jurisdiction.

(3) “Lodging marketplace” means a person or entity that:

(a) provides for consideration, regardless of whether the consideration is deducted as a fee from the transaction, an online application, software, website, system, or other medium, through which short term rentals in this state are advertised or offered to the public as available; and

(b) directly or indirectly provides or maintains a platform for goods or services by providing a payment system that facilitates a transaction between two platform users.

(4) “Lodging accommodations” means any dwelling unit, room, campground space, lodging, or sleeping accommodation furnished to transient guests for consideration.

(5) “Lodging operator” means a person who rents to an occupant any lodging accommodation offered through a lodging marketplace.

(6) “Lodging transaction” means a charge to an occupant by a lodging operator for the occupancy of any lodging accommodation.

(7) “Unaffiliated third party” means a person who is not owned or controlled, directly or indirectly, by the same interests.

(8) “Short‑term rental” means any single‑family house, dwelling unit, room, or any unit or group of units in a condominium, cooperative or timeshare, or home that is offered for a fee and for less than thirty consecutive days. Short‑term rentals do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center, or another similar use.

Section 6‑1‑2110. (A) A local governing body shall not prohibit or effectively prohibit short‑term rentals within its jurisdictional boundaries.

(B) A local governing body may not:

(1) restrict the use of or regulate short‑term rentals based on their classification, use, frequency, or duration; or

(2) enact or enforce a law, ordinance, regulation, or plan that regulates or prohibits short‑term rentals unless the law, ordinance, regulation, or plan is enacted to:

(1) protect the public's health and safety, including rules and regulations related to residential fire and building codes, health and sanitation, transportation or traffic control, noise levels, solid or hazardous waste and pollution control, and designation of an emergency point of contact, if the local governing body demonstrates that the rule or regulation is for the primary purpose of protecting the public's health and safety, provided that enforcement would not expressly or effectively prohibit or limit the use of a property as a short‑term rental, and provided that the regulation is enforced by the local governing body in the same manner as for similar properties that are not short‑term rentals;

(2) require the registration of a short‑term rental with the local governing body prior to the commencement of operations. Local governing bodies may impose a fine for failure to register under the registration program; or

(3) limit or prohibit the use of short‑term rentals for the purposes of housing sex offenders, operating or maintaining a structured, sober‑living home, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult‑oriented businesses.

(C) The local governing body shall not:

(1) regulate the operation of a lodging marketplace; or

(2) require a lodging marketplace to provide personally identifiable information of users without an administrative subpoena or court order.

(D) This section does not apply to private entities or homeowners' associations.

SECTION 2. Section 6‑1‑510 of the S.C. Code is amended to read:

Section 6‑1‑510. As used in this article:

(1) “Local accommodations tax” means a tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Section 12‑36‑920(A) and which is imposed on every person engaged or continuing within the jurisdiction of the imposing local governmental body in the business of furnishing accommodations to transients for consideration., including persons operating as a lodging marketplace as defined in Section 12‑36‑72.

(2) “Local governing body” means the governing body of a county or municipality.

(3) “Positive majority” means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

(4) “Workforce housing” means residential housing for rent or sale that is reasonably and appropriately priced for rent or sale to a person or family whose income falls within thirty percent and one hundred twenty percent of the median income for the local area, with adjustments for household size, according to the latest figures available from the United States Department of Housing and Urban Development (HUD).

SECTION 3. Section 6‑1‑520 of the S.C. Code is amended to read:

Section 6‑1‑520. (A) A local governing body may impose, by ordinance, a local accommodations tax, not to exceed three percent. However, an ordinance imposing the local accommodations tax must be adopted by a positive majority vote. The governing body of a county may not impose a local accommodations tax in excess of one and one‑half percent within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.

(B) A local governing body that imposes a local accommodations tax shall notify the Department of Revenue and the State Treasurer through delivery of a certified copy of the ordinance adopted by the local governing body imposing the tax at least sixty days prior to the effective date of the ordinance.

(C) All proceeds from a local accommodations tax must be kept in a separate fund segregated from the imposing entity's general fund. All interest generated by the local accommodations tax fund must be credited to the local accommodations tax fund.

SECTION 4. Section 6‑1‑570 of the S.C. Code is amended to read:

Section 6‑1‑570. The tax provided for in this article must be collected, remitted, and administered in the same manner as the tax imposed by Section 12‑36‑920. to the local governing body on a monthly basis when the estimated amount of average tax is more than fifty dollars a month, on a quarterly basis when the estimated amount of average tax is twenty‑five dollars to fifty dollars a month, and on an annual basis when the estimated amount of average tax is less than twenty‑five dollars a month.

SECTION 5. Section 6‑1‑620 of the S.C. Code is amended to read:

Section 6‑1‑620. As used in this article:

(1) “Beach preservation fee” means a fee imposed on the gross proceeds derived from the rental or charges for accommodations furnished to transients for consideration within the jurisdiction of the governing body which are subject to the tax imposed pursuant to Section 12‑36‑920(A),.including rentals facilitated by a lodging marketplace, as defined in Section 12‑36‑72.

(2) “Governing body” means the governing body of a qualified coastal municipality.

(3) “Qualified coastal municipality” means a municipality bordering on the Atlantic Ocean that has a public beach within its corporate limits and which imposes a local accommodations tax pursuant to Section 6‑1‑520 that does not exceed one and one‑half percent pursuant to the limitations imposed pursuant to Section 6‑1‑540.

SECTION 6. Section 6‑1‑630 of the S.C. Code is amended to read:

Section 6‑1‑630. (A) The governing body of a qualified coastal municipality by ordinance, subject to a referendum, may impose a beach preservation fee not to exceed one percent.

(B) Upon the adoption of an ordinance calling for a referendum, the county election commission shall conduct a referendum at the time specified in the ordinance on the question of implementing a one percent beach preservation fee. The state election laws apply to the referendum, mutatis mutandis. The county election commission shall publish the results of the referendum to certify them to the governing body. The beach preservation fee must not be imposed unless a majority of the qualified electors residing in the municipality voting in the referendum vote in favor of the referendum.

(C)(1) The ballot must read substantially as follows:

“Must an additional one percent beach preservation fee be added to the accommodations tax for the purpose of nourishment, renourishment, maintenance, erosion mitigation, and monitoring of beaches, dune restoration and maintenance, including planting of grass, sea oats, or other vegetation useful in preserving the dune system, and maintenance of public beach accesses within the corporate limits of \_\_\_\_\_\_.

Yes \_\_\_\_

No \_\_\_\_

(2) If the question is not approved at the initial referendum, the governing body may, by an ordinance meeting the requirements of this section, call for another referendum on the question. However, following the initial referendum, a referendum for this purpose must not be held more often than once in a twenty‑four month period on the Tuesday following the first Monday in November in even‑numbered years.

(3) Once a week for the four weeks immediately preceding the referendum, the governing body of the municipality shall publish notice in a newspaper of general circulation within the jurisdiction a description of and the specific uses for the beach preservation fee. The governing body also must publish notice on its website in the same manner.

(D) The fee authorized by this article is in addition to all other local accommodations taxes imposed pursuant to Section 6‑1‑520 and must not be deemed cumulative with the local accommodations tax or fee rate for the purposes of Section 6‑1‑540. The governing body of a qualified costal municipality that imposes a beach preservation fee shall notify the Department of Revenue and the State Treasurer through delivery of a certified copy of the ordinance adopted imposing the fee at least sixty days prior to the effective date of the ordinance.

(E) The fee authorized by this article is in addition to all other local accommodations taxes imposed pursuant to Section 6‑1‑520, shall be collected, remitted, and administered in the same manner as the tax imposed by Section 12‑36‑920, and must be deemed cumulative with the local accommodations tax or fee rate for the purposes of Section 6‑1‑540.

(E)(F) All proceeds from the beach preservation fee must be kept in a separate fund segregated from the governing body's general fund. All interest generated by the beach preservation fee fund must be credited to the beach preservation fee fund.

SECTION 7. Section 6‑1‑650 of the S.C. Code is amended to read:

Section 6‑1‑650. Real estate agents, brokers, corporations, or listing services required to remit fees under this section must notify the appropriate governing body if rental property, previously listed by them, is dropped from their listings. A lodging marketplace, as defined in Section 12‑36‑72, shall not be subject to this requirement.

SECTION 8. Section 5‑7‑30 of the S.C. Code is amended to read:

Section 5‑7‑30. (A) Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them, provided that any taxes or surcharges imposed on the rental of accommodations, including, but not limited to taxes or surcharges imposed on the rental of any rooms, campground spaces, lodgings, or sleeping accommodations shall be collected and administered by the South Carolina Department of Revenue in the same manner as the tax imposed by Section 12‑36‑920; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax; and a business engaged in operating a professional sports team as defined in Section 12‑6‑3360(M)(17) is not subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

(B) For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two‑thirds of the persons paying a business license tax in the area and who paid not less than one‑half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty‑five or more parking spaces for customer use is required to pay not more than twenty‑five percent of a surtax levied pursuant to the provisions of this paragraph.

(C) If a local governing body imposes a tax authorized pursuant to this Section, it must notify the Department of Revenue and the State Treasurer through delivery of a certified copy of the ordinance adopted by the local governing body at least sixty days prior to the effective date of the ordinance.

SECTION 9. Section 12‑36‑70 of the S.C. Code is amended to read:

Section 12‑36‑70. “Retailer” and “seller” include every person:

(1)(a) selling or auctioning tangible personal property whether owned by the person or others;

(b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals place of abode;

(c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;

(d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;

(e) selling electric power or energy;

(f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;

(2)(a) maintaining a place of business or qualifying to do business in this State; or

(b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State.;

(3) operating as a marketplace facilitator, as defined in Section 12‑36‑71.; or

(4) operating as a lodging marketplace, as defined in Section 12‑36‑72.

The department, when necessary for the efficient administration of this chapter, may treat any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom they operate or from whom they obtain the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of the dealer, distributor, supervisor, employer, or other person. The department may also treat the dealer, distributor, supervisor, employer, or other person as a retailer for purposes of this chapter.

SECTION 10. Chapter 36, Title 12 of the S.C. Code is amended by adding:

Section 12‑36‑72. (A) “Lodging marketplace” means a person or entity who:

(1) provides for consideration, regardless of whether the consideration is deducted as a fee from the transaction, an online application, software, website, system, or other medium through which short‑term rentals a good or service in this State is advertised or offered to the public as available; and

(2) directly or indirectly provides or maintains a platform for goods or services by providing a payment system that facilitates a transaction between two platform users.

(B) For purposes of this section, a person “facilitates” a rental by brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations through a transaction directly, including through the use of one or more payment processors, between a customer and an accommodations provider.

SECTION 11. Section 12‑36‑920 of the S.C. Code is amended to read:

Section 12‑36‑920. (A) A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration., or through a lodging marketplace facilitating the rental of an accommodation. This tax does not apply:

(1) where the facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the individual'’s place of abode; or

(2)  to gross proceeds from rental income wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g) as that code is defined in Section 12‑6‑40(A).

The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients. The tax imposed by this subsection (A) does not apply to additional guest charges as defined in subsection (B) or separately stated optional charges on a bill to a customer for amenities, entertainment, special items in promotional tourist packages, and other guest services. This tax applies to any charge by a lodging marketplace, as defined in Section 12‑36‑72, to a transient.

(B) A sales tax of five percent is imposed on additional guest charges at any place where rooms, lodgings, or accommodations are furnished to transients for a consideration, unless otherwise taxed under this chapter. For purposes of this subsection, additional guest charges are limited to charges for:

(1) room service;

(2) laundering and dry cleaning services;

(3) in‑room movies;

(4) telephone service; and

(5) rentals of meeting rooms.

(C) Real estate agents, brokers, corporations, or listing services required to remit taxes under this section shall notify the department if rental property, previously listed by them, is dropped from their listings. A lodging marketplace, as defined in Section 12‑36‑72, shall not be subject to this requirement.

(D) When any business is subject to the sales tax on accommodations and the business has more than one place of business in the State, the licensee shall report separately in his sales tax return the total gross proceeds derived from business done within and without the corporate limits of municipalities. A taxpayer who owns or manages rental units in more than one county or municipality shall report separately in his sales tax return the total gross proceeds from business done in each county or municipality.

(E) The taxes imposed by this section are imposed on every person engaged or continuing within this State in the business of furnishing accommodations to transients for consideration or acting as a lodging marketplace, as defined in Section 12‑36‑72.

(F) The Department of Revenue shall annually publish the applicable tax rate, fees or surcharges imposed on accommodations by any state or local governing body, including, but not limited to, the taxes, fees, or surcharges imposed pursuant to Chapters 10 and 37 of Title 4, Chapter 1 of Title 6, and Chapter 7 of Title 5. If a local governing body enacts a new tax, fee, or surcharge or increases the rate of an existing tax, fee, or surcharge, the Department of Revenue shall notify accommodations intermediaries of the new tax, fee, or surcharge at least sixty days prior to the enforcement of subsection (G).

(G) Subject to the restrictions in subsection (F), when a lodging marketplace, as defined in 12‑36‑72, facilitates the rental of an accommodation subject to the tax imposed by this section, the lodging marketplace shall be solely responsible for collecting and remitting the tax. Subject to applicable laws, the uniform provisions for the collection and enforcement of taxes assessed by the Department of Revenue pursuant to Chapter 54 of Title 12 shall apply to a lodging marketplace.

SECTION 12. Section 12‑36‑922 of the S.C. Code is repealed.

SECTION 13.If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 14. This act takes effect upon approval by the Governor.

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