

## **BILL ANALYSIS**

C.S.H.B. 1792  
By: Springer  
Urban Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties are concerned that residential short-term rental units are not properly regulated in certain areas and that this exposes consumers to negligent or bad actors. The parties also contend that hotel and tourist taxes are often not paid by these residential short-term rental units and they emphasize that this poses a financial cost to the state. The parties believe that the same regulations that are already present for hotels and other standard lodging accommodations should be applied to these types of units. C.S.H.B. 1792 seeks to address this issue through the regulation of residential short-term rental units.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1792 amends the Occupations Code to require a residential short-term rental listing service, before listing a residential short-term rental unit on its website, to obtain a statement from the owner or tenant of the unit that includes all hotel tax taxpayer identification numbers applicable to the unit. The bill makes it a Class C misdemeanor for a person to violate this bill provision and specifies that each day that a violation occurs or continues to occur constitutes a separate offense. The bill specifies that this bill provision does not preempt an order, ordinance, or similar measure adopted by a political subdivision relating to a residential short-term rental unit that is consistent with or more stringent than this bill provision. The bill defines a "residential short-term rental unit" as a residential dwelling, including a single-family residence, apartment, residential condominium unit, or other residential real estate improvement, in which the public may obtain sleeping accommodations in exchange for compensation for a period of less than 30 consecutive days but excludes from the definition an establishment licensed, registered, or otherwise regulated by a public subdivision as a bed and breakfast. The bill exempts certain specified residential short-term rental listing services from this bill provision.

C.S.H.B. 1792 amends the Tax Code to expand the definition of "hotel" for purposes of the state hotel occupancy tax to include a residential short-term rental unit as defined by the bill's Occupations Code provisions. The bill establishes that a person required to collect the state hotel occupancy tax qualifies as a semiannual filer having two reporting periods from October 1 to March 31 and from April 1 to September 30 if the person owes less than \$250 for a calendar month or \$750 for a calendar quarter and the hotel occupancy tax is imposed for activity that

occurs on less than nine days per calendar quarter. The bill establishes that the taxes are due and payable on the 20th day after the end of each reporting period.

C.S.H.B. 1792 authorizes the governing body of a municipality by ordinance to adopt for the municipal hotel occupancy tax and the commissioners court of a county by order to adopt for the county hotel occupancy tax the reporting periods and payment dates prescribed in statutory provisions and the bill's provisions establishing the state hotel occupancy tax reporting requirements.

**EFFECTIVE DATE**

September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1792 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 108.001, Business & Commerce Code, is amended by amending Subdivision (2) and adding Subdivision (6-a) to read as follows: (2) "Commercial lodging establishment" means a hotel, motel, inn, <u>residential short-term rental unit</u> , or similar entity that offers lodging to the public in exchange for compensation. (6-a) " <u>Residential short-term rental unit</u> " <u>has the meaning assigned by Section 341.001, Health and Safety Code.</u>	No equivalent provision.
SECTION 2. Section 341.001, Health and Safety Code, is amended by adding Subdivision (6-a) to read as follows: (6-a) " <u>Residential short-term rental unit</u> " <u>means a residential dwelling, including a single-family residence, apartment, residential condominium unit, or other residential real estate improvement, in which the public may obtain sleeping accommodations in exchange for compensation for a period of less than 30 consecutive days. The term applies regardless of whether the dwelling was originally constructed or zoned as a residential dwelling.</u>	No equivalent provision.
SECTION 3. Section 341.066, Health and Safety Code, is amended to read as follows: Sec. 341.066. TOURIST COURTS, HOTELS, INNS, <del>[AND]</del> ROOMING HOUSES, <u>AND RESIDENTIAL SHORT-</u>	No equivalent provision.

TERM RENTAL UNITS. (a) A person operating a tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit in this state shall:

(1) provide a safe and ample water supply for the general conduct of the tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit; and

(2) submit samples of the water at least once a year before May 1 to the department for bacteriological analysis.

(b) A tourist court, hotel, inn, ~~[and]~~ rooming house, and residential short-term rental unit must be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) An owner or operator of a tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit shall keep the premises sanitary and shall provide every practical facility essential for that purpose.

(d) An owner or operator of a tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit who provides a gas stove for the heating of a unit in the facility shall determine that the stove is properly installed and maintained in a properly ventilated room.

(e) An owner, operator, or manager of a tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit shall maintain sanitary appliances located in the facility in good repair.

(f) Food offered for sale at a tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

(g) An owner, manager, or agent of a tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit may not rent or furnish a unit to a person succeeding a previous occupant before:

(1) thoroughly cleaning the unit; and

(2) providing clean and sanitary sheets, towels, and pillowcases.

(h) An owner, operator, or manager of a tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit shall maintain the facility in a sanitary condition.

(i) A tourist court, hotel, inn, ~~[or]~~ rooming house, or residential short-term rental unit that does not conform to this chapter is a public health nuisance.

SECTION 4. Section 791.021(a), Health and Safety Code, is amended to read as follows:

(a) This section applies to:

- (1) a hospital;
- (2) a seminary;
- (3) a college;
- (4) an academy;
- (5) a school;
- (6) a dormitory;
- (7) a hotel or other facility for the accommodation of transient guests;
- (8) a lodging house, apartment house, rooming house, or boardinghouse;
- (8-a) a residential short-term rental unit, as defined by Section 341.001;
- (9) a lodge hall;
- (10) a theater or other public place of amusement; or
- (11) any other facility used for public gatherings.

No equivalent provision.

SECTION 5. Section 792.001(1), Health and Safety Code, is amended to read as follows:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration, including a hotel, motel, tourist home, tourist house, tourist court, hostel, lodging house, rooming house, [ø] inn, or residential short-term rental unit as defined by Section 341.001. The term does not include:

- (A) a hospital, sanitarium, or nursing home; or
- (B) a building in which all or substantially all of the occupants have the right to use or possess their sleeping accommodations for at least 28 consecutive days.

No equivalent provision.

SECTION 6. Section 2155.001(a), Occupations Code, is amended to read as follows:

(a) A hotel owner or keeper or owner of a residential short-term rental unit, as defined by Section 2155.151, shall post a card or sign in a conspicuous place in each hotel room stating:

- (1) the daily room rate; and
- (2) the date the card or sign was posted.

No equivalent provision.

No equivalent provision.

SECTION 1. The heading to Chapter 2155, Occupations Code, is amended to read as follows:

CHAPTER 2155. HOTELS, ~~[AND]~~  
BOARDINGHOUSES, \_\_\_\_\_ AND  
RESIDENTIAL SHORT-TERM RENTAL  
UNITS

SECTION 7. Chapter 2155, Occupations Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. RESIDENTIAL  
SHORT-TERM RENTAL UNITS

Sec. 2155.151. DEFINITIONS. In this  
subchapter:

(1) "Residential short-term rental listing  
service" means a business that maintains an  
Internet website or mobile application that  
lists and facilitates the rental of residential  
short-term rental units.

(2) "Residential short-term rental unit"  
means a residential dwelling, including a  
single-family residence, apartment,  
residential condominium unit, or other  
residential real estate improvement in which  
the public may obtain sleeping  
accommodations in exchange for  
compensation for a period of less than 30  
consecutive days. The term applies  
regardless of whether the dwelling was  
originally constructed or zoned as a  
residential dwelling.

Sec. 2155.152. COUNTY AND  
MUNICIPALITY REGULATION. (a)  
This section applies only to:

(1) a county with a population of more than  
one million;

(2) a county with a population of more than  
300,000 that is adjacent to a county with a  
population of more than one million; and

(3) a municipality located in a county  
described by Subdivision (1) or (2).

(b) Except as provided by Subsection (c), a  
county or municipality shall:

(1) characterize and treat a residential short-  
term rental unit in the same manner as a  
hotel for purposes of consumer protection,  
public health and human safety, taxation,  
licensing, and zoning and other land use  
regulations; or

(2) adopt an order or ordinance, as  
applicable, to specifically regulate  
residential short-term rental units.

(c) Subsection (b) does not apply to:

(1) a residential short-term rental unit that  
is rented for no more than seven nights each  
calendar year; or

SECTION 2. Chapter 2155, Occupations Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. RESIDENTIAL  
SHORT-TERM RENTAL UNITS

Sec. 2155.151. DEFINITIONS. In this  
subchapter:

(1) "Residential short-term rental listing  
service" means a business that maintains an  
Internet website that lists and facilitates the  
rental of residential short-term rental units.

(2) "Residential short-term rental unit"  
means a residential dwelling, including a  
single-family residence, apartment,  
residential condominium unit, or other  
residential real estate improvement, in  
which the public may obtain sleeping  
accommodations in exchange for  
compensation for a period of less than 30  
consecutive days. The term does not  
include an establishment licensed,  
registered, or otherwise regulated by a  
political subdivision as a bed and breakfast.

No equivalent provision.

(2) a rental agreement for a residential short-term rental unit in which:

(A) the unit is part of the primary residence of the lessor;

(B) the unit is less than the entire dwelling;

(C) the lessor is generally present for the duration of the rental; and

(D) if the primary residence includes more than one unit, only one unit at the dwelling is rented at one time.

Sec. 2155.153. RESIDENTIAL SHORT-TERM RENTAL LISTING SERVICES.

(a) This section does not apply to a residential short-term rental listing service that:

(1) is operated by a governmental entity;

(2) is operated by a nonprofit organization exempt from federal income tax under Section 501(c)(6), Internal Revenue Code of 1986;

(A) whose members or affiliates do not have a direct or indirect pecuniary interest in the listing service, units listed by the service, or any other residential short-term rental listing service units;

(B) that either:

(i) is designated as a convention and visitors bureau by a county or municipality; or

(ii) has an agreement with a governmental entity to provide listing services for available lodging on an Internet website or mobile application; and

(C) that was not created or used with the intent to avoid the applicability of this section; or

(3) lists only residential short-term rental units that are constructed to hotel standards.

(b) Before listing a residential short-term rental unit on its Internet website or mobile application, a residential short-term rental listing service shall obtain an affidavit signed by the owner or tenant of the unit that:

(1) states that the owner or tenant is in compliance with all applicable state and local laws governing the residential short-term rental unit, including this subchapter, Chapters 156, 351, and 352, Tax Code, and any applicable deed restrictions, land use covenants, or leases;

(2) includes all hotel tax taxpayer identification numbers applicable to the unit; and

(3) is accompanied by any relevant

Sec. 2155.152. RESIDENTIAL SHORT-TERM RENTAL LISTING SERVICES.

(a) This section does not apply to a residential short-term rental listing service that:

(1) is operated by a governmental entity;

(2) is operated by a nonprofit organization exempt from federal income tax under Section 501(c)(6), Internal Revenue Code of 1986;

(A) whose members or affiliates do not have a direct or indirect pecuniary interest in the listing service; and

(B) that either:

(i) is designated as a convention and visitors bureau by a county or municipality; or

(ii) has an agreement with a governmental entity to provide listing services for available lodging on an Internet website; or

(3) lists only residential short-term rental units that are constructed to hotel standards.

(b) Before listing a residential short-term rental unit on its Internet website, a residential short-term rental listing service shall obtain a statement from the owner or tenant of the unit that

includes all hotel tax taxpayer identification numbers applicable to the unit.

documentation, including a license or certificate of occupancy, to demonstrate compliance with an order or ordinance adopted under Section 2155.152(b).

(c) A county or municipality may charge a fee for providing a copy of any applicable documentation under Subsection (b)(3).

(d) If a governmental entity conducts an audit or seeks to identify the owner of a residential short-term rental unit listed on a residential short-term rental listing service's Internet website or mobile application, the listing service shall comply with the audit or investigation and provide any documentation requested by the governmental entity that is related to the audit or identification.

(e) A residential short-term rental listing service shall:

(1) obtain a new affidavit that meets the requirements of Subsection (b) annually for each listing; and

(2) provide the date that each residential short-term rental unit last provided an affidavit under this section on the unit's listing on the listing service's Internet website or mobile application.

(f) A person commits an offense if the person violates this section. Each day that a violation occurs or continues to occur constitutes a separate offense. An offense under this subsection is a Class C misdemeanor.

No equivalent provision.

(c) A person commits an offense if the person violates this section. Each day that a violation occurs or continues to occur constitutes a separate offense. An offense under this subsection is a Class C misdemeanor.

(d) This section does not preempt an order, ordinance, or similar measure adopted by a political subdivision relating to a residential short-term rental unit that is consistent with or more stringent than this section.

SECTION 3. Section 156.001, Tax Code, is amended to read as follows:

Sec. 156.001. DEFINITION. In this chapter, "hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, [øæ] bed and breakfast, or residential short-term rental unit as defined by Section 2155.151, Occupations Code. The term does not include:

- (1) a hospital, sanitarium, or nursing home;
- (2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private

or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or  
(3) an oilfield portable unit, as defined by Section 152.001.

No equivalent provision.

SECTION 4. Section 156.151, Tax Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) Except as provided by Subsection (c) or (d), each calendar month is a reporting period and the taxes imposed by and collected under this chapter are due and payable to the comptroller on or before the 20th day of the month following the end of each calendar month.

(c) If a person required to collect the tax imposed by this chapter ~~[taxpayer]~~ owes less than \$500 for a calendar month or \$1,500 for a calendar quarter and does not qualify as a semiannual filer under Subsection (d), the person ~~[taxpayer]~~ qualifies as a quarterly filer having a reporting period of a calendar quarter and the taxes are due and payable on the 20th day after the end of the calendar quarter.

(d) If a person required to collect the tax imposed by this chapter owes less than \$250 for a calendar month or \$750 for a calendar quarter and the tax under this chapter is imposed for activity that occurs on less than nine days per calendar quarter, the person qualifies as a semiannual filer having two reporting periods from October 1 to March 31 and April 1 to September 30. Taxes are due and payable on the 20th day after the end of each reporting period.

No equivalent provision.

SECTION 5. Section 156.153, Tax Code, is amended to read as follows:

Sec. 156.153. REIMBURSEMENT FOR TAX COLLECTION. The person required to file a report under this chapter may deduct and withhold from the taxes otherwise due to the state on the monthly, ~~[or]~~ quarterly, or semiannual return, as reimbursement for the cost of collecting the tax, one percent of the amount of the tax due as shown on the report. If taxes due under this chapter are not paid to the state within



the time required or if the person required to file a report fails to file the report when due, the person forfeits the claim to reimbursement that could have been taken if the tax had been paid or the report filed when due.

No equivalent provision.

SECTION 6. Subchapter A, Chapter 351, Tax Code, is amended by adding Section 351.0033 to read as follows:

Sec. 351.0033. ADOPTION OF STATE REPORTING PERIODS AND PAYMENT DATES. The governing body of a municipality by ordinance may adopt for the tax imposed by this chapter the reporting periods and payment dates prescribed by Section 156.151.

No equivalent provision.

SECTION 7. Subchapter A, Chapter 352, Tax Code, is amended by adding Section 352.0033 to read as follows:

Sec. 352.0033. ADOPTION OF STATE REPORTING PERIODS AND PAYMENT DATES. The commissioners court of a county by order may adopt for the tax imposed by this chapter the reporting periods and payment dates prescribed by Section 156.151.

No equivalent provision.

SECTION 8. Section 156.151, Tax Code, as amended by this Act, does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 8. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2015.

(b) Section 791.021(a), Health and Safety Code, as amended by this Act, takes effect January 1, 2017.

SECTION 9. This Act takes effect September 1, 2015.