

NetChoice Promoting Convenience, Choice, and Commerce on The Net

Carl Szabo, Vice President and General Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



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Del. Dereck Davis, Chair
House Economic Matters Committee
Maryland House of Delegates
House Office Building
Annapolis, MD 21401

RE: Opposition to HB 1604 – Limited Residential Lodging

Dear Chairman Davis and members of the committee,

We ask that you not move forward with HB 1604.

This bill would:

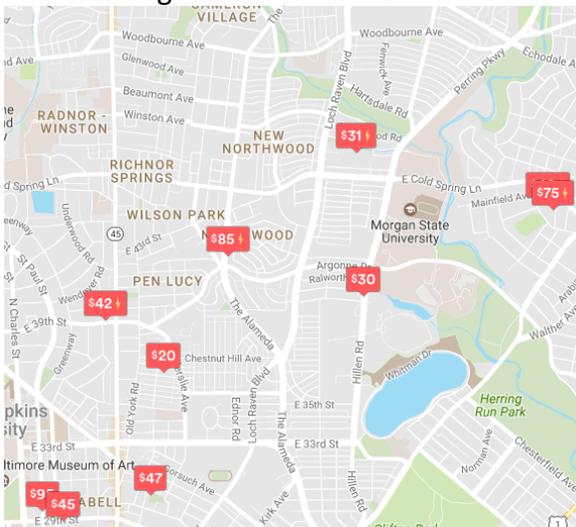
- impose unworkable state-level requirements on Short-term rental (STR) platforms in Maryland,
- force disclosure of private information of Maryland residents to potentially every state employee, and
- is so broad it would capture advertisements on BaltimoreSun.com and other sites.

We do, however, agree with reasonable requirements for STR hosts and regularly advocate for such requirements.

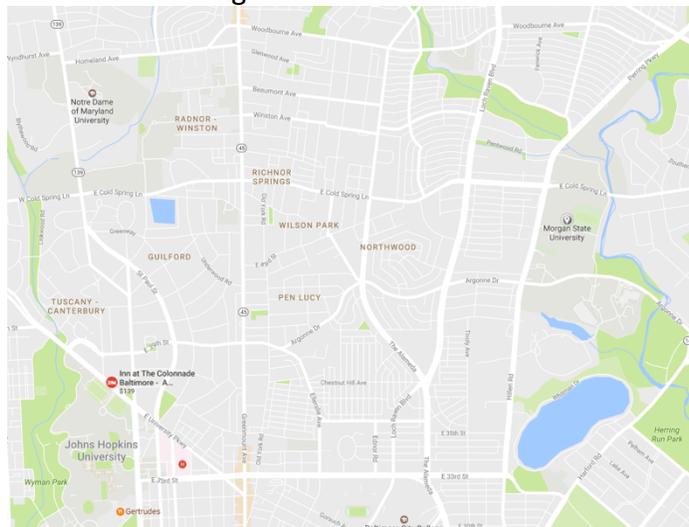
Benefits to your constituents of short-term rentals

STR services provide necessary income to many of your constituents. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through certain short-term rental services is used to cover household expenses.

STR listings in and around District 43



Hotel listings in and around District 43



Consider, for example, families coming from across the country for graduation ceremonies at Morgan State University, Loyola University Maryland and the Notre Dame of Maryland University. STR services allow constituents to earn income by sharing their homes.

The presence of STR services also brings new money into areas like District 43. Since there are few hotels in the districts like these, travelers are not likely to encounter businesses in areas under-served by hotels. Conversely, guests who stay in districts via STR services, bring income to your districts as they visit restaurants, grocery stores, and businesses in areas like District 43.

Big hotel chains benefit most from HB 1604 passage

Big hotel chains are backing HB 1604 for entirely selfish reasons. Big hotel chains see STRs as a threat to their business model – however, it's not for the reasons you may think.

Presently, the hotel industry enjoys record setting occupancy and pricing. However, the presence of STR services is seen by some in the hotel industry as forcing hotels to keep prices at reasonable levels. For instance, LaSalle Hotel Properties's CEO told investors that a law curtailing short-term rental services would allow hotels to boost their prices by eliminating competition.¹

Lower hotel room prices mean that visitors to Maryland have more money to spend with Maryland businesses. Likewise, when your constituents travel, STR services help them find more reasonably priced accommodations.

As you can see from the image above, the nearest hotel to Morgan State, The Inn at The Colonnade Baltimore costs \$139/night as opposed to only \$30 at an STR. It's important to keep STR services and a competitive market as a check on hotel price inflation.

HB 1604 imposes these requirements and liability on newspapers like BaltimoreSun.com

We are sure that the Committee would think it absurd to hold *newspapers* responsible for what customers write in their classified listings. But that is precisely what HB 1604 would require of classified sections of newspapers, bulletin boards in universities, and internet websites.

HB 1604 requires every business that advertises a room for a fee to comply with a litany of requirements – even if the advertiser is not a party to the rental transaction. Advertisements, of course, would include paid-for ads in the classified section of the local newspaper. Failure to comply with the onerous rules of HB 1604 would result in stiff penalties.

For example, HB 1604 forces hosting intermediaries to know if a host is licensed (p4 lines 28-30). However, there is no clear mechanism for the intermediary to achieve this knowledge with certainty.

Much like the Classified ads listing in the Baltimore Sun, STR hosting platforms are just that, platforms for hosts to list their STR availability.

It would be absurd to impose HB 1604's requirements on the Sun's classified section and we ask that you not do so for STR services.

¹ Gaby Del Valle, *Hotel CEO: New Airbnb Regulations Should Allow A 'Big Boost' In Hotel Room Rates*, Gothamist (Oct. 27, 2016) (Passage of a law limiting short-term rental services "should be a big boost in the arm for the business, certainly in terms of the pricing.")

HB 1604 would undermine a key benefit of the internet and would likely be unconstitutional

The internet is an open resource that enables people from all parts of Maryland to freely communicate with one another and pursue their goals. While some nations discourage user-generated content, the United States created a fertile ground for business models that have transformed the world.

Moreover, this openness is bolstered by Section 230 of the federal Communications Decency Act, which says platforms can't be held strictly liable for content posted *by others*.

However, HB 1604 fails to recognize Section 230. This not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of the HB 1604.

HB 1604 exposes the privacy of Maryland residents and short-term rental guests to potentially all state employees

The 4th Amendment of the US Constitution protects Maryland citizens from unlawful search and seizure is a core privacy protection.

Unfortunately, HB 1604 (p5 lines 11-30) ignores this privacy protection and instead requires platforms to disclose records and information about hosts and guests to state employees. And this disclosure does not require the state's employees to first obtain a warrant.

Moreover, HB 1604 gives the Department of Comptroller broad authority to determine what information must be disclosed (p5 lines 29-30). This could include tax ID numbers, names and hometowns of guests, etc.

This not only exposes the operating procedures and income of businesses but could also expose the privacy of Maryland residents using the platform and people staying in Maryland homes.

The hotel industry has successfully defeated in court disclosure mandates like HB 1604. When the city of Los Angeles demanded that a hotels proprietary business records, the hotel industry fought back in court – ultimately winning at the US Supreme Court (*see In re Patel*, 576 U. S. ____ (2015)). To protect this court ruling, we could see the hotel industry opposing HB 1604. And if HB 1604 is passed, Maryland would likely see a similar court outcome.

Legal arguments aside, HB 1604 grants virtually any Maryland public employee access to private information of Maryland residents (p6 lines 1-8). As you can imagine, this provides an easily abused resource of information about your constituents and guests staying in the state.

Rather than advance HB 1604, which imposes all these burdens and unintended consequences, we instead encourage you to look to reasonable regulations that have proven beneficial in other jurisdictions.

We've seen high compliance rates when localities create reasonable registration and regulation for STRs.

A thoughtful approach to home-sharing by creating a registration process would benefit all Maryland residents.

We welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org