

NetChoice Promoting Convenience, Choice, and Commerce on The Net

Steve DelBianco, Executive Director
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



February 22, 2017

Sen. Thomas M. Middleton, Chair
Senator John C. Astle, Vice Chair
Senate Finance Committee
Maryland General Assembly
Annapolis, MD 21401

RE: Opposition to SB 463 – Limited Residential Lodging

Dear Chair Middleton, Vice Chair Astle, and members of the committee:

We oppose SB 463 in its current form since it would effectively eliminate the presence and potential of short-term rentals (STR) in Maryland.

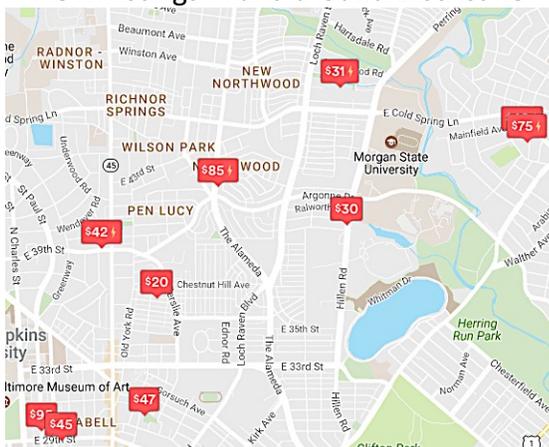
We do, however, support reasonable registration requirements for STR hosts. And we have supported statewide systems for collection of taxes due on STR activity, as in Vice Chair Astle’s bill, SB 93. We welcome the opportunity to work with Senator Conway to amend SB 463 so that it achieves the goals of registration without undermining the economic opportunities available to many Maryland homeowners.

Maryland businesses and home owners benefit from short-term rentals

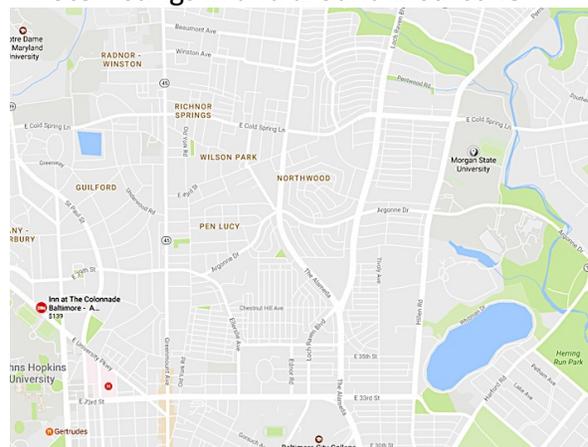
Short-term rental services provide needed income to many Maryland homeowners. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through short-term rental is used to cover the costs of maintaining their households.

The presence of short-term rental services also brings new money into areas like Senator Conway’s District 43, where there are few hotels to bring visitors in touch with local businesses. Consider, for example, families coming from across the country for graduation or other ceremonies at Morgan State, Loyola, and Notre Dame of Maryland University. Short-term rentals via internet platforms are enabling Marylanders to earn income by sharing their homes in these college communities.

STR listings in and around District 43



Hotel listings in and around District 43



Conversely, guests who stay in District 43 short-term rentals bring income into the district as they visit restaurants, grocery stores, and other businesses there.

Big hotel chains benefit most from SB 463 passage

Big hotel chains are backing SB 463 because they see short-term rentals as a threat to their business model.

Today the hotel industry enjoys record-setting occupancy levels and room rates. However, the emergence of short-term rentals is seen by some in the hotel industry as forcing hotels to hold their rates down. For instance, LaSalle Hotel Properties' CEO told investors that *a law curtailing short-term rentals would allow hotels to boost their prices by eliminating competition.*¹

Lower hotel room rates mean that visitors to Maryland have more money to spend with Maryland businesses. Likewise, when your constituents travel, short-term rentals offer more reasonably priced accommodations.

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

As written, SB 463 would undermine a key benefit of the internet and would likely be unconstitutional

SB 463 requires hosting platforms like HomeAway, Airbnb, and VRBO to know whether a host is properly and presently licensed by the state (p. 6 lines 24-25 of SB 463). However, there is no clear mechanism for the platform to have this knowledge with certainty.

Much like the classified ads in the *Baltimore Sun*, these hosting platforms are just places for hosts to list their short-term rental availability. It would be absurd to impose these requirements on the *Sun's* classified section, so it is also unreasonable to impose that obligation on short-term rental platforms.

Also, SB 463's imposition of strict liability is surely unconstitutional, since it is preempted by federal law – Section 230 of the federal Communications Decency Act – which says that platforms cannot be held strictly liable for content posted *by others*.

The internet is an open resource that enables people from all parts of Maryland to publish their views and pursue their economic opportunities. While some nations discourage this kind of user-generated content, the US created fertile ground for business models that have since transformed the world.

SB 463 violates Section 230 and would likely result in a swift injunction against the law.

As written, SB 463 exposes the privacy of Maryland residents and short-term rental guests

The 4th Amendment of the US Constitution protects Americans from unlawful search and seizure, including for their business records. But, SB 463 (at p.8 § 3) would force platforms to disclose records and personal information about hosts and guests, to tax collectors or agencies without a warrant.

In 2015, the US Supreme Court ruled this form of warrantless disclosure unconstitutional² – when Los Angeles demanded the guest records of a hotel operator without a warrant. Even hotel trade associations filed briefs in support of the defendant.³ The Supreme Court said lodging operators “must be afforded an *opportunity* to have

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.”)

² *Los Angeles v. Patel*, 576 U.S. ____ (2015)

³ Br. of Asian Am. Hotel Owners Ass'n, *City of Los Angeles v. Patel*, 2015 U.S. S. Ct. Briefs LEXIS 2005 (2015).

a neutral decision maker review an officer’s demand to search the registry before he or she faces penalties for failing to comply”⁴ – something that SB 463 fails to do.

We worry that the new investigative powers that SB 463 gives to state officials could be abused and could jeopardize Marylanders’ privacy.

This committee should not approve SB 463 – unless it is significantly amended.

Rather than advance SB 463 as written, which would effectively ban short-term rentals, we encourage you to seek reasonable regulations that have proven beneficial in other jurisdictions.

We’ve seen high compliance when localities create reasonable registration and regulation for short-term rentals.

A thoughtful approach to home-sharing by creating a registration process would benefit all Maryland residents. Registration would also ensure the home-sharing boon to homeowners and visitors also benefits non-participating residents through revenue collection that is funneled back into the local economy.

We welcome the opportunity to work with Senator Conway and your committee on reasonable regulations that allow all to prosper.

Sincerely,



Steve DelBianco
Executive Director, NetChoice

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

⁴ *Patel* at 12 (emphasis in the original).