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STRIKING THE BALANCE: HOW STATES CAN PROTECT BOTH STR ADVOCATES AND OPPONENTS

James Stumpf*

I. INTRODUCTION

Picture three scenarios. First, imagine that you are planning to stay a weekend in Texas. Perhaps you want to tailgate for a Longhorns football game in Austin, see a game at Minute-Maid Park in Houston, visit the beaches in Galveston, or explore the Alamo in San Antonio. Unless you are from those cities, most likely you will need to find some sort of lodging. You check out the hotel prices and are stunned to see that the only half-way decent hotels charge over $200 a night. Airbnb prices, you figure, should be significantly less. But, imagine that Airbnb and other short-term rental (hereinafter “STR”) platforms were either completely banned or taxed so harshly that they became extinct in cities like Austin, Dallas, Fort Worth, Houston, San Antonio, and Galveston. In this scenario, you would be forced to pay an excessive amount of money to stay at a mediocre hotel.

Second, imagine that you own a beautiful Victorian house in a lively and vibrant community in Houston. You are nearing retirement age and do not have quite enough savings to simultaneously keep your treasured house and stop working. STR platforms like Airbnb and HomeAway become very attractive to you. By renting out the extra rooms in your house as a STR, you can earn up to $20,000 a year. This amount would surely satisfy all of your financial needs for the rest of your life. But, imagine that the city of Houston has decided to ban STRs. Now, you can no longer earn an additional income to support your retirement. You will probably have to sell your historic house in order to pay your daily expenses. You are out of options.

Third, imagine that you live in a small Idaho mountain town. You have lived in the same house for nearly twenty years and your neighborhood is quiet, peaceful, and safe. Over the past few years,
your town has become a popular skiing, camping, and hiking destination for tourists. Previously, these tourists would have stayed at hotels located in the commercial district of town. However, after the rise of Airbnb and other STR platforms, these tourists are staying at your next door neighbor’s house. These tourists often throw late-night parties with loud music, drinking, and drugs. Litter from the tourists is being blown onto your yard and cars are clogging up the street. All you want is for the STR to go away.

Texas Senate Bill 451 (hereinafter “S.B. 451”) and Idaho House Bill 216 (hereinafter “H.B. 216”) were bills drafted in 2017 that tried to strike a balance with those that support STRs and those that are opposed to STRs. Ultimately, Idaho H.B. 216 was enacted and Texas S.B. 451 never left the Texas House of Representatives. In this legislative update, I will explain why I believe that other states should enact bills similar to S.B. 451 and H.B. 216. Additionally, I will explain why certain aspects of these bills are better than others. I will begin by explaining the history of STRs and government regulations imposed on them. Then, I will present a law that I believe all states should adopt for regulating STRs. Finally, I will explain why states should adopt this proposed law, how the proposed law will impact certain cities, and what I expect certain municipalities will do as a result of this proposed law.

II. BACKGROUND

* James Stumpf is a 2018 DePaul College of Law J.D. Candidate. He graduated from Bradley University in Peoria, IL in 2015 with a B.A. in Political Science. During his first and second years of law school he worked as a law clerk at Best, Vanderlaan & Harrington. James is the Legislative Update Editor for the Journal of Art, Technology & Intellectual Property Law for the 2018-2019 academic year. He would like to thank Josh Shancer, his editor, for all his guidance throughout the year. Additionally, James would like to thank Jim Stumpf, Judy Stumpf, and Mindy Schanzle for always encouraging him to do his best.

2 Id.
3 See infra Section II.
4 See infra Section III.
5 See infra Section IV.
A. STRs Prior to Airbnb

STRs are not new to America. In fact, in most urban areas in the nineteenth century, renting a room in a house for a short-term period was more common than staying at an inn or bed and breakfast. During this time period, hotels and other forms of lodging were very expensive. As a result, STRs were the only form of lodging available for members of the lower classes. As STRs are nothing new to America, regulations on them are not either. Cities categorized these STRs as lodging houses, boarding houses, bed and breakfasts, hostels, and hotels. Additionally, health reforms inspired

7 Ruth Graham, Boardinghouses: Where the City Was Born, BOS. GLOBE (Jan. 13, 2013), https://www.bostonglobe.com/ideas/2013/01/13/boardinghouses-where-city-was-born/Hpstvjt0kj52ZMpjUOM5RJ/story.html (A very common form of STR in the nineteenth century was boarding houses. It has been estimated that between one third and one half of nineteenth-century urban residents either took in boarders or were boarders themselves. Boarding houses were operated and rented by various groups of people. For example, Ruth Graham quoted Walt Whitman's description of the diverse group of boarding house residents he encountered as: "Married men and single men, old men and pretty girls; milliners and masons; cobblers, colonels, and counter-jumpers; tailors and teachers; lieutenants, loafers, ladies, lackbrains, and lawyers; printers and parsons - 'black spirits and white, blue spirits and gay' - all 'go out to board').
8 Jefferson-Jones, supra note 6, at 561.
9 Id.
%20house (last visited Jan. 27, 2018) (Merriam-Webster defines "lodging house" as a "rooming house"); Boarding house, MERRIAM-WEBSTER, https://www.merriamwebster.com/dictionary/boardinghouse (last visited Jan. 27, 2018) ("Boarding house" is defined as "as lodging houses at which meals are provided"); Bed-and-breakfast, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/bed-and-breakfast (last visited Jan. 27, 2018) ("Bed-and-breakfast" is defined as "an establishment (such as an inn) offering lodging and breakfast"); Hostel, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/hostel (last visited Jan. 27, 2018) ("Hostel" is defined as "an inexpensive lodging facility for usually young

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many laws such as occupancy limits, ventilation and plumbing requirements, and bath-to-room ratios. These zoning and health regulations lead to the gradual disappearance of these early STRs by making them either illegal or too expensive to operate.

B. Airbnb and the Resurgence of STRs

In October 2007, Brian Chesky and Joe Gebbia, two roommates living in San Francisco, came up with an idea to make some extra money by renting out their apartment and an air-mattress to strangers as a cheap bed and breakfast. Originally, their goal was just “to make a few bucks.” However, in February 2008, Nathan Blecharczyk joined Chesky and Gebbia as a co-founder and launched a website called “AirBed & Breakfast.” Their business goal was to connect tourists and individuals to a more-affordable alternative to urban lodging such as hotels and traditional bed and breakfasts. Eventually, over the next few years their company would accommodate millions of bookings all over the world and grow into a $25 billion company.

Travelers that typically has dormitory-style sleeping arrangements and sometimes offers meals and planned activities – called also youth hostel”); Hotel, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/hotel (last visited Jan. 27, 2018), (“Hotel” is defined as “an establishment that provides lodging and usually meals, entertainment, and various personal services for the public”).

16 Id.
17 Id.
18 Id. (“AirBed & Breakfast” would eventually be shortened to just “Airbnb”).

https://via.library.depaul.edu/jatip/vol28/iss2/7
cities and 191 countries.\textsuperscript{19} Airbnb, however, was not the only company that emerged from this resurgence of STRs.\textsuperscript{20} Other STR platforms such as HomeAway.com, VRBO.com, FlipKey.com, and Vacationhomerentals.com launched and provided services similar to Airbnb.\textsuperscript{21}

\section*{C. The Business Model for STRs}

Today, STR platforms can be accessed via their websites or mobile applications for iOS, Apple Watch, and Android.\textsuperscript{22} Typically,

\begin{itemize}
\item \textsuperscript{20} Cory Scanlon, Comment, \textit{Re-zoning the Sharing Economy: Municipal Authority to Regulate Short-Term Rentals of Real Property}, 70 SMU L. REV. 563, 567 (2017); Talia Avakian, \textit{How to Decide Which Vacation Rental Site to Use}, BUS. INSIDER (May 19, 2015, 10:51 AM), http://www.businessinsider.com/how-to-decide-which-vacation-rental-site-to-use-2015-5.(Other STR platforms include: (1) AlltheRooms.com, a website that simultaneously searches prices on Airbnb, Flipkey, Homeaway, and VRBO at the same time; (2) Campinmygarden.com, a website that offers private backyards to rent where you can pitch a tent and camp on the property; (3) Couchsurfing.com an online community where guests stay for free at a host’s couch or spare air mattress. The platform is designed to build friendships between the host and the guest where the host can show the guest several attractions around town; (4) Flipkey, a site where each property is ranked on TripAdvisor.com, features over 300,000 vacation homes located in over 11,000 cities throughout the world; (5) HomeAway.com, a traditional, private vacation home sharing platform similar to Airbnb; (6) KidandCoe.com, a site that caters to travelers with children, offers around 500 global listings that describes how many rooms there are suited for kids and whether the accommodation has items like toys, cribs, and strollers; (7) OneFineStay, a site that provides upscale home rentals in Paris, London, New York, and Los Angeles equipped with a staff member and 24/7 phone support for emergencies; (8) Preferred Residences.com, a site for those wishing to stay in upscale villas, bungalows, and condominiums; (9) Roomorama.com, another large platform with over 300,000 listings and similar structure to Airbnb; (10) Vacationroost.com, a site that manages rentals in America’s prime ski and beach destinations like Aspen, Park City, and Puerto Vallarta in Mexico; (11) Visiwa.com, a site focused on island rentals ranging from completely private properties to those that operate like a bed and breakfast; and (12) VRBO.com, a site created by HomeAway.com which focuses on United States rental options).
\item \textsuperscript{21} Scanlon, \textit{ supra} note 20 at 567.
\item \textsuperscript{22} See generally \textit{Airbnb Mobile}, https://www.airbnb.com/mobile (Last visited Oct. 14, 2017); \textit{How it Works}, https://www.homeaway.com/info/homeaway/owner-marketing/how-it-
the property owner lists their property on the platform for a specific period of time and sets a price. The renter sees the property owner’s listing and can choose to either book, or not book, the rental. Each time a STR is booked, STR platforms typically charge the guest a 6%-12% guests service fee and the host a 3%-5% host service fee.

There are three basic models of how property owners use their property for STRs: (1) home sharing, (2) home rental, and (3) transient rental. In the “home sharing” model, the STR is the host’s residence and both the host and the guest are co-occupants of the premises during the guests’ stay. In the “home rental” model, the STR is still the host’s residence. But, instead of restricting the guest to one room or a small portion of the unit, the guest rents the entire dwelling and the host does not occupy the dwelling during the guest’s stay. In the “transient rental” model, the host owns a multi-family dwelling, such as a duplex or apartment complex, and the dwelling’s sole purpose is to provide STRs to individuals.

D. Reactions to STRs

26 Scanlon, supra note 20 at 567.
27 Id.
28 Id. at 567-68.
29 Id.
30 Id. at 568.
Reactions to STRs have been mixed. Individual proponents claim that STRs protect property rights, encourage tourism, promote local business, offer affordable alternatives to hotels, and increase jobs and income for residents of the community. However, opponents believe that short term rentals eliminate “neighbors” from neighborhoods by driving away long-term residents, draw rowdy crowds, inflate property values, and overall destroy happy, residential communities. Additionally, some individuals believe that STR marketplaces allow for racial, ethnic, religious, gender, and sexual orientation discrimination.


32 Megan Barber, *Airbnb vs. the City: How Short-term Rentals are Changing Urban Neighborhoods*, CURBED (Nov 10, 2016, 10:00 AM), https://www.curbed.com/2016/11/10/13582982/airbnb-laws-us-cities; Vacation Rentals are Being Threatened in Michigan, MICH. REALTORS http://www.mirealtors.com/Advocacy-Initiatives/Preserve-Private-Property-Rights (last visited Jan. 28, 2018). For example, Michigan Relators believes that STRs are essential to the health of Michigan’s economy. The group claims that STRs have become a valued option for vacationers in Michigan and are a significant property right for those homeowners that choose to open their homes to visitors. Id.

33 Id.; David J. Brown, *Do Short-Term Vacation Rentals Change the Character of Historic Neighborhoods?*, (July 25, 2017, 4:13 PM), http://forum.savingplaces.org/blogs/david-brown/2017/07/25/do-short-term-vacation-rentals-change-the-character-of-historic-neighborhoods. Residents of New Orleans’ historic neighborhoods have expressed strong opposition to STRs moving into their neighborhood. Lisa Amoss, a resident of the historic Faubourg St. John neighborhood stated that: “[o]ur neighborhood (and many others) have been invaded by STRs and they are drastically changing our character and culture...Our neighborhood is becoming increasingly occupied by transients who have no vested interest in keeping this a vibrant, diverse, and safe place to live.” Additionally, Meg Loustau, a resident of New Orleans’ historic Tremé neighborhood stated “[e]ven if they are quiet ... that’s still a home that’s no longer home to one of our neighbors. People who are here for short periods of time, they don’t vote, they don’t go to school, they don’t go to church here, they don’t go to the dry cleaners.” Id.

34 Olivia Solon, *Airbnb Host Who Canceled Reservation Using Racist Comment Must Pay $5,000*, THE GUARDIAN (July 13, 2017, 8:00 AM), https://www.theguardian.com/technology/2017/jul/13/airbnb-california-racist-comment-penalty-asian-american. In February 2017, Dyne Suh had booked Tami Barker’s mountain cabin in Big Bear, California. Shortly before Suh arrived at the cabin, Barker cancelled the reservation by text message stating: “I wouldn’t rent it to u if u were the last person on earth” and “[o]ne word says it all. Asian”. After Suh said that she would complaint to Airbnb about the racist remark, Barker replied:
Since their beginning, municipalities have been attempting to regulate modern STRs. In fact, several cities have placed some very strict regulations on STRs. These types of restrictions include limiting the amount of days a property may be rented out as a STR, prohibiting certain STR models, placing a limit on the amount of STRs allowed to operate within a municipality, and restricting STR operations to certain areas within a municipality. For example, San Francisco’s STR ordinance only allows permanent residents of San Francisco to rent out their dwellings on STR websites for a maximum of ninety days per year. Also, in Austin, Texas, the city council voted to phase out “ transient rental ” model homes by 2022.

“[it]’s why we have Trump … and I will not allow this country to be told what to do by foreigners.” After the incident, Suh said: “I just feel so hurt. People thought: ‘Oh, with the election of President Obama racism is over in this country.’ No, it’s very much alive, it exists and it could happen to anyone … [it] stings that after living in the US for over 23 years this is what happens. No matter if I follow the law … no matter how well I treat others, it doesn’t matter. If you’re Asian, you’re less than human and people can treat you like trash.” After the incident, Barker was banned from Airbnb, was ordered to pay $5,000, and required to take a course in Asian American studies.

35 Scanlon, supra note 20 at 568.

36 Id.; Scott Shatford, Is Airbnb Legal? The Best and Worst Cities for Short-Term Rentals, (Mar. 22, 2016), http://blog.airdna.co/is-airbnb-legal-in-your-city/. Ft. Worth, Texas; Kansas City, Missouri; Los Angeles, California; New Orleans, Louisiana; Fresno, California; Atlanta, Georgia; Denver, Colorado; and Oklahoma City, Oklahoma are considered to be among the worst cities in the country for STRs.


38 Id.

39 AUSTIN, TEX., CODE OF ORDINANCES § 25-2-788 (2015) (deciding that Type 2 STRs, or STRs in residential areas where the owner does not live on the property should be phased out by 2022); Wade Goodwyn, In Austin, A Boom In Short-Term Rentals Brings a Backlash, NPR, (Feb. 9, 2017, 5:50 PM) https://www.npr.org/2017/02/09/514309905/in-austin-a-boom-in-short-term-rentals-brings-a-backlash (Several Austin residents have spoken out against STRs. “We believe they’re essentially commercial hotels embedded in our neighborhoods,” says
Additionally, Winona, Minnesota allows only 30 percent of homes in a neighborhood to be used as a STR.\textsuperscript{40} Finally, Jackson, Wyoming has banned STRs in all residential neighborhoods.\textsuperscript{41} However, the town expressly allows STRs in two of its downtown neighborhoods.\textsuperscript{42}

Other cities place only a few restrictions on STRs.\textsuperscript{43} For example, Louisville, Kentucky requires STR hosts to submit annual registrations with the city and revenue commission, be in accordance with fire and safety codes, and limit the amount of guests to be no more than twice the number of bedrooms.\textsuperscript{44} Additionally, some cities have even tried working with STR platforms to benefit both parties.\textsuperscript{45} For example, in 2014, Portland, Oregon became the first city to engage in Airbnb’s Shared City Initiative.\textsuperscript{46} This plan leverages the Airbnb community to contribute economic, social, and environmental improvements to the city by allowing Portland to collect and remit

\begin{quote}
David King, president of the Austin Neighborhoods Council, which represents nearly 100 neighborhood associations. The author, Goodwyn, stated: “[f]ifty years ago Austin was a sleepy college town flowing to the seasonal rhythm of its state university. Now it’s an economic and cultural powerhouse and burgeoning tourist destination. Austin’s property values and taxes are through the roof. The city’s musicians and working class are being priced out.” Mayor Pro Tem Kathie Tovo, of Austin, stated “[y]ou know we have a housing shortage here in Austin … We are working on issues related to affordability and then to have a policy on the books that takes available housing stock and makes it unavailable for renters, for property owners is not in the best interest of Austin residents.”); Michael Theis, \textit{Austin City Council Bans Type 2 Short-Term Rentals, AUSTIN BUS. J.,} https://www.bizjournals.com/austin/news/2016/02/23/austin-city-council-bans-type-2-short-term-rentals.html (last updated Feb. 23, 2016) (the vote total was 9 in favor of the ban and 2 opposed to the ban).\textsuperscript{40} Singman, \textit{supra} note 37 (this law is not without its critics. One resident, a veteran who rented his house as a STR while he was stationed in Iraq was forced to stop renting his house by the city).\textsuperscript{41} Blevins, \textit{supra} note 37.\textsuperscript{42} \textit{Id.}\textsuperscript{43} Speir, \textit{supra} note 31 at 403.\textsuperscript{44} \textit{Short Term Rental Information, LOUISVILLEKY.GOV.},https://www.louisvilleky.gov/government/planning-design/short-term-rental-information (last visited Feb. 21, 2018).\textsuperscript{45} Leigh Gallagher, \textit{Airbnb Cozies up to Cities, FORTUNE} (Mar. 26, 2014), https://fortune.com/2014/03/26/Airbnb-cozies-up-to-cities.\textsuperscript{46} \textit{Id.}
taxes from Airbnb hosts.\textsuperscript{47} Airbnb agreed to provide Portland hosts free smoke and carbon monoxide detectors as well as work with the city’s tourism bureau on a campaign to promote the city and its small businesses.\textsuperscript{48} In exchange, the city of Portland matches any donation provided by an Airbnb host to a specified non-for-profit.\textsuperscript{49}

Additionally, it should be noted that STRs can be found in every major city in the United States.\textsuperscript{50} Some cities simply take stronger stances against STRs than others.\textsuperscript{51} For example, in New York City, a city with one of the strictest stances against STRs, you can still book a weekend trip with Airbnb that costs approximately $50-$200 a night.\textsuperscript{52} Additionally, in Austin, Texas, another city with one of the strictest stances against STRs and one of the reasons why S.B. 451 was enacted, Airbnb rentals are available all over the city costing approximately $30-$200 a night.\textsuperscript{53}

\textsuperscript{47} Id.
\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Hamza Abdul-Samad, Cities Where an Airbnb Rental Property is No Good, MASHVISOR (Mar. 17, 2017), https://www.mashvisor.com/blog/airbnb-rental-property/.
\textsuperscript{51} Id.
E. Judicial Reaction to Municipal Regulations on STRs

Courts are divided when examining municipal regulations on STRs. Some courts have taken favorable stances towards STRs. In Vill. of Tiki Island v. Ronquille, the city created an ordinance that prohibited all STRs within the city limit. The Texas appellate court upheld an injunction in favor of a homeowner in the Village of Tiki Island because the homeowner’s pleadings and evidence raised a constitutional takings challenge. Additionally, in Wilkinson v. Chawawa Cmty., the Supreme Court of Washington held that a community association exceeded its power in prohibiting STRs.

AIRBNB, www.airbnb.com/Pittsburgh (last visited Jan. 13, 2018),
AIRBNB, www.airbnb.com/San-Diego (last visited Jan. 13, 2018),
AIRBNB, www.airbnb.com/San-Francisco (last visited Jan. 13, 2018),
(Airbnb rentals can be found in every major United States city. Including, but not limited to: Atlanta, Boston, Chicago, Cincinnati, Cleveland, Dallas, Denver, Houston, Indianapolis, Kansas City, Los Angeles, Miami, Milwaukee, Minneapolis, Nashville, New Orleans, Philadelphia, Phoenix, Pittsburg, St. Louis, San Diego, San Francisco, Seattle and Washington DC).

54 Scanlon, supra note 20 at 584.
56 There, the homeowner had been renting her home short-term for seven years, bought the home as an investment for the purpose of rentals, and made substantial improvements to the property. The village ordinance at issue banning STRs grandfathered certain identified properties that were already engaged in STRs. But, the homeowner in this particular case was excluded from this grandfathered status. Because it was shown that irreparable harm would come to the homeowner, the appellate court held that the trial court had jurisdiction to enter a temporary injunction prohibiting the village form enforcing the ordinance. Ronquille, 463 S.W.3d at 565.
57 Vill. of Tiki Island, 463 S.W.3d at 587-88.
58 There, the restrictive covenants enacted limited the use of neighborhood lots to “single family residential use” and prohibited “industrial or commercial use.” Additionally, the covenants specified the rights and duties of residents in painstaking detail, including which animals residents could keep. However, the covenants did not address STRs. The court held that STRs were considered “single family residential use” within the terms of the covenant. The court reasoned that the covenants clearly contemplated rentals of homes through restriction of the number and appearance of signs, the fact that tenants’ properties would remain residential
The court reasoned that STRs in a residential community did not conflict with existing covenants barring commercial use of the property because STRs were not considered to be a commercial use.\textsuperscript{59}

On the other hand, some courts have taken stronger stances against STRs.\textsuperscript{60} In Siwinski v. Town of Ogden Dunes, the Supreme Court of Indiana upheld a zoning ordinance, which prohibited commercial activities in residential districts, to prohibit defendants from operating a STR in a residential district.\textsuperscript{61} The court reasoned that STRs were a commercial activity because “[a]ny activity conducted for profit or gain” was a commercial activity and the city ordinance was not arbitrary or ambiguous.\textsuperscript{62}

\textit{F. Protecting STRs at the Federal Level}

There has not yet been a federal bill proposed addressing municipal regulations on STRs. However, there are several parties today lobbying for and against such a bill at the federal level.\textsuperscript{63} App-based companies like Airbnb and Uber have been very active in lobbying for protection of the “sharing economy”\textsuperscript{64} at the federal level regardless of the duration of the rental, and that the single family residential use restriction restricted the type and appearance of buildings rather than the persons who could reside there. As a result, the residents of the neighborhood were allowed to use their homes as STRs.” \textit{Wilkinson}, 327 P.3d at 624-25.

\textsuperscript{59}Id.

\textsuperscript{60}Siwinski v. Town of Ogden Dunes, 949 N.E.2d 825, 832 (Ind. 2011).

\textsuperscript{61}Id.

\textsuperscript{62}Id. (There, in addition to the homeowners’ use of their home as a STR being considered a violation of the town’s ordinance, the court upheld a $32,500 fine on the homeowners. The city’s ordinance provided that the first violation of the ban on STRs was $2,500 and $7,500 for each additional violation. The homeowners apparently committed five violations, warranting a $32,500 fine).


\textsuperscript{64}\textit{Sharing Economy}, OXFORD LIVING DICTIONARIES, https://en.oxforddictionaries.com/definition/sharing_economy (last visited Jan. 29, 2018) ("Sharing economy" as defined by Oxford Dictionary, is “an economic
level.\textsuperscript{65} Airbnb has actually hired a trio of Democratic lobbyists at the high-powered lobbying firm Podesta Group in order to protect their interests at the federal level.\textsuperscript{66}

The primary opponent of STR lobbying groups at the federal level is the U.S. hotel industry.\textsuperscript{67} This industry argues that STRs should be subject to the same regulations as hotels.\textsuperscript{68} The American Hotel and Lodging Association (hereinafter “AHLA”),\textsuperscript{69} a trade group, is active in attempting to lobby for more regulations on STRs.\textsuperscript{70} This trade group launched a campaign in 2016 urging

\textsuperscript{65} Ho, supra note 63.

\textsuperscript{66} Id. (These lobbyists include Oscar Ramirez, a former top aide to Labor Secretary Hilda Solis; Paul Brathwaite, the former executive director for the Congressional Black Caucus who also served as a Labor Department senior staffer under President Bill Clinton, and Claudia James, a former policy advisor for Rep. James E. Clyburn (D-S.C.) Unfortunately, the lobbyist disclosure filing does not specify what the lobbyists are working on beyond “issues related to the sharing economy”); accord Robert Pear, \textit{In a Lobby-Happy Washington, Politics Can Be Even Thicker Than Blood}, N.Y. TIMES, (Sept. 5, 2000) (The Podesta Group was a lobbying and public affairs firm in Washington, D.C.); Justin Elliot, \textit{Who’s Doing Mubarak’s Bidding in Washington?}, SALON (Jan. 28, 2011) (The firm represents American corporations as well as nonprofits and governments. While primarily keeping close ties with the Democratic Party and the former Obama Administration, the group has worked for Republican efforts as well like the campaign for former Florida Governor Jeb Bush. However, the firm ceased to exist as of January 1, 2018); Katelyn Polantz, \textit{Podesta Group on the Verge of Shuttering Amid Ties to Mueller Probe}, CNN (Nov. 11, 2017) (A majority of the Podesta Group’s former principal subsequently joined Cogent Strategies, a new firm founded by former CEO of the Podesta Group, Kimberly Fritts).

\textsuperscript{67} Ho, supra note 63.

\textsuperscript{68} Id.

\textsuperscript{69} \textit{Who We Are}, AHLA, https://www.ahla.com/who-we-are (last visited Jan. 29, 2018) (The AHLA seeks a vibrant and united hospitality industry powering America’s economy. Their mission is the indispensable resource serving, supporting and advocating on behalf of the American hospitality industry. The AHLA has over 24,000 members including leading global hotel brands, hotel owners, management companies, Real Estate Investment Trusts, independent properties, Bed and Breakfasts, state hotel associations, industry partners, and suppliers. Notable members include: Best Western, Marriott, Hilton, Wyndham, Four Seasons, Hyatt, and Red Roof Inn).

\textsuperscript{70} Ho, supra note 63.
federal lawmakers to increase scrutiny on STR platforms’ practices.71 The trade group argues that STR platforms drive up housing prices and restrict housing stock.72 As a result of the trade group’s campaign, in July 2016, Democratic Senators Elizabeth Warren (Mass.), Dianne Feinstein (Calif.), and Brian Schatz (Hawaii) sent a letter to the Federal Trade Commission Chairwoman Edith Ramirez asking the agency to investigate to what degree people are using STR platforms to run full-time rental business and its effect on local communities.73

G. States and Municipalities Ultimately Decide

While there are some efforts going on at the federal level, ultimately the states and municipalities have the most control over the future of STRs.74 As a result, a majority of STR proponents and opponents’ lobbying efforts occur at the state and local level.75 STRs...

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71 Id.; Katie Benner, Inside the Hotel Industry’s Plan to Combat Airbnb, N.Y. TIMES, (Apr. 16, 2017) https://www.nytimes.com/2017/06/17/technology/airbnbs-hosts-professional-hotels.html?smprod=nytcore-ipad&smid=nytcore-ipad-share (In New York, the AHLA has begun working with local affiliates to lobby the state legislators and governor’s office to enact steeper fines for STR hosts that violate local laws. Also, the association has met with legislators and attorneys in several states to discuss how Airbnb hosts often do not comply with local rules imposed on hotels such as anti-discrimination legislation, safety and fire inspection standards, and local tax collection laws. Mr. Flanagan of the AHLA stated the association’s goals in these efforts: “[w]e are trying to showcase and bust the myth that Airbnb supports mom and pop and helps them make extra money … Homesharing is not what this is about.” This year, the association plans to fund more anti-Airbnb research and release a testimonial campaign of people’s bad experiences with STRs “to provide a counterweight to Airbnb’s strategy of presenting a unified, working-class face”).

72 Ho, supra note 63.

73 Id. (Subsequent to the trade group’s campaign, Airbnb sent a memo to lawmakers framing the hotel trade group as anti-union).


75 Id. (Airbnb spent more than $404,200 on lobbying New York legislatures during the first six months of 2017, including $345,593 paid directly to some of Albany’s most influential lobbyists, according to a financial disclosure statement recently filed with the state. “They’ve hired just about every lobbyist in Albany … [i]t shows that they are worried and it shows that they have limitless amounts of money to throw around,” said Assemblywoman Linda Rosenthal (D-Manhattan), a critic of STRs.)
advocates call for both statewide and municipal protections against out-right bans, unreasonable taxes, and licensing requirements. STR opponents generally call for increased municipal power to regulate STRs, increased prohibitions in residential areas, and a level playing field between STRs and the hotel industry for tax purposes.

H. State-Wide Regulations on STRs

In an attempt to protect STRs, a few states have proposed legislation that forbids municipalities from banning or substantially burdening STRs. In 2011, Florida was the first state to pass a statewide regulation on STRs. This regulation, F.S. §509.032(7)(b),

Airbnb’s New York lobbyists include Patricia Lyn Associates, Hinman Straub, and Bolton St. James. Airbnb defended their lobbying efforts in New York, stating “[w]hile the hotel industry and its allies use a shadowy front group to attack hard working New Yorkers and hide its undisclosed lobbying activities, we have been open and transparent about defending tens of thousands of hosts across New York who are trying to earn a little extra income so they can stay in the neighborhoods they love.” Meanwhile, the Hotel and Motel Trades Council spent $127,855 lobbying and the Hotel Association of New York City spent at least $50,000 during the first half of 2017); See also Biz Carson, Airbnb Has Spent More than $8 Million Fighting a Proposed Law in San Francisco, BUS. INSIDER (Sept. 28, 2015) http://www.businessinsider.com/airbnb-spends-8-million-against-prop-f-2015-9 (In 2015, Airbnb spent more than $8 million to fight a ballot initiative in San Francisco that would put strict restrictions on the city’s STRs. In comparison, a hotel labor union donated $125,000 in support of the proposition).


77 Egbert, supra note 76 (Michigan lodging and tourism officials have lobbied the Michigan legislatures to enact laws allowing municipalities more discretion to regulate STRs as they see fit without state interference).


79 Id.

80 F.S. §509.032(7) (specifically, the statute states “(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of
restricts local laws, ordinances, and regulations from prohibiting vacation rentals or regulating the length and frequency of stays.\textsuperscript{81} Florida's state-wide regulation grandfathered in any pre-existing STR regulations promulgated before 2011.\textsuperscript{82} However, this Florida law is likely to change sometime in the near future.\textsuperscript{83} At some point in 2018, the Florida legislature is set to reassess §509.032(7)(b) and is voting to enact a new STR law.\textsuperscript{84}

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\textsuperscript{81} Sklar, supra note 78.


\textsuperscript{83} Id.

\textsuperscript{84} Robinson Cole, Florida’s “Vacation Rental” Laws to Be Readdressed in 2018 Legislative Session, JDSUPRA (Dec. 6, 2017), https://www.jdsupra.com/legalnews/florida-s-vacation-rental-laws-to-be-24700/ (There are two House Bills that have been filed so far. The first one is H.B. 773 by Representative Mike LaRossa. H.B. 773 would amend Section 509.032(7)(b), Florida Statutes to clarify how local governments may regulate vacation rentals while still maintaining the state preemption. Here is the text of the amendment: (b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental provided such regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242 or a long-term rental subject to the provisions of chapter 83 or whether a property owner chooses not to rent the property. However, a local law ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when the duration or frequency requirements of such law, ordinance, or regulation are being amended to be less restrictive. The Second One, H.B. 7898, was introduced by Representative Cyndi Stevenson. H.B. 789 would amend Section 212.18, Florida Statutes, which applies to the Florida Department of Revenue's authority to administer state law and regulate the registration of real property owners who lease or rent their property. Subsection 212.18(3)(a) and (b) require that persons who engage in a business of leasing or renting property subject to paying taxes, must file an application with the Department of Revenue for a “certificate of registration.” Once issued to the property owner, it must be displayed in a “conspicuous place.” H.B. 789 would amend Section 212.18(3)(b) to add a requirement that persons renting or
Arizona was the second state to pass a state-wide regulation on STRs. On January 1, 2017, an Arizona law became effective that overrules any preexisting or future city or municipality ordinance prohibiting STRs through websites such as Airbnb and VRBO. However, the bill does allow for cities and counties to regulate STRs if there is a serious issue of public health and safety, nuisance, and "adult-oriented businesses." Additionally, homeowners associations are free to prohibit STRs.

leasing property for use as a “vacation rental” (as defined in Section 509.242(1)(c), Florida Statutes) must also display the certificate of registration number in each rental listing or advertisement for the property).


Id.; Stefan Etienne, Arizona’s Governor Ducey Signs SB 1350 into Law; Prohibiting the Ban of Short-Term Rentals, TECH CRUNCH (May 13, 2016), https://techcrunch.com/2016/05/13/arizonas-governor-ducey-signs-sb-1350-into-law-prohibiting-the-ban-of-short-term-rentals/ (Matt Kiessling, leader of STR policy for the Travel Technology Association and proponent of STRs and the bill, stated the following about the ratification of SB 1350: “With SB 1350, Arizona has proven itself to be forward-thinking when it comes to public policy, willing to embrace the peer-to-peer economy while also balancing the interests of all stakeholders,” and that, “[t]his bill truly is a win for everyone – it ensures that STRs remain and option for travelers to Arizona and provides enormous economic benefits to local communities, while streamlining the collection of tax revenue”); Terrance Thornton, SB 1350 Likely to Bring New Dynamic to Valley of the Sun Neighborhoods, SCOTTSDALE INDEP. (May 18, 2016), https://www.scottsdaleindependent.com/
Virginia has recently passed a state-wide regulation on STRs.\(^89\) However, Virginia has taken a different stance from the previously mentioned states.\(^90\) In 2017, the Virginia General Assembly passed Virginia Senate Bill 1578 (hereinafter “S.B. 1578”)\(^91\) and gives localities the option of requiring STR operators to

(Scottsdale Councilman Guy Phillips says that SB 1350 has negated the city’s ability to regulate vacation rentals in Scottsdale, while ensuring penalties are in place for attempting to do so. In particular Councilman Phillips stated: “Since the state passed into law to withhold state funds from cities who don’t comply with its laws, it virtually neuters Scottsdale’s ability to protect our ability to protect our neighborhoods … It might help the tourism market place for millennial but not for those seeking a quality experience in [an] affluent city. This only helps short-term and overnight stays, which provide little to the local economy … When you’re seeking a home to raise your family, will you want one where the neighborhoods are overnight renters and partiers? … We should be able to provide quiet and peaceful neighborhoods for our residents and the state has taken that away”).

\(^91\) S.B. 1578, Reg. Sess. (Va. 2017). SECTION 15.2-983. CREATION OF REGISTRY FOR SHORT-TERM RENTAL OF PROPERTY. Under this section, notwithstanding any other provision of law, general or special, any locality may, by ordinance, establish a short-term rental registry and require operators within the locality to register annually. The registration shall be ministerial in nature and shall require the operator to provide the complete name of the operator and the address of each property in the locality offered for short-term rental by the operator. A locality may charge a reasonable fee for such registration related to the actual costs of establishing and maintaining the registry. (B)(1). No ordinance shall require a person to register pursuant to this section if such person is (i) licensed by the real estate board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia real estate time-share act (section 55-360 et seq.); (iii) licensed or registered with the department of health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments. (B)(2). If a locality adopts a registry ordinance pursuant to this section, such ordinance may include a penalty not to exceed $ 500 per violation for an operator required to register who offers for short-term rental a property that is not registered with the locality. such ordinance may provide that unless and until an operator pays the penalty and registers such property, the operator may not continue to offer such property for short-term rental. upon repeated violations of a registry ordinance as it relates to a specific property, an operator may be prohibited from registering and offering that property for short-term rental. (C)(1). Such ordinance may further provide that an operator required to register may be prohibited from offering a
register with the municipality. Additionally, the bill authorizes local governments to impose penalties not to exceed $500 per incident on hosts who violate the registry ordinance.

I. Texas Senate Bill 451

Texas tried to pass a statewide regulation on STRs in 2017. S.B. 451 was introduced on January 10, 2017 in the Texas Senate...
by State Senator, Kelly Hancock (R). The bill was co-sponsored by two other State Senators, Dawn Buckingham (R) and Bryan Hughes (R). Under this bill, municipalities would be forbidden from banning STRs. Additionally, municipalities would be forbidden from adopting or enforcing a law that regulates the operation of a short-term rental marketplace or imposes a tax or fee on a person operating a STR that is not otherwise authorized by the current laws of the state. However, under S.B. 451, municipalities would be allowed to adopt laws addressing fire and building codes, health and sanitation, traffic control, pollution, annual registration, requiring an emergency contact, and prohibiting the use of an STR as housing sex offenders or selling alcohol and illegal substances. Additionally, municipalities would be allowed to tax STRs similar to hotels so long as there is a hotel occupancy tax already authorized by local law. Also, under S.B. 451, municipalities would be required to apply local

of a private property as a short-term rental; (2) regulates the operation of a short-term rental marketplace; (3) imposes a tax or fee on a person operating a short-term rental marketplace that is not otherwise authorized by the laws of this state; (4) requires a person operating a short-term rental marketplace to apply, calculate, collect, or remit a tax imposed under Chapter 156, 351, or 352, Tax Code, except as otherwise required by the laws of this state, regardless of whether the person has previously provided those services; or (5) imposes a tax on a person described by Subdivision (4) for the provision of services described by that subdivision. Under section F, S.B. 451 provides that this section does not affect the authority of a municipality or county to adopt and enforce a local law that imposes a hotel occupancy tax on a person using a short-term rental in the same manner as the tax is imposed on a person using other property the use of which is subject to the tax. Under section G, if a hotel occupancy tax is authorized by the municipality or county in which a short-term rental is located, a person operating a short-term rental marketplace may apply, calculate, collect, or remit a tax imposed by the state, municipality, or county under Chapter 156, 351, or 352, Tax Code, as applicable).

99 Id.
100 Id.
101 Id.
laws regulating land use to STRs in the same manner as other similar properties.\textsuperscript{102}

Proponents of S.B. 451 include STR platforms, such as Airbnb and HomeAway, as well as bipartisan activists for STRs.\textsuperscript{103} Like most supporters of STRs, Hancock and other proponents of S.B. 451 said that the law would protect homeowners.\textsuperscript{104} Proponents believed that S.B. 451 would protect homeowners from strict local laws that infringe on property rights while still allowing a limited amount of local regulation.\textsuperscript{105} Also, proponents believed that S.B. 451 would further accelerate the STR marketplace that has blossomed as a vital part of the Texas tourism industry.\textsuperscript{106} Additionally, many supporters of S.B. 451 relied on STR platforms for their income.\textsuperscript{107} Prior to this legislation, there had been legislation in various Texas cities placing severe restrictions on STRs.\textsuperscript{108} According to its supporters, S.B. 451 would prevent these municipalities from placing

\textsuperscript{102} Id. (These land use regulations would include: (1) zoning in accordance with the laws of the State of Texas; (2) residential use; (3) occupancy limitations; (4) noise; (5) property maintenance; and (6) nuisance).

\textsuperscript{103} Samuels, \textit{supra} note 96.

\textsuperscript{104} Id.

\textsuperscript{105} Id.

\textsuperscript{106} Six Ways That Short-Term Vacation Rentals Are Impacting Communities, HOST COMPLIANCE, https://hostcompliance.com/how-do-short-term-vacation-rentals-impact-communities/ (last visited Jan. 3, 2018) (STRs can provide a city with an additional income through tax revenues. Additionally, STR guests benefit the whole community because they spend their money in other visitor related amenities such as restaurants, bars and museums. For example, research in San Diego estimated that $86.4 million was spent on such activities by visitors staying in short-term vacation rentals); Dave Montgomery, \textit{North Texans in Heated Debate Over Bill to Protect Short-Term Rentals}, STAR-TELEGRAM (Mar. 25, 2017, 7:07 PM), http://www.star-telegram.com/news/politics-government/state-politics/article140820053.html .

\textsuperscript{107} Id. HOST COMPLIANCE, \textit{supra} note 106 (Cheri Kimbrell, a Houston homeowner, stated the following in support of S.B. 451, “I depend on the rental revenue to help me support my mortgage and my high property taxes. As a single woman, this allows me to be able to afford my beloved home ... I pride myself on offering warm, southern hospitality that is unlike any hotel experience”).

\textsuperscript{108} Samuels, \textit{supra} note 96 (Fort Worth has a regulation that requires property owners to obtain a bed-and-breakfast permit which is only available to homes built before 1993. Additionally, the City of Austin has passed an ordinance banning transient model STRs).
such strict regulations on STRs.\textsuperscript{109} Supporters of S.B. 451 also believed that the bill would ensure a fair and even playing field for STRs and the Texans who use them.\textsuperscript{110}

Several groups and individuals opposed S.B. 451. One in particular was the Texas Municipal League (hereinafter “TML”), an association representing 1,156 Texas cities.\textsuperscript{111} The TML feared the

\textsuperscript{109}Id. (Suzanne Suarez, an Austin homeowner, stated the following in support of S.B. 451: “While today the local ordinance is in favor of [STRs], who’s to say they won’t change their mind tomorrow? … That’s why we need the state to protect us”).

\textsuperscript{110}Dustin Brighton, A Level Playing Field for Texas Homeowners, TRIBTALK (May 16, 2017), https://www.tribtalk.org/2017/05/16/a-level-playing-field-for-texas-homeowners/ (Dustin Brighton stated the following in support of S.B. 451: “S.B. 451 is an exceptional opportunity to create innovative policy solutions to local economic challenges. This statewide solution would clarify overlapping regulatory jurisdictions and eliminate the inefficiency of the today’s patchwork system. Most importantly, it would mean opportunity and prosperity for Texans. I urge the leaders in the state Capitol to protect entrepreneurs, homeowners and small business by laying the foundation for future growth with the passage of this legislation”).

\textsuperscript{111}History and General Information on the Texas Municipal League, TML, https://www.tml.org/history (last visited Jan. 29, 2018) (The TML’s mission is to serve the needs and advocate the interests of cities and city officials. In fact, the TML Constitution states that the purpose of the League is to “render services which individual cities have neither time, money nor strength to do alone.” In practice, the League claims that their mission translates into the following services: (1) to represent the interests of member cities before legislative, administrative, and judicial bodies at the state and federal levels; (2) to sponsor and conduct an annual conference and other conferences, seminars, meetings, and workshops for the purpose of studying municipal issues and exchanging information regarding municipal government; (3) to provide administrative services to the Texas Municipal League risk pools so that quality coverages at reasonable and competitive prices can be made available to member cities and their employees; (4) To publish and circulate an official magazine and other publications, reports, and newsletters of interest to member cities; (5) To serve as a repository of literature, analyses, research, and data related to municipal operations and make that information available to member cities; (6) To alert member cities of important governmental or private sector actions or proposed actions which may affect municipal operations; (7) To promote the interests of League affiliates (departments) and regions by providing organizational and technical assistance as directed by the Board and consistent with financial resources; (8) To promote constructive and cooperative relationships among cities and between the League and other levels of government, councils of governments, the National League of Cities, educational institutions, and the private sector; (9) To provide for and conduct training in relevant and timely topics related to municipal government; (10) To provide, in a timely manner, any
impact that S.B. 451 would have on cities where restrictions on STRs were already in place. Homeowner groups also tended to be against S.B. 451. These groups feared that S.B. 451 would attract more STRs in residential neighborhoods and, as a result, erode the character of these neighborhoods with increased noise, pollution, and traffic.

S.B. 451 was passed in the Texas Senate on April 18, 2017. The bill passed with twenty Republicans and eleven Democrats supporting it. A companion bill to S.B. 451, Texas House Bill 2551 (hereinafter “H.B. 2551”), was introduced in the Texas House of

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112 Alex Samuels, *Short-term Rental Measure Likely Dead After Conference Committee Action*, THE TEX. TRIBUNE (May 28, 2017), https://www.texastribune.org/2017/05/28/short-term-rental-measure-likely-dead-after-conference-committee-action/ (Bennet Sandlin, executive director of the Texas Municipal League, stated “[c]ities support reasonable rules about short-term party houses because of the effect they can have on neighboring home values”).
114 *Id.* (Dana Burghdoff, Assistant Planning Director of Fort Worth stated “[S.B. 451] will change the character of the neighborhood … We know the demand [for short term rentals] is there, and … we think we need to accommodate it, but we just need to do it in a way that’s respectful of the property owners who bought their property for a residential purpose and bought in a neighborhood expecting residential neighbors.” Melinda Ramos, Senior Assistant City Attorney of Fort Worth, stated that one concern facing city official is the potential of an ultimate “tipping point at which a neighborhood changes from being residential in character and becomes transient in nature due to the concentration of short-term rentals”); Samuels, supra note 112 (Critics of S.B. 451 also feared that it would allow Texans to rent their homes to people who might host disruptive parties. Between October 2012 and August 2015, the city of Austin received 252 complaints about short-term rentals. Of those, twenty-three were about noise and parking and 110 were about alleged illegal activity).
116 2017 Legislative Outlook Tex. S.B. 451
Representatives by State Representative Tan Parker (R). H.B. 2551, however, never made it past first committee in the Texas House and resulted with only ninety-two Republicans and fifty-eight Democrats supporting it.

**K. Idaho House Bill 216**

Idaho also tried to pass a state-wide regulation on STRs in 2017. However, unlike S.B. 451, Idaho’s H.B. 216 actually passed both legislative chambers. H.B. 216 was introduced into the Idaho House of Representatives by State Representative Tan Parker (R).

120 Id. (Under Section 63-1804: (1) a local government may not levy a sales, use, franchise, receipts, or other similar tax or fee on the business of operating a short-term rental marketplace. Pursuant to subsection 2, a short-term rental marketplace shall register with the state tax commission for collection, reporting, and payment of sales and use and travel and convention taxes levied by this state and any applicable local government taxes administered by the state tax commission on short-term rentals and vacation rentals due from a lodging operator on any lodging transaction facilitated by the short-term rental marketplace. Under subsection 3, a short-term rental marketplace shall collect, report, and pay taxes imposed on the lodging operator or occupant of a short-term rental or vacation rental by any local government. Additionally, under subsection 4, any local government that has levied a tax pursuant to statutory authorization, may contract with the state tax commission for the collection and administration of such taxes in like manner and under definitions and rules of the state tax commission for the collection and administration of the state sales or use tax under chapter 36, title 63, Idaho Code. Alternatively, such local government shall have authority to administer and collect such tax. All revenues collected on behalf of the local governments by the state tax commission pursuant to this chapter shall be distributed as follows: An amount of money shall be distributed to the state refund fund sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid through the state refund fund and those moneys are continuously appropriated. The state tax commission may retain an amount of money equal to such fee as may be agreed upon between the state tax commission and such local government for the actual cost of the collection and administration of the tax. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided in this section. All remaining moneys received pursuant to this chapter shall be placed in a fund designated by the state controller and remitted monthly to the local government levying such tax.)
House of Representatives and passed with 63 ayes and 5 noes on March 3, 2017.\(^\text{121}\) The bill subsequently passed the Idaho State Senate with 35 ayes and 0 noes and went on to the governor’s desk where it was approved.\(^\text{122}\) H.B. 216 prohibits municipalities from banning STRs.\(^\text{123}\) Additionally, H.B. 216 prohibits municipalities from regulating the operation of a STR marketplace and levying a sales, use, franchise, receipts or other similar tax or fee on a STR.\(^\text{124}\) However, H.B. 216 does allow municipalities to implement reasonable regulations to safeguard public health, safety, and general welfare in order to protect the integrity of residential neighborhoods.\(^\text{125}\) The bill also requires the STR marketplace to collect, report, and pay taxes imposed on the lodging operator or occupant of a STR.\(^\text{126}\)

H.B. 216 was sponsored by the Idaho Lodging and Restaurant Association (hereinafter “ILRA”).\(^\text{127}\) While remaining neutral on the

SECTION 2. That Chapter 65, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION , to be known and designated as Section 67-6539, Idaho Code, and to read as follows: 67-6539. LIMITATIONS ON REGULATION OF SHORT-TERM RENTALS AND VACATION RENTALS. Under section 2, neither a county nor a city may enact or enforce any ordinance that has the express or practical effect of prohibiting short-term rentals or vacation rentals throughout the jurisdiction of such county or city. Notwithstanding the foregoing prohibition, a county or city may implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate. A short-term rental or vacation rental shall be classified as a residential land use for zoning purposes subject to all zoning requirements applicable thereto. Additionally, (2) neither a county nor a city can regulate the operation of a short-term rental marketplace).

\(^{121}\) 2017 Voting Record ID H.B. 216 (Ida. 2017) (Of the ayes, 7 were Democrats and 56 were Republicans. Of the noes, 4 were Democrats and 1 was a Republican).

\(^{122}\) Id. (Of the ayes, 6 were Democrats and 29 were Republicans).


\(^{124}\) Id.

\(^{125}\) Id.

\(^{126}\) Id.

bill, the Association of Idaho Cities (hereinafter “AIC”)\(^\text{128}\) worked with the bill’s sponsor to craft the language of the bill concerning local planning and zoning regulation in order to favor its interest.\(^\text{129}\) H.B. 216 is very popular among Idaho residents because, on one hand, it protects STR operators and, on the other hand, it still gives municipalities discretion in regulating STRs.\(^\text{130}\) The bill went into effect on January 1, 2018.\(^\text{131}\)

III. PROPOSED LEGISLATION

Because most STR regulation and lobbying efforts occur at the state and local levels of government, a federal law addressing

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They are dedicated to preserving and improving the hospitality industry in Idaho by proactively creating a favorable political and regulatory environment and promoting and delivering programs, resources, and benefits that address the needs of its members and help its members succeed. Some issues that the ILRA is continually involved in include minimum wage, business signage, business personal property tax elimination, transportation, unemployment insurance, workers compensation, small lawsuits, liquor licensing issues and numerous tax issues).

\(^\text{128}\) *About AIC*, (last visited Mar. 12, 2018) http://idahocities.org/?page=About (The AIC is a nonpartisan, nonprofit corporation, owned, organized, and operated by Idaho’s city governments. AIC provides services that individual cities might not be able to afford on their own. The association’s membership is composed of Idaho’s city governments with each city having an equal vote. Individuals, other associations or groups, and business whose interests are compatible with AIC, may be eligible for nonvoting, affiliate membership. The AIC’s membership is composed of over 200 incorporated Idaho cities).

\(^\text{129}\) Ruen, *supra* note 127.

\(^\text{130}\) Steven Greenhut, *Idaho Vacation-Rental Law is a Model for the Nation*, IDAHO BUS. REV., (May 15, 2017), https://idahobusinessreview.com/2017/05/15/idaho-vacation-rental-law-is-a-model-for-the-nation/ (Greenhurt stated that “the bill uses state authority to stop local bullies from singling out STRs for special mistreatment. It’s a perfect use of the right of state governments to pre-empt the locals from using their tax and regulatory authority to abuse individual rights.” Further, Wayne Hoffman, president of the Idaho Freedom Foundation, stated “[t]he legislature did a good job – they really worked at it and struck a balance … For a lot of legislators, it really came down to private property rights … The argument that private property and economic opportunity should prevail –those were the compelling components”).

STRs would not be appropriate. Therefore, a model law for states to adopt would be more effective. A proper law for states to enact involves four components. First, and most important, cities must be barred from banning STRs throughout their jurisdictions. Under this law, municipalities would be prevented from not only expressly prohibiting STRs, but also enacting laws that have the practical effect of making STRs non-existent within their jurisdiction.

Second, however, cities would be allowed to regulate STRs for issues of health, public safety, noise, and neighborhood preservation. A state should give municipalities broad authority when regulating STRs based on these concerns. Health, public safety, noise, and neighborhood preservation are the most prevalent concerns that cities have with STRs and they should have the power to combat them. Examples of laws that municipalities may adopt in order to combat these concerns include: requiring the annual registration of STRs, limiting the number of guests allowed at a STR per night, and placing fines on STR operators and guests if there is excess litter, parked cars, and noise. Additionally, municipalities may enact laws that restrict STRs by limiting the number allowed in a jurisdiction, prevent STRs from operating in certain areas, and ban certain STR models. However, in order to impose such restrictions, municipalities must justify them as necessary to combat serious issues of health, public safety, noise, and neighborhood preservation.

133 Id.
134 The text of the proposed law would read: “under no circumstances may a municipality or county enact or enforce a law that has the express or practical effect of prohibiting short-term rentals or vacation rentals throughout the jurisdiction for such municipality or county.”
136 The text of the proposed law would read: “a municipality or county may implement such reasonable regulations as it deems necessary in order to safeguard the public health, safety, and general welfare in order to protect the character of residential neighborhoods in which short-term rentals or vacation rentals operate.”
Third, cities would be allowed to tax short-term rentals. A state should put the burden on the STR marketplace to collect, report, and pay taxes imposed on the operator or occupant of the STR. However, the taxes imposed on STRs should not be unreasonable and should be similar to the taxes imposed on hotels. Because hotels, motels, inns, and bed and breakfasts (hereinafter collectively referred to as “hotels”) are subject to municipal taxes all over the country, there is no reason that STRs should not be taxed in a similar way.137

Fourth, any STR bill that a state enacts must include a provision making it clear that the Civil Rights Act applies, and all anti-discrimination legislation must be followed. Unfortunately, STR operators have acquired a reputation for discriminating against potential tenants based on race, ethnicity, religion, gender, and sexual orientation.138 In order to combat this, operators should be prohibited from these forms of discrimination.139

Any tax or restriction on a STR must be reasonable and not place a substantial burden on STR operators or renters. A substantial burden on STR operators and renters would have the effect of making the operation or renting of a STR futile. An example of this would be a municipality imposing taxes on STRs that are stricter than taxes imposed on similarly situated hotels. Another example would be a municipality limiting the number of STRs allowed in the city to the extent that they are virtually non-existent.140

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137 The text of the proposed law would read: “if a hotel occupancy tax is authorized by the municipality or county in which a short-term rental is located, a person operating a short-term rental marketplace may apply, calculate, collect, or remit a tax imposed by the state.”; Hotels and Restaurants, CORNELL LAW SCHOOL (last visited Jan. 13, 2018) https://www.law.cornell.edu/wex/hotels_and_restaurants.


139 The text of the proposed law would read: “under no circumstances may a short-term or vacation rental rental operator discriminate against his/her tenants based on their race, ethnicity, religion, gender, or sexual orientation.”

140 The text of the proposed law would read: “any tax or restriction a municipality or county places on short-term or vacation rentals must be reasonable and not place a
There would also be remedies available for any violation of the proposed law. Generally, municipalities would be liable for violating provisions of the proposed law addressing: banning STRs, regulations on STRs, and taxes on STRs. A proper remedy against a municipality would be an injunction preventing the municipality from enforcing the particular law. Additionally, in circumstances where municipalities continually try to enact ordinances contrary to the proposed law, damages against the municipalities may be appropriate. However, for STR operators who refuse to lease their property to tenants based on their race, ethnicity, gender, religion, or sexual orientation, the victim would not only be entitled to an injunction preventing the STR operator from refusing service, but also an allowance of damages not to exceed $10,000.

These components combined would help balance the tension between STR advocates and STR opponents. On one hand, STR advocates could rest easy knowing that STRs are legal in every city across the state. The only problems that would arise for STR advocates would be minor regional restrictions and a limited, although not unreasonably small, number of STRs allowed per municipality. On the other hand, STR opponents would feel at ease knowing that municipalities have the power to step in and regulate STR operations should a nuisance or problem arise.

substantial burden on short-term or vacation rental operators so as to make operating the short-term or vacation rental futile.”

141 The text of the proposed law would read: “remedies based on a municipality or county’s violation of this law may result in an injunction barring enforcement of the municipality or county’s law or possibly damages not to exceed $500,000.”

142 The text of the proposed law would read: “any short-term or vacation rental operator who violates the discrimination provision of this law would be subject to an injunction and damages not to exceed $10,000.” Remedies for Employment Discrimination, U.S. EQUAL EMP. OPPORTUNITY COMMISSION (last visited Mar. 12, 2018) https://www.eeoc.gov/employees/remedies.cfm (this $10,000 figure is based off the Equal Employment Opportunity Commission’s $50,000 limit of damages against companies with 15-100 employees. Typically, the STR operator is a single person. I believe that this is a reasonable limit for damages against a single person).
S.B. 451 and H.B. 216 address all three of these components in effective ways. Both bills prohibit municipalities from banning STRs. H.B. 216 gives municipalities broad discretion in regulating STRs based on health, safety and general welfare in order to protect the integrity of residential neighborhoods in which STRs operate. Although it does not give municipalities as broad of discretion as H.B. 216, S.B. 451 still allows municipalities to regulate STRs in several ways. Additionally, H.B. 216 and S.B. 451 allow STRs to be taxed similar to hotels. For these reasons, it was appropriate to base the proposed law off of S.B. 451 and H.B. 216.

Municipal reactions to the proposed law are sure to be mixed. Those with friendly stances towards STRs would not be affected at all while those with strict stances against STRs would be affected and likely try to get around the law. Ultimately, however, it will be up to the courts to determine whether a municipality is abiding by the proposed law.

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143 It should be noted that Arizona S.B. 1350 is very similar to H.B. 216 and S.B. 451. However, this article focuses on S.B. 451 and H.B. 216 because they were both written and voted on within this past year; S.B. 451, 85th Leg. Reg. Sess. (Tex. 2017); H.R. 216, 64th Leg., Reg. Sess. (Idaho 2017).
145 Idaho H.R. 216.
146 Tex. S.B. 451 (this includes enforcing fire and building codes, health and sanitation, traffic control, solid or hazardous waste and pollution, annual registration of STRs, requiring the designation of an emergency contact, and prohibiting the use for the purpose of housing sex offenders and selling illegal substances).
147 Id. (If a hotel occupancy tax is authorized by the municipality or county in which a STR is located, a person operating a STR marketplace may apply, calculate, collect or remit a tax imposed by the state, municipality, or county); Idaho H.R. 216 (A STR marketplace shall collect, report, and pay taxes imposed on the lodging operator or occupant of a STR by any local government).
IV. ANALYSIS

A. Why a Federal Law Addressing STRs Would Not Be Appropriate

A federal law addressing STRs and municipal regulations of STRs would have its advantages. First, it would provide nation-wide uniformity in the amount of power that municipalities have when regulating STRs. A federal law would side-step the issue of every state adopting a law similar to the proposed legislation. Additionally, it could address the problems regarding racial, religious, and ethnic discrimination mentioned previously that are notorious with STRs. This could be done by including a non-discrimination provision or making it clear that the Civil Rights Act applies to STRs.

However, the issue is best left to the states. All states are different and should enact their own laws regarding STRs. For example, California is the largest state by population with a very diverse population of approximately 40 million people. On the other side of the country, Vermont is a small liberal state with little over 600,000 people living there. Additionally, in the Deep South, Mississippi is a very conservative state with approximately 3 million citizens. Because each state is unique, they face their own issues and problems regarding property, real estate, zoning, tourism, and STRs. Therefore, each state should enact their own STR law that coincides with the proposed law.

Also, the states have precedent for regulating real estate and land-use planning. Regulatory authority for real estate and land-use planning is typically delegated from state governments to local

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148 Callahan, supra note 138.
152 See generally BARLOW BURKE, UNDERSTANDING THE LAW OF ZONING AND LAND USE CONTROLS, CHAPTER 1, (LEXISNEXIS 2002).
governments such as counties and municipalities. Additionally, there is also precedent in states enacting their own STR regulations. As previously mentioned, Florida, Arizona, Virginia, and Idaho have all passed their own state-wide regulations on STRs. Because of these precedents, it is appropriate for state governments, rather than the federal government, to enact laws regulating STRs.

Additionally, the federal government could not effectively protect the thousands of municipalities throughout the country’s neighborhood character. The thought of such a regulation is simply insurmountable. Additionally, the federal government is notorious for its slow and incompetent response to local needs. Even in emergency situations, like Hurricane Katrina, the federal government has been criticized for not reacting appropriately. A non-emergency situation, like protecting municipalities from the harmful effects of STRs, would certainly produce an even slower, more inadequate federal response. Because of this, and the reasons listed above, it is appropriate for state-wide regulations on STRs.

B. Why Cities Should Not Ban STRs

153 Id.
155 Id.
158 Id. (The federal government was blamed for its delayed response to help citizens of New Orleans escape the wrath of Hurricane Katrina in 2005. FEMA (Federal Emergency Management Agency) apparently failed to adequately react to the disaster as a result of Louisiana Governor Kathleen Blanco’s failure to submit a request for help in a timely manner and to ask President Bush a request asking for help with evacuation).
Now that it has been established that state laws addressing STR regulations are appropriate, it is important to stress that states must prevent municipalities from banning STRs. Municipalities should not be able to ban STRs because of all the benefits associated with them. STRs provide numerous benefits for municipalities, STR operators, and STR renters.

One benefit is the availability of affordable lodging for tourists. Listings on STR platforms are, on average, much less expensive than hotel rooms in major tourist destinations. Because of this, tourists with lower incomes are now able to visit foreign destinations that they might not have been able to before the proliferation of STR platforms.

Another benefit of STRs is that they provide homeowners with an additional source of income. STR platforms are often used by property owners seeking to make a few extra dollars in order to supplement their current income. In other cases, however, property owners rely on the income they receive from STR platforms in order to pay their routine expenses.

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160 Id. (Bus ticket comparison site Busbud says that in at least eight major U.S. cities, money-conscious travelers are better off booking an Airbnb than a hotel room. Airbnb rates in Boston, Chicago, Los Angeles, New York, Portland, Seattle and Washington D.C., are significantly lower than comparable hotels, sometimes by as much as $80 a night).
161 Id.
163 Id.
164 Id. (After having a tough year working as a freelance commercial producer, Ms. Badia, a New York City Airbnb host, decided to rent out an upstairs two-bedroom apartment in her house. When she did her taxes for the year, she discovered that she had worked a mere 20 days. “That was a big reality check,” she said. “Hosting on Airbnb wasn’t a choice. It was decided for me.” “That is the sad part,” she added. “I tear up because I get emotional about it, but you’re lost in your house, saying to yourself, how am I going to keep my home?” Donna Deans, a Brooklyn Airbnb host, rented her second bedroom out of necessity in order to fund for her retirement.)
STRs also help cities’ tourism industries. By providing more affordable lodging, more tourists are able to visit the host cities. STR patrons end up eating at local restaurants, shopping at local stores, visiting local museums, and seeing other local attractions. Local economies, in effect, are greatly benefited by the additional number of tourists visiting their city.

Additionally, STRs offer guests a unique experience that they might not be able to get at a hotel. Many STR hosts go all out to make their guests’ stay as comfortable and pleasant as possible.

“Airbnb is my retirement plan,” she said, “until I go to the nursing home or I hit the lottery or, you know, meet the maker, one of the three.”


Economic Effects of Airbnb in Australia, DELOITE ACCESS ECONOMICS (2017) https://www2.deloitte.com/content/dam/Deolitte/au/Documents/Economics/deolitte-au-economics-airbnb-economic-effects-in-australia-010517.pdf (The author noted that Airbnb guests are now a significant driver of the Australian tourism economy. STRs have contributed $1.6 billion (1.27 US dollars) to Australia’s GDP in 2015-16, supporting over 14,000 jobs in addition to the activities of the hosts; Six Ways That Short-Term Vacation Rentals Are Impacting Communities, supra note 166).


Seth Porges, 7 Tips From NYC’s ‘King of Airbnb’ for Being the Highest-Rated Host in Town, NYMAG (Nov. 30, 2015) http://nymag.com/daily/intelligencer/2015/11/how-to-be-the-highest-rated-airbnb-host-in-town.html (One Airbnb host has been labeled “the King of Airbnb in NYC” by the New York Post for the tactics he uses to attract renters to his properties. First, the King recommends “[s]creen[ing] your guests, David Lee Roth style.” By doing this, the King hides hidden messages in his Airbnb listings and only rents to the users who read them. “The best matches are the ones who have actually read your profile and aren’t just spamming a ‘sup’ at everybody in a ten-mile radius,” the King said. Second, the King recommends hacking the algorithm that Airbnb uses in placing STR results so that yours in at the top. Third, the King recommends maximizing photos of STR. Fourth, the King recommends “adding a little something extra” such as leaving body wash, shampoo, conditioner, toothbrushes, toothpaste, coffee, towels, and even alcohol. The King also recommends being flexible and managing bad reviews by giving guests a full description of the property so people are not taken by surprise).
Having a STR host may be an excellent resource for learning about local culture, restaurants, bars, shops, and attractions. Also, STRs are rarely in large hotel-like buildings or high-rises. Instead, STRs are often found in homes, apartments, and condos scattered across the city. This gives guests a more genuine experience of the city that they are visiting.

C. Why Municipalities Should Be Able to Regulate STRs

Although it is important to keep STRs legal, municipalities should still be able to regulate STRs. Municipal regulations on STRs are appropriate because all municipalities are different, STRs are notorious for destroying neighborhood character, municipalities have traditionally regulated hotels, and STRs are notorious for being operated illegally.

The first reason why municipalities should be able to regulate STRs is because all municipalities are different, each with their own unique population, industries, and culture. Municipalities have reacted to STRs based on their economy and their experiences with STR platforms. For example, Galveston, Texas, one of the friendliest cities towards STRs, has had a pretty good relationship with STRs. Galveston is a coastal resort town on the Gulf of

171 Fishman, supra note 169.
172 Id.
173 Id.; Stephanie Bernstein, Amazing Airbnb Chicago Homes You Can Rent, TIME OUT (Sept. 25, 2017) https://www.timeout.com/chicago/things-to-do/best-airbnb-rentals-and-apartments (The author found several unique STRs around the city of Chicago. One was a “kid-approved kingdom,” which is a normal four-bedroom pad home for kids in the Wrigleyville neighborhood. This STR comes equipped with a crib, tons of toys, and an expansive library filled with bedtime reads. Another house was a “Sunny Stunner” dubbed the “Outdoor Oasis” and included a 1,000 square foot deck and patio. A 49-foot yacht along Chicago’s shoreline is also available to rent and drive around Lake Michigan. Additionally, the Castle on Berwyn, one of Chicago’s most famous properties located in the Andersonville neighborhood, is filled with ornate art and antiques and is available to rent).
174 Fishman, supra note 169.
175 Shatford, supra note 36.
176 Id.
177 Id. (Galveston, Texas; Savannah, Georgia; Louisville, Kentucky; and San Diego, California are considered to be the friendliest cities towards STRs. These cities have
Mexico with a population of roughly 50,000 people.\(^\text{178}\) Galveston’s economy is centered around tourism.\(^\text{179}\) STRs have become very popular in Galveston as a result of tourists seeking an affordable alternative to hotels.\(^\text{180}\) Under a Galveston City Ordinance, STRs are expressly allowed in the city and only two restrictions are placed on them.\(^\text{181}\) In Galveston, STR operators are required to pay a $50 annual fee and give renters a brochure that tells them to be quiet.\(^\text{182}\) Because STRs are so beneficial to tourist-destination cities like Galveston, it was appropriate for Galveston to enact favorable laws for STR operators.\(^\text{183}\)

Ft. Worth, on the other hand, has one of the strictest stances against STRs in this country.\(^\text{184}\) Ft. Worth has population over 850,000 people and an economy centered around not only tourism, but also healthcare, manufacturing, education, and retail.\(^\text{185}\) While Ft. Worth attracts many tourists, it has a much larger residential population than Galveston.\(^\text{186}\) Citizens living in Ft. Worth’s all enacted a legal framework favorable toward STR owners and only enforce very minimal restrictions on STR operations. There are also several cities where there is no legal framework in place. Examples of these cities include: Cleveland, Ohio; Columbus, Ohio; Dallas, Texas; Detroit, Michigan; El Paso, Texas; Indianapolis; Indiana; Mesa, Arizona; Milwaukee, Wisconsin; Omaha, Nebraska; Phoenix, Arizona; and San Antonio, Texas. While not as favorable as the cities mentioned previously, these cities are generally pretty laid-back in enforcing STR restrictions).


\(^{179}\) Id.


\(^{181}\) Galveston Ordinance No. 15-012 (VI) (2015).


\(^{183}\) *Galveston, Texas*, supra note 178.

\(^{184}\) Shatford, *supra* note 36. (Ft. Worth, Texas; Kansas City, Missouri; Los Angeles, California; New Orleans, Louisiana; Fresno, California; Atlanta, Georgia; Denver, Colorado; and Oklahoma City, Oklahoma are considered to be among the worst cities in the country for STRs).

\(^{185}\) *Fort Worth, Texas Demographic Data*, (last visited Jan. 6, 2018), https://www.neighborhoodscout.com/tx/fort-worth/demographics.

\(^{186}\) Id.
residential areas were often bothered by STRs moving into their neighborhoods. As a result, Ft. Worth has enacted STR regulations that require all STR operators to register their property as an official bed-and-breakfast. Additionally, all STRs must operate in a commercial zone, not a residential zone. Because Ft. Worth is very different from tourist-destination cities like Galveston, it was appropriate for the municipality to adopt its own laws to fit the city’s unique needs.

Even cities that are large tourist attractions and have large residential populations have reasons to enact strict regulations on STRs. New York City, for example, is among the cities in the United States with the strictest regulations on STRs. New York City is a huge tourist destination for people all over the world. Additionally, New York City’s economy is driven by finance, arts and entertainment, and technology. A report by the state attorney general found that 75% of New York City’s Airbnb rentals were illegal in 2014. Consequently, these property owners, who were illegally subletting their property on STR platforms, were evading...
millions of dollars in annual hotel taxes that should have been collected by the city.\textsuperscript{196} In response to the numerous illegally operated STRs throughout the city,\textsuperscript{197} New York City passed a law prohibiting rentals of less than 30 days in a multi-unit building if the tenant is not present.\textsuperscript{198} Because New York City has had such a unique experience with STRs, it was appropriate for the city to institute its own laws in order to properly regulate them.

Even small towns have reasons to enact regulations on STRs.\textsuperscript{199} Jackson, Wyoming, a beautiful rural town with a population of just over 10,000, has enacted its own laws regarding STRs.\textsuperscript{200} The town has become a fairly large tourist attraction after a livestream video of the town square went viral on YouTube in 2016.\textsuperscript{201} After seeing the damage that STRs cause to residential neighborhoods, the city of Jackson took action.\textsuperscript{202} The town completely banned STRs in its residential neighborhoods.\textsuperscript{203} However, in order to support its booming tourism industry, the town passed regulations that allowed STRs in three percent of its total homes in two of its downtown neighborhoods.\textsuperscript{204} Because Jackson has such a unique background, it was appropriate for the town to enact its own laws in order to combat the negative effects that STRs often bring to small towns.

The second reason why municipalities have good reasons to regulate STRs is the preservation of neighborhood character. For

\begin{itemize}
  \item \textsuperscript{196} \textit{Id.}
  \item \textsuperscript{197} These illegally operated STRs tended to draw a very large amount of rowdy guests, parking issues, and neighborhood disruptions.
  \item \textsuperscript{199} Blevins, \textit{supra} note 37.
  \item \textsuperscript{200} \textit{Jackson, WY}, (last visited Jan. 7, 2018), https://datausa.io/profile/geo/jackson-wy/.
  \item \textsuperscript{201} Raisa Brunner, \textit{Watch a Very Hip Sheriff Casually Hit the Dab on the Viral Jackson Hole Livestream}, \textit{TIME}, (Sept. 8, 2016), http://time.com/4484632/jackson-hole-livestream-sheriff-dab/ (After watching the video, tourists became fascinated with the town's elk antler arch, its law enforcement, and its prevalence of red trucks).
  \item \textsuperscript{202} Blevins, \textit{supra} note 37.
  \item \textsuperscript{203} \textit{Id.}
  \item \textsuperscript{204} \textit{Id.}
\end{itemize}
example, STRs have a reputation for artificially inflating property values. The presence of too many illegal STRs on the market results in there being fewer homes and apartments available for long-term rentals. As a result, landlords can charge higher rent prices from tenants. With property values skyrocketing, once affordable, working class neighborhoods are becoming living arenas for only the very rich. Thus, municipalities should have the ability to regulate

205 The Problem With Commercialized Short-Term Rentals, (last visited Jan. 13, 2018), http://www.keepleighborhoodsfirst.org/strproblem; Stephen Sheppard, Do Airbnb Properties Affect House Prices?, Williams College (Oct. 30, 2016) https://web.williams.edu/Economics/wp/SheppardUdellAirbnbAffectHousePrices.pdf (The theory behind this is relatively straightforward. First, under several circumstances residences can be held as an asset and rented on STR platforms to produce income for the operator. This permits speculation for potential capital appreciation as well as generating rental income during the period of ownership. This potential income and capital gain can draw investors to purchase residential property because rental income obtained via STR platforms reduces the cost of ownership rather than for their own private use. Either mechanism would increase effective demand for housing and drive up the price of sales and rentals on these units. As a result, freehold sales price and rental price on the property would be affected because the willingness-to-pay of both buyers and renters would be increased due to this potential increase in income).

206 The Problem With Commercialized Short-Term Rentals, supra note 205.

207 Id.; Michael Hiltzik, Rental Sites Likes Airbnb Aren’t as Innocuous as They Pretend, L.A. TIMES, (July 15, 2015), http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150719-column.html (For example, in 2014, the total housing costs for renters in Los Angeles increased by more than $464 million in one year); Stephen Sheppard, Do Airbnb Properties Affect House Prices?, Williams College (Oct. 30, 2016) https://web.williams.edu/Economics/wp/SheppardUdellAirbnbAffectHousePrices.pdf (In the author’s hedonic model, Airbnb listings increase property values by 6% to 11%. Using the author’s difference-in-difference approach produced an ever larger estimated impact, suggesting that properties that are subject to Airbnb treatment increase in value by about 31%. However, the author’s rough calculations based on average property values and average Airbnb rentals, the estimated impact suggests that properties that are subject to Airbnb increase by an estimate of 17.7%).

208 Rachel Monroe, More Guests, Empty Houses, SLATE, (Feb. 13, 2014) http://www.slate.com/articles/business/moneybox/2014/02/airbnb_gentrification_how_the_sharing_economy_drives_up_housing_prices.html (Cat Cox, a chef and founder of the local roller derby team in Maria, TX, left her town after her long-term rental got converted to vacation housing. In leaving, Cox was particularly upset about how the new sharing economy favors tourists over locals, changing a once quiet and residential town by attracting more and more tourists. “Instead of having
the amount of STRs available in certain areas in order to maintain sustainable property values.

Also, STRs are notorious for attracting disruptive visitors.\textsuperscript{209} STRs often attract a young and rowdy crowd.\textsuperscript{210} As a result, STRs bring continually parked cars, loud music, and rampant littering from vacationers in formerly peaceful neighborhoods.\textsuperscript{211} In residential areas, this creates a serious problem for residents who do not want to be disturbed.\textsuperscript{212} While some municipalities may welcome partiers, someone live in that house who’s contributing to the community, you’re turning the house into a place that gets rented out a couple of times a month,” Cox said).

\textsuperscript{209} The Problem With Commercialized Short-Term Rentals, supra note 205; Jason Lamb, Public Weights In On Short Term Rentals in Nashville, NEWSCHANNEL 5 (Jan. 2, 2018) https://www.newschannel5.com/news/public-weighs-in-on-short-term-rentals-in-nashville (Raphaela Keohane, a resident of Nashville who opposes STRs, complained “[t]here’s an Airbnb in the building down the block from me, and in August at 3 a.m., there were six women trying to get out of an Uber car, and they were so drunk and screaming they couldn’t even get out of the car. I don’t appreciate this at 3 o’clock in the morning”).


\textsuperscript{211} Mark A. Easter, Solving the Problem of the Unchecked Rise of Short-Term Rentals, (Mar. 28, 2017), https://www.bbknowledge.com/economic-development/solving-the-problem-of-the-unchecked-rise-of-short-term-rentals/; Amy Powell; Canada Couple’s Home Trashed by Airbnb Renter, ABC 7, (May 2, 2015), http://abc7.com/news/canada-couples-home-trashed-by-airbnb-renter/692391/ (Property owners who rented their home in Calgary, Canada came back one night to discover that the previous tenant had strewn food and garbage across the floor and smeared it on the walls and furniture. Sofa pillows were stained with spilled drinks, urine, and other bodily fluids. Some were torn open and piled on the floor. “There’s mayonnaise on furniture and barbecue sauce everywhere and chicken meat in my shoes. Everywhere is just totally trashed,” Star King, the property owner, said. Apparently, a few hours after they turned over the keys, the Kings (the property owners) started getting calls from concerned neighbors who said that a party bus had rolled up and that at least 100 people were in the house. The police reportedly came to the house seven times to try to break up the party, with no success. “When the police came [to the King’s house after the rowdy tenants had left] they said, ‘this wasn’t a party, it was a drug-induced orgy,’” Mark King said. Airbnb subsequently issued a statement that said that the guest had been banned from the website and the website was working to “quickly reimburse the Kings under their $1 million host guarantee”).

\textsuperscript{212} Nichols, supra note 210; Megan Barnes, El Segundo Considers Crackdown on ‘Party House’, THE DALEY BREEZE (Jan. 14, 2018), https://www.dailybreeze.com/
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other localities would rather keep noise disruptions to a minimum. Thus, localities should have the ability to regulate STRs based on noise, disruptions, and unruly parties as they see fit.

Additionally, STRs bring non-residents into once-residential communities. Critics complain that STRs take “neighbors” of out “neighborhoods.” Tenants of STRs do not vote, pay taxes, work, attend public schools, or participate in the community. As a result, neighborhoods with large numbers of STRs are becoming more like hotel districts and less like quiet, residential areas. For small towns who rely on the tourism industry such as Galveston, this is not so much an issue. But, urban and suburban areas are more likely to oppose these short term outsiders from entering their communities. Therefore, it is appropriate for municipal governments to enact their own unique laws regarding STRs.

STRs are also criticized for pitting neighbors against each other. Property owners often desire to rent their home or bedroom

2018/01/14/el-segundo-considers-crackdown-on-party-house-rentals/ (A particular STR house along the beach has become a nuisance to various residents of El Segundo. Gary Schmunck, a neighbor of the STR complained to the El Segundo City Council that “[t]he house is rented out with loud parties, general noise, drunken fights – pick one, it all goes on … [i]t’s like living next door to a fraternity house. The situation has gotten a little bit better but the problem is we never know when it’s going to be back.” Another neighbor described the noise as “like ‘Animal House’ every weekend.” Veronica Bryce, also a neighbor of the STR in El Segundo, complained that people sometimes mistake her house for the rental home and end up in her driveway. “The parking situation gets tricky,” she told the city council. “I’ve had my driveway blocked several times because they sometimes have teams and groups of people come and it’s just this constant in and out”).


Id.

Id. (A 2016 study found that most STRs in New Orleans are in historic neighborhoods, noting: “[a]s homes are converted to short term rentals … this changes the neighborhood from one that serves residents to one that serves tourists”).

on STR platforms in order to earn an additional income.\textsuperscript{218} In some cases, the property owners who lease their homes on STR platforms rely on this income in order to pay their mortgage, send their children to college, or go on an expensive vacation.\textsuperscript{219} On the other hand, however, neighbors of STRs are forced to deal with many of the issues associated with STRs and desire the STR to be shut down.\textsuperscript{220} Neighbors of STRs often protest by putting up signs, complaining to their city council, and voicing their opinions to the tenants themselves.\textsuperscript{221} Because of the inherent conflicts between neighbors

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\item business/airbnb-pits-neighbor-against-neighbor-in-tourist-friendly-new-orleans.html.
\item \textsuperscript{218} Id.
\item \textsuperscript{220} Walker, supra note 217.
\item \textsuperscript{221} Adam Hammons, \textit{Neighbors Still Fed Up With Short Term Rentals After Resolution Passed}, CBS AUSTIN, (Aug. 22, 2015) http://cbsaustin.com/news/local/neighbors-still-fed-up-with-short-term-rentals-after-resolution-passed (One protestor puts a sign in front of his house stating “Keep the NEIGHBOR in our NEIGHBORHOOD! NO STR-2’s”); Jamie Munks, \textit{Las Vegas Launches Short Term Rental Complain Hotline}, LAS VEGAS REVIEW-JOURNAL (Aug. 15, 2017) https://www.reviewjournal.com/news/politics-and-government/las-vegas/las-vegas-launches-short-term-rental-complaint-hotline/ (One protestor put a sign in front of her house stating “DON’T MOTEL MY NEIGHBORHOOD: SUPPORT, COUNCIL BILL #2017-16”); Brown, supra note 219 (Kristen Hotopop, who lives in an older neighborhood near the famed music district in Austin, Texas, complained to the Austin City Council that “[y]ou have large groups of people there screaming in the middle of the night… [w]hen the bars close downtown … it just becomes kind of an all-night thing”); Marissa Kynaston, \textit{Airbnb Renters Upsetting Vegas Residents}, KTNV (Apr. 28, 2017) https://www.ktnv.com/news/airbnb-renters-upsetting-vegas-residents (In particular, one homeowner in the John Park neighborhood of Las Vegas, Mario Pawlik, became fed up with how his once quiet neighborhood is now filled with parties, drugs, and prostitutes because of countless STR renters. Pawlik took matters into his own hands by delivering handwritten letters to his neighbors, asking them not to rent out their properties. Additionally, Pawlik wrote a letter to several renters of a STR. In particular, Pawlik’s note to them read: “[t]his is a peaceful and quiet residential neighborhood. We the people of the John S. Park Neighborhood Association do not want you here. Your person and your vehicle will be video recorded – as well as all visitors. All noise and suspicious activity will be immediately reported to the police and we will make sure all illegal activity will be prosecuted – in criminal and civil court. We are vehemently opposed to your presence here. You will not be allowed to deny us our right to the quiet
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and STR operators, it is appropriate for municipal governments to regulate STRs in the community.

Additionally, there is strong Supreme Court precedent favoring a municipality’s capacity to preserve neighborhood character. In the landmark Supreme Court opinion, *Village of Euclid v. Ambler Realty Co.*, the Court upheld a city ordinance which excluded apartment houses, retail stores, and shops from residential districts. The Court used the doctrine of nuisance to determine if the zoning ordinance was legitimate. Because the apartment complexes were parasitic in nature, the Court held, the city was within its rights to exclude them from residential, single-family homes. The desirability of a neighborhood, in the Court’s opinion, is greatly diminished by apartment houses. The Court in *Euclid*'s opinion still continues to influence courts across the country in the twenty-first century.

enjoyment of our homes and property. No parties or events no noise. If you have a problem with this take it up with the stinking piece of animal waste who took your money. Signed, the residents of the John S. Park Neighborhood).

222 *Ewing v. City of Carmel-By-The-Sea*, 286 Cal.Rptr. 382, 386 (Cal. App. Ct. 1991) (citing *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926) (The Ewing court found that the city could validly restrict the occupation of homes in a residential area to those staying longer than thirty days, even if such people were not causing nuisances, because only permanent residents have a stake in the community and stick around long enough to get involved in things like “volunteer[ing] at the library” or “lead[ing] a Scout troop.” The court also noted that the city’s main objective was to confine such activity to commercial areas, rather than banning visitors from coming to the city).

223 *Euclid, 272 U.S. at 397.*

224 Under common law, “nuisance” is a substantial and unreasonable interference with a right common to the general public, usually affecting the public health, safety, peace, comfort, or convenience. *Michigan v. U.S. Army Corps of Engineers*, 667 F.Ed 765, 771 (7th Cir. 2011)(holding that the states boarding the Great Lakes established a good or even substantial likelihood of success on merits of their claim for a preliminary injunction that non-native species of carp invading Lake Michigan constituted a public nuisance).

225 *Euclid, 272 U.S. at 387-88.*

226 *Euclid, 272 U.S. at 397.*

227 *Id.*

228 Greater Chicago Combine and Center, Inc. v. City of Chicago, 431 F.3d 1065, 1071 (7th Cir. 2005) (using the Euclid test, the Seventh Circuit held that the city’s ordinance did not violate equal protection by virtue of its differing treatment of
The third reason why municipalities should be able to regulate STRs is because hotels are already regulated by municipalities all across the country. Hotels have been regulated by localities since colonial times. Hotels are subject to regulation under the police power of the state. The general requirement for state regulations on hotels is “reasonableness.” Most states require hotel owners to have a license to operate such facilities. Hotels are also governed by Article 2 of the Uniform Commercial Code (“UCC”). The UCC adopts the doctrines of express and implied warranties on hotel rooms and facilities.

Many states delegate the responsibility of regulating hotels to administrative bodies, municipalities, or agencies. Most of these bodies and municipalities mandate that hotels operate in commercial, non-residential zones of the city in order to not disturb residential

residential and non-residential areas of pigeon keepers and other pet owners); Kamaole Pointe Development LP v. County of Maui, 573 F.Supp.2d 1354, 1371 (D.Haw 2008)(holding that an ordinance requiring a set-aside of affordable housing was not arbitrary or irrational and addressed a clear, legitimate government objective); Zuckerman v. Town of Hadley, 813 N.E.2d 843, 848 (Mass. 2004)(holding that a zoning restriction on the rate of development was unconstitutional because it did not serve a legitimate zoning purpose).


230 Id.

231 Id.

232 Id. (“Reasonableness” refers to an accepted amount of government regulation based on the situation and the particular state).

233 Id.

234 Id.

235 Hotels and Restaurants, supra note 229 (Reasonableness is implied in the context of mutual relation between patrons and owners consisting of reciprocal obligations and duties. The owner is under a duty to furnish proper accommodations, and to exercise proper care for the safety and tranquility of the guest. The guest is under a duty to exercise due care to refrain from any boisterous or otherwise distrustful or offensive conduct. The owner is also under a duty to receive and entertain all persons who offer themselves as guests, unless he or she has some reasonable grounds for refusal. “Reasonableness” in this context is limited by civil rights statues. Owners are prohibited from refusing to accommodate or entertain persons on account of their race, color, religion, or national origin).

236 Id.

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communities. Additionally, most local governments tax hotel guests. These taxes range from as low as 10 percent to over 18 percent, depending on the city.

If hotels are regulated, STRs should be regulated by municipalities as well. STRs and hotels perform essentially the same function: providing lodging for visitors. It is true that the typical property owners of STRs are individuals and the typical owners of hotels are large corporations. But, it is not fair that STR operators may be unregulated while hotel operators are forced to abide by zoning restrictions, noise ordinances, and taxes.

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239 Id. (Cities on the lower end include: Burbank, California (10.5%) and San Mateo County, California (12%). Cities on the higher end include: New York City (18.27%), Nashville (17.76%), Houston (17%), Indianapolis (17%), San Antonio (16.75%), and Columbus (16.75%).
241 Id.
242 Id.; Orwoll, supra note 238; Nathan Ingraham, New York Passes Law Making it Illegal to List Short-Term Rentals on Airbnb, (Oct. 21, 2016), https://www.engadget.com/2016/10/21/new-york-passes-law-making-it-illegal-to-list-short-term-rentals/ (For example, hotels in New York pay a 18.27% tax while many (particularly illegal) STRs are getting away without paying any taxes at all); Sean O’Neill, American Hotel Association to Fight Airbnb and Short-Term Rentals. TNOOZ (Apr. 30, 2014) https://www.tnooz.com/article/american-hotel-association-launches-fightback-airbnb-short-term-rentals/ (The AHLA claims that “[i]n many markets, Airbnb and similar short-term online rental marketplaces are technically illegal, but lax enforcement of existing laws has allowed these entities to grow exponentially in size. Their increasing popularity, together with unclear regulatory structures, has prompted many local governments to examine new ways to tax and regulate these companies. Airbnb has led aggressive outreach programs in several cities, engaging local officials, agreeing to collect and pay some taxes, and pushing for favorable rewrites of local planning law. To counter these actions, AH&LA is working to drive the short-term rental company debates. Our plan includes: Together with our partner states, identifying target cities and localities where we can engage in select tax, safety, and health fights at the council level to pre-empt other deals
Additionally, unlike hotels, STR hosts are notorious for discriminating against certain guests.\textsuperscript{243} Hotels are subject to civil rights statutes prohibiting them from refusing to accommodate or entertain persons on account of their race, color, religion, or national origin.\textsuperscript{244} STRs, while almost certainly bound by the Civil Rights Act as well, often get around the non-discrimination provision due to the lack of municipal regulations on them.\textsuperscript{245} As a result, minorities often face discrimination by STR hosts.\textsuperscript{246} Because of this, and the reasons listed above, it is appropriate for municipalities to regulate STRs in a similar manner as hotels.

The fourth reason why municipalities should be able to regulate STRs is because STRs are notorious for being operated illegally, without paying taxes and not following fire and building being sought by short-term online rental companies; Creating a feedback loop at the federal level between Congress and federal agencies, and pushing legislation ensuring laws regulating hotels are applied equally to short-term online rental companies; Highlighting the tremendous innovation within the hotel sector; and Raising enforcement concerns regarding the lack of compliance by short-term online rental companies with areas including provisions of the Americans with Disabilities Act, safety, occupancy rules, and tax reporting\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{243}}} Callahan, supra note 138
\textsuperscript{\textsuperscript{\textsuperscript{244}}} U.S.C. § 1981 (Owners are prohibited from refusing to accommodate or entertain persons on account of their race, color, religion, or national origin).
\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{245}}} Callahan, supra note 138.
\textsuperscript{\textsuperscript{\textsuperscript{\textsuperscript{246}}} Additionally, it is of note that this is one factor favors federal regulation of STRs because some localities, in some areas, might be less stringent on enforcing STR hosts not to discriminate. However, if states begin regulating STRs in the same manner as hotels, hopefully this issue can be solved due to hotels' adherence to the Civil Rights Act; \textit{Id.} (In striking back against these discriminatory STR hosts, a popular hashtag \#AirbnbWhileBlack trended as black users of the site shared their grievances about being denied stays by hosts because of their race); \textit{How Innclusive Addresses Issues of Discrimination} (last visited Feb. 2, 2018) https://www.innclusive.com/why-innclusive (As a result of the negative reputation associated with Airbnb hosts and discrimination, an “all-inclusive” STR platform was launched called “Innclusive.” Innclusive attempts to remove the opportunity for discrimination in STRs by introducing the photo of a prospective tenant only after the booking is confirmed. Innclusive claims that their branding purposely reflects a very diverse audience and has been shown to reduce the likelihood that a discriminating person would list their properties in the first place).
codes.\(^{247}\) As previously mentioned, approximately 75% of New York City’s Airbnb rentals were illegal in 2014.\(^{248}\) As a consequence, cities like New York City are losing millions of dollars of uncollected tax revenue.\(^{249}\) Also, STRs often fail to enforce fire and building codes, often resulting in large groups of individuals cramming into a confined place, renters smoking tobacco or illegal substances while inside the property, and property owners not maintaining and installing smoke and carbon monoxide detectors.\(^{250}\) Because STRs often fail to follow local laws, it is appropriate for municipalities to increase regulations on them.

D. Why Virginia S.B. 1578 Should Not Be Followed

Before explaining why H.B. 216 and S.B. 451 are in accordance with the proposed law, it is appropriate to explain why a state should not base their law on S.B. 1578.\(^{251}\) The primary reason for this is because there is no provision in S.B. 1578 that prevents municipalities from banning STRs.\(^{252}\) As previously noted, STRs


\(^{249}\) Id.

\(^{250}\) Jess Ashworth, 7 Airbnb Horror Stories You Won’t Believe Are True, (Apr. 21, 2017) https://www.lodgify.com/blog/airbnb-horror-stories/ (In Sydney, Australia, after renting her home out on Airbnb, the homeowner came back to find drug paraphernalia, drugs, and other unidentifiable substances strewn across the apartment. Her home had been completely ransacked with valuable items stolen, expensive rugs used as ashtrays and blood-soaked towels. Another party, fully equipped with a professional sound system and a bouncer to approve tickets, squeezed 200 people into a one-bedroom apartment and continued to party until 6 A.M. Additionally, in one situation, an Airbnb-rented house did, in fact, burn down. A former Airbnb Customer Service Representative shared her story on reddit stating: “One night at around 4am, I got a call from a guest saying that the place they rented was burning down. Twenty minutes later, I got a call from a host saying that a guest had burned their place down. It wasn’t really my job to figure out who was at fault, or even what actually happened, but one thing was certain. That place did burn down”).

\(^{251}\) Va. S.B. 1578.

\(^{252}\) Id.
provide numerous benefits STR operators, STR renters, and municipalities and state-wide regulations on STRs should expressly prevent municipalities from prohibiting them.\textsuperscript{253} This is the fundamental principal which the proposed law is based on. Because S.B. 1578 lacks this provision, it should not be used as a model for future states to base their STR laws on.\textsuperscript{254}

E. Why S.B. 451 and H.B. 216 Should Be Followed

The Texas and Idaho Legislatures included several appropriate provisions regarding STRs in their bills.\textsuperscript{255} As opposed to S.B. 1578, S.B. 451 and H.B. 216 are very similar to the proposed law. Thus, states should use S.B. 451 and H.B. 216 as models when drafting their own STR laws.

The first reason why S.B. 451 and H.B. 216 are similar to the proposed law is because both bills prohibit municipalities from banning STRs.\textsuperscript{256} This is ideal because, as previously mentioned, STRs should be legal in every municipality due to the various advantages associated with them.\textsuperscript{257}

The second reason why S.B. 451 and H.B. 216 are similar to the proposed law is because they allow municipalities to tax and


\textsuperscript{254} Va. S.B. 1578. (However, there a numerous provisions in S.B. 1578 that are aligned with the proposed law. For example, S.B. 1578 allows for a penalty for violators of STR laws, however the penalty cannot exceed $500 per violation. Additionally, S.B. 1578 expressly allows municipalities to establish STR registries and require annual registration and fees. In addition to not having a provision forbidding municipalities from banning STRs, however, it is a point of concern that this provision favors municipalities too much. There is almost nothing in the bill that protects STR operator’s rights except the protection against unreasonable penalties. This hardly strikes the balance and I believe an appropriate law should afford more protections to STR operators).

\textsuperscript{255} Tex. S.B. 451; Idaho H.R. 216.

\textsuperscript{256} Id.

regulate STRs for certain purposes.\textsuperscript{258} S.B. 451 and H.B. 216 allow municipalities to regulate STRs for the purpose of protecting public health and safety.\textsuperscript{259} This provision is also important because, as previously mentioned, STRs are notorious for creating excess litter, not following various building and fire codes, and creating a dangerous and destructive environment for communities.\textsuperscript{260} S.B. 451 and H.B. 216 also allow municipalities to tax STRs.\textsuperscript{261} H.B. 216 requires the STR marketplace to collect and remit state and local taxes on their own.\textsuperscript{262} By having STR platforms directly collect and remit state and local taxes, STR hosts can no longer sidestep tax payments by simply not reporting their income.\textsuperscript{263} Additionally, S.B. 451 allows municipalities to impose a hotel occupancy tax on STR operators so long as hotel occupancy taxes are authorized by municipal or county law.\textsuperscript{264} As previously stated, hotels have been

\textsuperscript{258} Tex. S.B. 451; Idaho H.R. 216.

\textsuperscript{259} Id. (The Idaho bill, however, only mentions “health, safety, and general welfare” when describing what a municipality can do regarding STRs. The Texas bill and the Arizona law, on the other hand, include fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, requiring the designation of an emergency contact, and prohibiting the use of the rental for the purpose of housing sex offenders or operating a structured sober living home or similar enterprise); Jess Ashworth, \textit{7 Airbnb Horror Stories You Won’t Believe Are True}, (Apr. 21, 2017) https://www.lodgify.com/blog/airbnb-horror-stories/ (In fact, one Airbnb host had the misfortune to find out that a tenant was using her property as a brothel).


\textsuperscript{261} Tex. S.B. 451; Idaho H.R. 216.


\textsuperscript{263} Id.; 2017 Tex. S.B. 451 (In fact, S.B. 451 makes an appropriate rule which forbids municipalities from requiring the STR operator to apply, calculate, collect, or remit a tax imposed upon them. Additionally, S.B. 451 allows municipalities to require STR operators to register their STR annually for tax purposes).

\textsuperscript{264} 2017 Tex. S.B. 451 (specifically, the bill reads: “[i]f a hotel occupancy tax is authorized by municipality or county in which a short-term rental is located, a person operating a short-term rental marketplace may apply, calculate, collect, or remit a tax imposed by the state, municipality, or county”).
historically subject to municipal regulations and there is no reason why STRs should not be subject to the same provisions.\footnote{Elaine Glusac, \textit{Hotels v. Airbnb: Let the Battle Begin}, N.Y. TIMES, (July 20, 2016), https://www.nytimes.com/2016/07/24/travel/airbnb-hotels.html?smprod=nytcore-ipad&smid=nytcore-ipad-share.} Thus, S.B. 451’s provision would allow a municipality to treat STRs the same as hotels.\footnote{2017 Tex. S.B. 451.}

The third reason why S.B. 451 and H.B. 216 are similar to the proposed law is because they allow municipalities to preserve neighborhood character.\footnote{Id.; Idaho H.R. 216.} S.B. 451 allows municipalities to apply local laws to STRs regarding zoning laws, residential use, occupancy limitations, noise, property maintenance, and nuisance.\footnote{2017 Tex. S.B. 451.} Additionally, H.B. 216 gives municipalities even broader authority to protect the integrity of residential neighborhoods as it sees fit.\footnote{2017 Idaho H.R. 216.} As previously mentioned, the preservation of neighborhood character is an important objective that cities should strive to achieve with their own neighborhoods.\footnote{David J. Brown, \textit{Do Short-Term Vacation Rentals Change the Character of Historic Neighborhoods?}, (July 26, 2017), http://forum.savingplaces.org/blogs/david-brown/2017/07/25/do-short-term-vacation-rentals-change-the-character-of-historic-neighborhoods.}

\textbf{F. Which is More Effective: H.B. 216 or S.B. 451?}

H.B. 216 prevents a municipality from banning STRs throughout the jurisdiction.\footnote{Idaho H.R. 216 (specifically, the bill reads: “[n]either a county nor a city may enact or enforce any ordinance that has the express or practical effect of prohibiting short-term rentals or vacation rentals throughout the jurisdiction of such county or city”).} While Idaho cities cannot completely ban STRs, H.B. 216 allows them to prohibit them in certain areas.\footnote{Id.} Municipalities often have good reasons to prevent the use of STRs in certain neighborhoods so as to protect its residential areas from the
harmful effects of STRs. S.B. 451 simply prevents municipalities from banning STRs. There is no extra language in S.B. 451 allowing bans in certain areas throughout the jurisdiction. Because of this, states should use language similar to H.B. 216 in writing their STR bill.

Also, H.B. 216 gives municipalities much broader authority to preserve neighborhood character than S.B. 451. Similarly, Arizona S.B. 1350, provides municipalities with relatively broad discretion to enact laws to protect a neighborhood’s integrity. S.B. 451’s language regarding the preservation of neighborhood character is much less broad. As opposed to S.B. 451, H.B. 216 and S.B. 1350 were both passed and enacted in their home states. Additionally, the broad discretion given in S.B 1350 and H.B. 216 gives municipalities more power to prevent the destruction and degradation of residential neighborhoods as the result of the influx of

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275 Id. (specifically, the bill reads: “a municipality may not adopt or enforce a local law that expressly or effectively prohibits the use of a private property as a short-term rental”).

276 Idaho H.R. 216.

277 Id.

278 S.B. 1350, 52d Leg., 2d Reg. Sess. (Ariz. 2016), (specifically, the bill reads: “A city or town may regulate vacation rentals or short-term rentals for ... Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance, and other nuisance issues”).

279 2017 Tex. S.B. 451 (specifically, the bill reads: “A municipality may adopt or enforce a local law applicable to short-term rentals addressing: fire and building codes, health and sanitation, traffic control, solid or hazardous waste and pollution control, and annual registration of short-term rentals.” Additionally, a municipality may adopt a law “requiring emergency contacts and prohibiting the use of a rental for the purpose of housing, sex offenders, operating a structured sober living home or similar enterprise, selling illegal drugs, selling alcohol, or operating as a sexually oriented business”).

STRIKING THE BALANCE.

Because of this, states should use broad language in their laws when affording municipalities the power to regulate based on the preservation of neighborhood character.

Additionally, H.B. 216 puts the burden on the STR marketplace to collect, report, and pay taxes imposed on the operator or occupant of a STR. There is no similar provision in S.B. 451. As previously mentioned, this takes the burden off of the operator of a STR and ensures that each STR is being legally taxed. Because of this, states should include a provision addressing the collection of taxes similar to H.B. 216.

Finally, S.B. 451 expressly gives municipalities the power to tax STRs similar to hotels. Although H.B. 216 allows for this kind of taxation, it is not as explicate as S.B. 451. Because of the various justifications for treating STRs similar to hotels, states should be explicit in allowing municipalities to tax STRs similar to hotels. Thus, states should include a hotel taxation provision similar to S.B. 451.

However, neither S.B. 451 nor H.B. 216 include a provision addressing racial, ethnic, religious, gender, or sexual orientation discrimination. As previously mentioned, this provision is important in order to combat the discrimination that is often associated with STRs. Thus, states should include a provision addressing discrimination, even though H.B. 216 and S.B. 451 do not.

282 Idaho H.R. 216.
284 Idaho H.R. 216.
285 Id.
286 Id.
288 Id.
289 Id.; Idaho H.R. 216.
290 Callahan, supra note 138
G. The Impact of the Proposed Law

What would be the impact of the proposed law? In short, it really depends on the municipality. In large cities with relatively relaxed treatment of STRs, there would be almost no impact. For example, Galveston, Texas, one of the few municipalities in the country that expressly permits STRs, would be completely unaffected because the city places only two minor restrictions on STRs.\(^{291}\) As previously mentioned, Galveston only requires STR owners to pay a $50 annual fee and to give renters a brochure that tells them to be quiet.\(^{292}\) The $50 annual fee is likely to remain in force because annual fees are expressly permitted under S.B. 451.\(^{293}\) Additionally, the brochure requirement is likely acceptable because an argument can easily be made that it preserves neighborhood character by limiting the noise in the area. This type of preservation is expressly permitted under the proposed law. Therefore, cities like Galveston are not likely to be affected.

In large cities with stricter regulations on STRs, however, there would be a greater impact. For example, Austin, Texas' legislation which prohibits "transient rental" STR models by 2022 probably could not be enforced because it would have the effect of prohibiting a certain type of STR throughout the jurisdiction.\(^{294}\) Also, New York City's law prohibiting rentals of less than 30 days in multi-unit buildings if the tenant is not present probably could not be enforced because it expressly prevents transient rental model-types of STRs.\(^{295}\) However, if Austin and New York justify their laws as being necessary for the preservation of neighborhood character or health and safety, they might be able to continue enforcing their laws under the proposed legislation.

\(^{291}\) Galveston Ordinance No. 15-012 (VI) (2015).
\(^{292}\) Id.
\(^{293}\) 2017 Tex. S.B. 451.
However, other large cities with strict regulations on STRs may be relatively unaffected. For example, Ft. Worth’s requirement that STR operators must register their property as a bed-and-breakfast and operate in a commercial zone would be relatively unaffected.  

This is because, under the proposed law, municipalities may classify STRs similar to bed and breakfasts and enforce zoning requirements so long as they are necessary for the preservation of neighborhood character. 

Jackson, Wyoming, a small town that prohibits STRs in residential neighborhoods while expressly allowing them in its downtown neighborhood so long as they comprise less than three percent of the total downtown homes, would probably not be affected by the proposed law. An argument can be made that the three percent cap could make operating a STR futile once the limit is reached. However, because the town enacted the provision for the purpose of preserving neighborhood character in its downtown and residential areas, the ordinance is probably acceptable under the proposed law.

H. How Would Municipalities Respond? 

Municipal reactions to the proposed law would be mixed. Some municipalities with friendly stances towards STRs, such as Galveston or Louisville, would be indifferent towards the law as it would not affect them whatsoever. Other municipalities who take strong stances against STRs, such as Austin, are likely to unhappy with the law and try to get around its provisions. Smaller

296 Solomon, supra note 180.
297 Blevins, supra note 37.
298 While STR caps are likely permissible, the three percent cap might be too strict of a standard in some cities. For example, a three percent cap in a huge tourist destination would be unfair to homeowners wishing to capitalize on leasing their property as a STR. In a small mountain town like Jackson, Wyoming, however, I believe that the three percent cap is more reasonable.
299 Blevins, supra note 37.
300 Shatford, supra note 36.
government bodies are notorious for trying to find loopholes to get around laws imposed on them by higher-level government bodies.\textsuperscript{302} For example, states like New Jersey, New York and California have tried to get around the recent property tax law imposed on them, H.R. 1 (115).\textsuperscript{303} These states have been trying to get around the $10,000 cap on state and local tax deductions from H.B. 1 (115) by allowing homeowners to deduct their state property taxes by labeling certain payments as "charitable deductions."\textsuperscript{304}

It is not hard to imagine that Austin would enact laws prohibiting certain STR models, limiting the number of STRs allowed, and restricting where STRs can operate. Austin would likely defend these provisions as being "necessary for the preservation of neighborhood character, health, and safety." While the proposed law allows for such provisions, it does not allow them to be unreasonable or place a substantial burden on STR operations. Additionally, no law can have the express or practical effect of prohibiting STRs.

Most likely, it will be up to the courts to decide whether STR restrictions violate the proposed law. Courts will have to decide whether such provisions are "necessary for the preservation of neighborhood character" on a case by case basis. As mentioned previously, an example of when the proposed law is violated would occur when a municipality imposes taxes or restrictions on STRs that are stricter than similarly situated hotels. Additionally, another example would be a municipality limiting the number of STRs allowed in the city to the extent that they are virtually non-existent. Therefore, it will be up for the courts to determine whether STRs under certain ordinances are being treated unfairly compared to other


\textsuperscript{303} Id.

\textsuperscript{304} Id.
similarly situated entities or are limited to the extent that they are virtually non-existent.

V. CONCLUSION

STRs are an affordable, quaint, cultural, and innovative option to hotels. Because of the benefits that STRs provide to STR operators, STR renters, and municipalities, states should use their powers to ensure that STRs are legal in every city. On the other hand, however, STRs have become a problem regarding taxation, neighborhood preservation, and municipal autonomy. As a result, states should enact a law that not only protects STRs, but also gives municipalities a stronger bite in protecting their citizens from the harmful effects associated with STRs. The effect of the proposed bill would vary from jurisdiction to jurisdiction. However, it would strike a balance between STR advocates and opponents. This balance would make the STR marketplace a much safer, stable, and fair environment.