

By: Representative Peranich

To: Tourism; Ways and Means

HOUSE BILL NO. 1248

1 AN ACT TO AMEND SECTION 41-49-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF "HOTEL" IN ORDER TO REFLECT THE CHANGING
3 DYNAMIC OF THE HOTEL INDUSTRY WITHIN THE STATE OF MISSISSIPPI; TO
4 DEFINE THE TERM "BONA FIDE WRITTEN LEASE"; TO AMEND SECTION
5 27-65-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO, TO
6 ENSURE THE COMPLIANCE OF ANY HOTEL ESTABLISHMENT WITH THE STATE
7 SALES TAX REQUIREMENT; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 41-49-3, Mississippi Code of 1972, is
10 amended as follows:

11 41-49-3. (1) As used in this chapter the term "hotel" shall
12 mean and include any entity or individual engaged in the business
13 of furnishing or providing one (1) or more rooms intended or
14 designed for dwelling, lodging, or sleeping purposes that at any
15 one time will accommodate transient guests on a daily or weekly
16 basis and that are known to the trade as such and includes every
17 builder or other structure kept, used, maintained or advertised
18 as, or held out to the public to be, a place where sleeping
19 accommodations are supplied for pay or other consideration to
20 transient or permanent guests or tenants that have not entered
21 into a bona fide written lease for a term of more than ninety (90)
22 consecutive days, whether such establishment be known as a hotel,
23 apartment hotel, condominium, cooperative housing, time-share, bed
24 and breakfast, rooming house, recreational vehicle park, cabin
25 inn, tavern, club, resort, tourist home, tourist court, motel,
26 court, motor court, motor lodge or by any other like term
27 regardless of the number of rooms, lots, units, suites, spaces or
28 cabins available, excluding nursing homes or institutions for the
29 aged or infirm as defined in Section 43-11-1, or any facility or

30 unit defined as a "condominium" by Section 89-9-5, which is leased
31 for a period of more than ninety (90) consecutive days as
32 evidenced by a bone fide written lease as defined by subsection
33 (2) of this section.

34 (2) As used in this section, "Bona fide written lease" means
35 a written document that clearly demonstrates it is intended for
36 the transient guest to have exclusive use of the leased unit in
37 the hotel. Factors to be considered in evaluating the parties'
38 intent include, but are not limited to:

39 (a) The length of the lease, including the beginning
40 and ending date;

41 (b) A statement giving the lessee complete and
42 exclusive use of the property for the entire duration of the
43 lease;

44 (c) Execution in good faith, without deceit or fraud;

45 (d) A sufficient description of the leased property;

46 (e) A statement that the lease contains the complete
47 and sole agreement;

48 (f) A provision that the lessee will pay an agreed
49 amount of rent;

50 (g) A statement containing the due date, frequency and
51 address for payment of the rent;

52 (h) A statement specifying what conditions will result
53 in early termination of the lease, the rights and obligations of
54 the parties at termination and any penalties that will result from
55 early termination; and

56 (i) Signatures of the named parties, lessee and lessor.

57 **SECTION 2.** Section 27-65-23, Mississippi Code of 1972, is
58 amended as follows:

59 27-65-23. Upon every person engaging or continuing in any of
60 the following businesses or activities there is hereby levied,
61 assessed and shall be collected a tax equal to seven percent (7%)
62 of the gross income of the business, except as otherwise provided:

63 Air conditioning installation or repairs;
64 Automobile, motorcycle, boat or any other vehicle
65 repairing or servicing;
66 Billiards, pool or domino parlors;
67 Bowling or tenpin alleys;
68 Burglar and fire alarm systems or services;
69 Car washing--automatic, self-service, or manual;
70 Computer software sales and services;
71 Cotton compresses or cotton warehouses;
72 Custom creosoting or treating, custom planing, custom
73 sawing;
74 Custom meat processing;
75 Electricians, electrical work, wiring, all repairs or
76 installation of electrical equipment;
77 Elevator or escalator installing, repairing or
78 servicing;
79 Film developing or photo finishing;
80 Foundries, machine or general repairing;
81 Furniture repairing or upholstering;
82 Grading, excavating, ditching, dredging or landscaping;
83 Hotels, motels, tourist courts or camps, trailer parks,
84 or any entity or individual engaged in the business of furnishing
85 or providing one or more rooms intended or designed for dwelling,
86 lodging or sleeping purposes as defined in Section 41-49-3 (1);
87 Insulating services or repairs;
88 Jewelry or watch repairing;
89 Laundering, cleaning, pressing or dyeing;
90 Marina services;
91 Mattress renovating;
92 Office and business machine repairing;
93 Parking garages and lots;
94 Plumbing or pipe fitting;

95 Public storage warehouses (There shall be no tax levied
96 on gross income of a public storage warehouse derived from the
97 temporary storage of tangible personal property in this state
98 pending shipping or mailing of the property to another state);

99 Refrigerating equipment repairs;

100 Radio or television installing, repairing, or servicing;

101 Renting or leasing personal property used within this
102 state;

103 Services performed in connection with geophysical
104 surveying, exploring, developing, drilling, producing,
105 distributing, or testing of oil, gas, water and other mineral
106 resources;

107 Shoe repairing;

108 Storage lockers;

109 Telephone answering or paging services;

110 Termite or pest control services;

111 Tin and sheet metal shops;

112 TV cable systems, subscription TV services, and other
113 similar activities;

114 Vulcanizing, repairing or recapping of tires or tubes;

115 Welding; and

116 Woodworking or wood turning shops.

117 Income from services taxed herein performed for electric
118 power associations in the ordinary and necessary operation of
119 their generating or distribution systems shall be taxed at the
120 rate of one percent (1%).

121 Income from services taxed herein performed on materials for
122 use in track or track structures to a railroad whose rates are
123 fixed by the Interstate Commerce Commission or the Mississippi
124 Public Service Commission shall be taxed at the rate of three
125 percent (3%).

126 Income from renting or leasing tangible personal property
127 used within this state shall be taxed at the same rates as sales
128 of the same property.

129 Persons doing business in this state who rent transportation
130 equipment with a situs within or without the state to common,
131 contract or private commercial carriers are taxed on that part of
132 the income derived from use within this state. If specific
133 accounting is impracticable, a formula may be used with approval
134 of the commissioner.

135 A lessor may deduct from the tax computed on the rental
136 income from tangible personal property a credit for sales or use
137 tax paid to this state at the time of purchase of the specific
138 personal property being leased or rented until such credit has
139 been exhausted.

140 Charges for custom processing and repairing services may be
141 excluded from gross taxable income when the property on which the
142 service was performed is delivered to the customer in another
143 state either by common carrier or in the seller's equipment.

144 When a taxpayer performs unitary services covered by this
145 section, which are performed both in intrastate and interstate
146 commerce, the commissioner is hereby invested with authority to
147 formulate in each particular case and to fix for such taxpayer in
148 each instance formulae of apportionment which will apportion to
149 this state, for taxation, that portion of the services which are
150 performed within the State of Mississippi.

151 **SECTION 3.** This act shall take effect and be in force from
152 and after July 1, 2007.