

By: Senator(s) Harkins, McMahan

To: Finance

SENATE BILL NO. 2874
(As Sent to Governor)

1 AN ACT TO CREATE A NEW SECTION IN TITLE 73, CHAPTER 59,
2 MISSISSIPPI CODE OF 1972, TO REQUIRE THAT ALL RESIDENTIAL
3 CONTRACTORS, IN ORDER TO OBTAIN A BUILDING PERMIT IN THIS STATE,
4 POSSESS A PERMIT FROM THE DEPARTMENT OF REVENUE ISSUED UNDER
5 SECTION 27-65-27; TO DEFINE "RESIDENTIAL CONTRACTOR" FOR PURPOSES
6 OF THIS PERMIT REQUIREMENT; TO CREATE A NEW SECTION IN TITLE 31,
7 CHAPTER 3, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT ALL
8 COMMERCIAL CONTRACTORS, IN ORDER TO OBTAIN A BUILDING PERMIT IN
9 THIS STATE, POSSESS A PERMIT FROM THE DEPARTMENT OF REVENUE ISSUED
10 UNDER SECTION 27-65-27; TO DEFINE "COMMERCIAL CONTRACTOR" FOR
11 PURPOSES OF THIS PERMIT REQUIREMENT; TO AMEND SECTION 27-65-27,
12 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE ABOVE PROVISIONS;
13 AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** All residential contractors, in order to obtain a
16 building permit in the State of Mississippi, shall possess a
17 permit from the Department of Revenue issued under Section
18 27-65-27.

19 Notwithstanding the definitions of "residential builder" and
20 "remodeler" in Section 73-59-1, for purposes of this section, a
21 residential contractor is a person or entity contracting or
22 offering to contract with an owner or possessor of residential
23 real estate to construct a residence or appurtenant structure



24 thereon, or to repair or renovate any portion of a residence or
25 appurtenant structure thereon, regardless of the cost of the
26 project, and regardless of whether all or part of the cost is
27 expected to be paid as a benefit of a property and casualty
28 insurance policy. A residential contractor is not a person
29 building, repairing or renovating his or her own personal
30 residence.

31 This section shall not apply to a residential contractor
32 having a permanent place of business in the State of Mississippi
33 or licensed under Section 31-3-1 et seq.

34 **SECTION 2.** All commercial contractors, in order to obtain a
35 building permit in the State of Mississippi, shall possess a
36 permit from the Department of Revenue issued under Section
37 27-65-27.

38 Notwithstanding the definition of "contractor" in Section
39 31-3-1, for purposes of this section, a commercial contractor is a
40 person or entity contracting or offering to contract with an owner
41 or possessor of commercial real estate to construct a building
42 thereon, or to repair or renovate any portion of a building
43 thereon, regardless of the cost of the project, and regardless of
44 whether all or part of the cost is expected to be paid as a
45 benefit of a property and casualty insurance policy.

46 This section shall not apply to a commercial contractor
47 having a permanent place of business in the State of Mississippi
48 or licensed under Section 31-3-1 et seq.



49 **SECTION 3.** Section 27-65-27, Mississippi Code of 1972, is
50 amended as follows:

51 27-65-27. (1) Any person who engages, or who intends to
52 engage, in any business or activity which will subject such person
53 to a privilege tax imposed by this chapter, or which falls within
54 the scope of Section 1 or Section 2 of this act, shall apply to
55 the commissioner for a permit to engage in and to conduct any
56 business or activity upon the condition that he shall pay the tax
57 accruing to the State of Mississippi under the provisions of this
58 chapter, and shall keep adequate records of such business or
59 activity as required by this chapter. By making an application
60 for a permit issued pursuant to this section, a person agrees,
61 regardless of his presence in this state, to:

62 (a) Be subject to the jurisdiction of this state for
63 purposes of taxation;

64 (b) Collect and remit all taxes levied under this
65 chapter on the type of business or activity to be conducted by the
66 applicant;

67 (c) Be subject to all the provisions of this chapter.

68 (2) Upon receipt of the permit, the applicant shall be duly
69 licensed under this chapter to engage in and conduct the business
70 or activity. The permit shall continue in force so long as the
71 person to whom it is issued shall continue in the same business at
72 the same location, unless revoked by the commissioner for cause.



73 (3) The commissioner shall require of every person desiring
74 to engage in business within this state who maintains no permanent
75 place of business within this state, of every person desiring to
76 engage in the business of making sales of mobile homes, a cash
77 bond or an approved surety bond in an amount sufficient to cover
78 twice the estimated tax liability for a period of three (3)
79 months. However, the bond shall in no case be less than One
80 Hundred Dollars (\$100.00) and the tax may be prepaid in lieu of
81 filing bond if the amount is approved by the commissioner. This
82 bond shall be filed with the commissioner prior to the issuance of
83 a permit to do business and before any such person may engage in
84 business within this state. Failure to comply with the provision
85 will subject such person to the penalties provided by this
86 chapter.

87 (4) The commissioner is authorized to deny the application
88 for a permit or revoke the permit of any person who has failed or
89 is failing to comply with any of the provisions of this chapter.
90 The commissioner may also deny the application for a permit or
91 revoke the permit of any person who has failed to satisfy all of
92 the finally determined tax liabilities owed by that person. If
93 the applicant or taxpayer is an entity, the commissioner may deny
94 the application for a permit or revoke the permit if any partner,
95 member, principal officer or director of such entity has failed to
96 satisfy all of the finally determined tax liabilities owed by that
97 partner, member, principal officer or director. Any denial or



98 revocation of an entity's permit based on a partner, member,
99 principal officer or director's finally determined tax liability
100 shall only be authorized if the partner, member, principal officer
101 or director owns ten percent (10%) or more of the entity and is or
102 will be exercising responsibility for fiscal management. In lieu
103 of denying or revoking an entity's permit, the commissioner may
104 accept an increased or additional bond from the entity to cover
105 the additional risk involved with having an individual with a
106 finally determined tax liability involved. As used in this
107 subsection, "finally determined tax liabilities" means any state
108 tax, fee, penalty and/or interest owed by a person to the
109 Department of Revenue where the assessment of the liability has
110 been made against that person as provided by law and such
111 assessment is not subject to any further timely filed
112 administrative or judicial review. Revocation of such permit, or
113 engaging or continuing in business after such permit is revoked or
114 engaging in business without a permit, shall subject the person to
115 all the penalties imposed by this chapter.

116 (5) Any person liable for the tax who fails to obtain a
117 permit from the commissioner, or who continues in business after
118 such permit has been revoked, or who fails to make his returns for
119 taxation as provided, or who fails to keep adequate records and
120 invoices provided by this chapter, or who fails or refuses to
121 permit inspection of such records, or who fails to pay any taxes
122 due hereunder, shall forfeit his rights to do business in this



123 state until he complies with all the provisions of this chapter
124 and until he enters into a bond, with sureties, to be approved by
125 the commissioner, in an amount not to exceed twice the amount of
126 all taxes estimated to become due under this chapter by the person
127 for any period of three (3) months, conditioned to comply with the
128 provisions of this chapter, and pay all taxes legally due by him.

129 (6) If any person is engaged in or continuing in this state
130 in any business or activity without obtaining a permit, or after
131 the permit has been revoked, or without filing a required bond, or
132 without keeping and allowing inspection of all records required by
133 this chapter, or without making a return, or returns, and without
134 paying all taxes due by him hereunder, it shall be the duty of the
135 commissioner to proceed by injunction to prevent the continuance
136 of the business. Any temporary injunction enjoining the
137 continuance of the business shall be granted without notice by a
138 judge or chancellor now authorized to grant injunctions.

139 **SECTION 4.** (1) Section 1 of this act shall be codified in
140 Title 73, Chapter 59, Mississippi Code of 1972.

141 (2) Section 2 of this act shall be codified in Title 31,
142 Chapter 3, Mississippi Code of 1972.

143 **SECTION 5.** This act shall take effect and be in force from
144 and after its passage.

