

The House Committee on Ways and Means offers the following substitute to HB 448:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated,
2 relating to excise tax on rooms, lodgings, and accommodations, so as to revise the definition
3 of "innkeeper" to include marketplace facilitators; to define the term "marketplace
4 innkeeper"; to expand the state levy of a nightly excise tax to include all rooms, lodgings, and
5 accommodations; to provide for exceptions; to provide for related matters; to provide for an
6 effective date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to
10 excise tax on rooms, lodgings, and accommodations, is amended in Code Section 48-13-50.2,
11 relating to definitions, by revising paragraph (2) and adding a new paragraph to read as
12 follows:

13 ~~"(2) 'Innkeeper' means any person who is subject to taxation under this article for the~~
14 ~~furnishing for value to the public any rooms, lodgings, or accommodations;~~

15 (A) Any person that furnishes for value to the public any room or rooms, lodgings, or
16 accommodations in a county or municipality and that is licensed by, or required to pay
17 business or occupation taxes to, such municipality or county for operating a hotel,
18 motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which
19 room or rooms, lodgings, or accommodations are regularly furnished for value; or

20 (B) A dealer as defined in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2
21 that is required to collect and remit the tax imposed by Article 1 of Chapter 8 of this
22 title for acting as a marketplace facilitator as such term is defined in paragraph (18.1)
23 of Code Section 48-8-2 for facilitating the furnishing for value to the public any room
24 or rooms, lodgings, or accommodations on behalf of another person.

25 (2.1) 'Marketplace innkeeper' means an innkeeper as defined in subparagraph (B) of
26 paragraph (2) of this Code section."

27 **SECTION 2.**

28 Said article is further amended by revising Code Section 48-13-50.3, relating to additional
 29 tax imposed by innkeepers, forms for reporting, use of funds from additional taxes, and
 30 provisions for termination, as follows:

31 "48-13-50.3.

32 (a) As used in this Code section, the term:

33 (1) 'Extended stay rental' means providing for value to the public a hotel or motel room
 34 for longer than 30 consecutive days to the same customer.

35 ~~(2) 'Innkeeper' means any person who is subject to taxation under this article for the~~
 36 ~~furnishing for value to the public a hotel or motel room.~~

37 ~~(3) 'Transportation purposes' means and includes roads, bridges, public transit, rails,~~
 38 ~~airports, buses, seaports, including without limitation road, street, and bridge purposes~~
 39 ~~pursuant to paragraph (1) of subsection (b) of Code Section 48-8-121, and all~~
 40 ~~accompanying infrastructure and services necessary to provide access to these~~
 41 ~~transportation facilities, including general obligation debt and other multiyear obligations~~
 42 ~~issued to finance such purposes.~~

43 ~~(b) On or after July 1, 2015, each innkeeper in this state shall charge a \$5.00 per night fee~~
 44 ~~to the customer, unless it is an extended stay rental, for each calendar day a hotel or motel~~
 45 ~~room is rented or leased. The innkeeper shall collect the fee at the time the customer pays~~
 46 ~~for the rental or lease of such hotel or motel room. The innkeeper collecting the fee shall~~
 47 ~~remit the fee on a monthly basis to the department.~~

48 (b)(1) On and after July 1, 2020, an excise tax of \$5.00 per night shall be levied upon the
 49 rental or lease of any room, lodging, or accommodation by an innkeeper.

50 (2) Taxes levied pursuant to this Code section shall be collected by the innkeeper from
 51 the customer at the time the customer pays for its rental or lease of any room, lodging,
 52 or accommodation. Any innkeeper collecting such taxes shall remit the amounts
 53 collected to the department on a monthly basis.

54 (3) Extended stay rentals shall be exempt from the tax levied by this Code section.

55 (4) Lodging or accommodations that do not provide physical shelter shall be exempt
 56 from the tax levied by this Code section.

57 (c) The commissioner shall promulgate and make available forms for the use of innkeepers
 58 to assist in compliance with this Code section. The commissioner shall promulgate rules
 59 and regulations as necessary to implement and administer the provisions of this Code
 60 section.

61 (d) It is the intention of the General Assembly, subject to appropriations, that the fees
 62 collected pursuant to subsection (b) of this Code section shall be made available and used
 63 exclusively for transportation purposes in this state.

64 (e) If the amount collected under this Code section is ever not appropriated for a fiscal year
 65 as provided by subsection (d) of this Code section, as determined jointly by the House
 66 Budget and Research Office and the Senate Budget and Evaluation Office, then the amount
 67 collected shall be reduced by 50 percent. Upon the conclusion of a second fiscal year in
 68 which the amount collected is not so appropriated, this Code section shall stand repealed
 69 and reserved, and such fees shall cease to be collected, on the date the appropriations Act
 70 for such fiscal year becomes effective. Such budget offices shall certify any such lack of
 71 appropriation to the Code Revision Commission for purposes of updating the Code in
 72 accordance with this subsection."

73 SECTION 3.

74 Said article is further amended by adding a new Code section to read as follows:

75 "48-13-50.4.

76 (a) A marketplace innkeeper shall constitute the innkeeper with respect to the transactions
 77 taxable pursuant to this article that it facilitates on behalf of another person. All taxes
 78 levied or imposed by this article on transactions facilitated by a marketplace innkeeper
 79 shall be paid by the purchaser to the marketplace innkeeper.

80 (b) The marketplace innkeeper shall remit all taxes in the manners provided in this article
 81 and, when received by the taxing authority, such taxes shall be credited against the taxes
 82 imposed by this article on the furnishing for value to the public any room or rooms,
 83 lodgings, or accommodations.

84 (c) Each marketplace innkeeper shall be liable for the full amount of taxes levied or
 85 imposed by this article on its transactions or the amount of tax collected by such
 86 marketplace innkeeper from all purchasers on all such transactions, whichever is greater.

87 (d) A transaction that is not taxable to the purchaser shall not be taxable to the marketplace
 88 innkeeper. Taxes collected and remitted by a marketplace innkeeper pursuant to this article
 89 shall be subject to the credit otherwise granted by this article for like taxes previously paid
 90 in another state.

91 (e) This Code section shall not be construed to require a duplication in the payment of any
 92 tax.

93 (f) A person shall not be obligated to collect and remit or be liable for the taxes levied or
 94 imposed by this article on any transaction for which its marketplace innkeeper is obligated
 95 and liable.

96 (g) The taxing authority shall only audit the marketplace innkeeper for sales made by it on
 97 behalf of another person except to the extent the marketplace innkeeper seeks relief through
 98 subsection (h) of this Code section.

99 (h) A marketplace innkeeper is relieved of liability for failure to collect and remit the
 100 correct amount of tax imposed by this article to the extent that the marketplace innkeeper
 101 demonstrates to the satisfaction of the taxing authority that the error was due to insufficient
 102 or incorrect information given to the marketplace innkeeper by the person on whose behalf
 103 the sale was facilitated and the marketplace innkeeper made a reasonable effort to obtain
 104 correct and sufficient information from such person; provided, however, that this
 105 subsection shall not apply if the marketplace innkeeper and such person are related
 106 members as defined in Code Section 48-7-28.3. If a marketplace innkeeper is relieved of
 107 liability under this subsection, the person on whose behalf the sale was facilitated shall be
 108 solely liable for the amount of uncollected tax."

109 **SECTION 4.**

110 Said article is further amended in Code Section 48-13-51, relating to county and municipal
 111 levies on public accommodations, by revising paragraph (1) of subsection (a), paragraphs (1),
 112 (2), and (3) of subsection (b), and subsection (b.1) as follows:

113 "(a)(1)(A)(i) The governing authority of each municipality in this state may levy and
 114 collect an excise tax upon the furnishing for value to the public of any room or rooms,
 115 lodgings, or accommodations facilitated or furnished by an innkeeper ~~any person or~~
 116 legal entity licensed by, or required to pay business or occupation taxes to, the
 117 municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin,
 118 campground, or any other place in which rooms, lodgings, or accommodations are
 119 regularly furnished for value.

120 (ii) Within the territorial limits of the special district located within the county, each
 121 county in this state may levy and collect an excise tax upon the furnishing for value
 122 to the public of any room or rooms, lodgings, or accommodations facilitated or
 123 furnished by ~~any person or legal entity licensed by, or required to pay business or~~
 124 occupation taxes to, the county for operating within the special district a hotel, motel,
 125 inn, lodge, tourist camp, tourist cabin, campground, or any other place in which
 126 rooms, lodgings, or accommodations are regularly furnished for value an innkeeper.

127 (iii) The provisions of this Code section shall control over the provisions of any local
 128 ordinance or resolution to the contrary enacted pursuant to Code Section 48-13-53 and
 129 in effect prior to July 1, 1998, or enacted pursuant to this article and in effect prior to
 130 July 1, 2019. Any such ordinance shall not be deemed repealed by this Code section
 131 but shall be administered in conformity with this Code section.

132 (B)(i) The excise tax shall be imposed on ~~any person or legal entity licensed by or~~
 133 required to pay a business or occupation tax to the governing authority imposing the
 134 tax for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground,

135 ~~or any other place in which rooms, lodgings, or accommodations are regularly~~
 136 ~~furnished for value~~ the innkeeper and shall apply to the furnishing for value of any
 137 room, lodging, or accommodation. Every person or entity subject to a tax levied as
 138 provided in this Code section shall, except as provided in this Code section, be liable
 139 for the tax at the applicable rate on the lodging charges actually collected or, if the
 140 amount of taxes collected from the ~~hotel or motel~~ guest is in excess of the total
 141 amount that should have been collected, the total amount actually collected must be
 142 remitted.

143 (ii) Any tax levied as provided in this Code section is also imposed upon every
 144 person or entity who is a ~~hotel or motel~~ guest and who receives a room, lodging, or
 145 accommodation that is subject to the tax levied under this Code section. Every such
 146 guest subject to the tax levied under this Code section shall pay the tax to the ~~person~~
 147 ~~or entity~~ innkeeper providing or facilitating the room, lodging, or accommodation.
 148 The tax shall be a debt of the person obtaining the room, lodging, or accommodation
 149 to the ~~person or entity~~ innkeeper providing or facilitating such room, lodging, or
 150 accommodation until it is paid and shall be recoverable at law by the ~~person or entity~~
 151 innkeeper providing or facilitating such room, lodging, or accommodation in the same
 152 manner as authorized for the recovery of other debts. The ~~person or entity~~ innkeeper
 153 collecting the tax from the ~~hotel or motel~~ guest shall remit the tax to the governing
 154 authority imposing the tax, and the tax remitted shall be a credit against the tax
 155 imposed by division (i) of this subparagraph on the ~~person or entity~~ innkeeper
 156 providing or facilitating the room, lodging, or accommodation.

157 (C) Reserved.

158 (D) Except as provided in paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5),
 159 (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this
 160 subsection, no tax levied pursuant to this Code section shall be levied or collected at a
 161 rate exceeding 3 percent of the charge to the public for the furnishings."

162 "(b)(1) Except as provided in paragraphs (2) and (3) of subsection (a) of this Code
 163 section, any new excise taxes which are first levied pursuant to this Code section after
 164 July 1, 2008, or any new excise tax which is first levied following the termination of a
 165 previous levy pursuant to this Code section after July 1, 2008, shall be levied pursuant
 166 to this subsection.

167 (2) The governing authority of each municipality in this state may levy an excise tax
 168 pursuant to this subsection at a rate not to exceed 8 percent of the charge for the
 169 furnishing for value to the public of any room or rooms, lodgings, or accommodations
 170 furnished or facilitated by ~~any person or legal entity licensed by, or required to pay~~
 171 ~~business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge,~~

172 ~~tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or~~
 173 ~~accommodations are regularly or periodically furnished for value an innkeeper.~~

174 (3) Within the territorial limits of the special district located within the county, each
 175 county in this state may levy an excise tax pursuant to this subsection at a rate not to
 176 exceed 8 percent of the charge for the furnishing for value to the public of any room or
 177 rooms, lodgings, or accommodations furnished or facilitated by any person or legal entity
 178 ~~licensed by, or required to pay business or occupation taxes to, the county for operating~~
 179 ~~within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin,~~
 180 ~~campground, or any other place in which rooms, lodgings, or accommodations are~~
 181 ~~regularly or periodically furnished for value an innkeeper."~~

182 "(b.1) As an alternative to the provisions of subsection (b) of this Code section, any county
 183 (within the territorial limits of the special district located within the county) and any
 184 municipality which is levying a tax under this Code section at the rate of 6 percent under
 185 paragraph (3.4) or (4) of subsection (a) of this Code section shall be authorized to levy a
 186 tax under this Code section at the rate of 7 percent in the manner provided in this
 187 subsection. Both the county and municipality shall adopt a resolution which shall specify
 188 that an amount equal to the total amount of taxes collected under such levy at a rate of 6
 189 percent shall continue to be expended as it was expended pursuant to either paragraph (3.4)
 190 or (4) of subsection (a) of this Code section, as applicable, and such resolution shall specify
 191 the manner of expenditure of funds for an amount equal to the total amount of taxes
 192 collected under such levy that exceeds the amount that would be collected at the rate of 6
 193 percent for any tourism, convention, or trade show purposes, tourism product development
 194 purposes, or any combination thereof. Each resolution shall be required to be ratified by
 195 a local Act of the General Assembly. Only when both such local Acts have become law,
 196 the governing authority of the county and municipality shall be authorized to levy an excise
 197 tax pursuant to this subsection at the rate of 7 percent of the charge for the furnishing for
 198 value to the public of any room or rooms, lodgings, or accommodations furnished or
 199 facilitated by any person or legal entity licensed by, or required to pay business or
 200 ~~occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp,~~
 201 ~~tourist cabin, campground, or any other place in which rooms, lodgings, or~~
 202 ~~accommodations are regularly or periodically furnished for value an innkeeper."~~

203 **SECTION 5.**

204 This Act shall become effective on July 1, 2020, and shall apply to each incidence of the
 205 furnishing for value to the public any room or rooms, lodgings, or accommodations occurring
 206 on or after July 1, 2020.

207

SECTION 6.

208 All laws and parts of laws in conflict with this Act are repealed.