

**RELATED ACTS**<sup>1</sup>

**PAGE**

Priv. Acts 1981, ch. 51,  
"Privilege tax on the occupancy of hotels and motels, etc." . . . . . C-42

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<sup>1</sup>The validity of this act is questionable since the town operates under the general law mayor-aldermanic charter.

CHAPTER NO. 51

HOUSE BILL NO. 1029

By Rhinehart

Substituted for: Senate Bill No. 1222

By Crouch

AN ACT to authorize the Town of Kimball to levy a privilege tax on the occupancy of hotels and motels, to regulate collection of the tax, and to provide for the application of the tax revenue.

WHEREAS, the vast majority of business trade in the Town of Kimball is from tourism and from persons staying temporarily in the Town; and

WHEREAS, the Town of Kimball provides fire and police protection, ambulance service, and other services to these visitors; and

WHEREAS, these visitors use the streets maintained by the Town of Kimball; and

WHEREAS, the Town of Kimball has little or no income from taxes from these visitors to defray the cost of the services provided; and

WHEREAS, the Town of Kimball needs an increased tax base to keep providing the same high level of services to an increasing number of temporary visitors to the Town, now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this Act unless the context otherwise requires:

a. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

b. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist

court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

c. "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel.

d. "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than ninety (90) continuous days.

e. "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

f. "Operator" means the person operating the hotel whether as owner, lessee or otherwise.

SECTION 2. The Board of Mayor and Aldermen (hereinafter "legislative body") is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided by this Act.

SECTION 3. Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his hotel and to be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to the town.

When a person has maintained occupancy for ninety (90) continuous days, he shall receive from the operator a refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to the town.

SECTION 4. The tax hereby levied shall be remitted by all operators who lease, rent or charge for any rooms within the town to the trustee or such other officer as may by ordinance of the legislative body be charged with the duty of collection thereof, such tax to be remitted to such officer not later than the 20<sup>th</sup> day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice for such occupancy whether prior to occupancy or after occupancy as may be the

custom of the operator, and if credit is granted by the operator to the transient; then the obligation to the town entitled to such tax shall be that of the operator.

SECTION 5. The trustee or other authorized collector of the tax authorized by this Act shall be responsible for the collection of such tax. A monthly tax return under oath shall be filed with the trustee by the operator with such number of copies thereof as the trustee may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the trustee and approved by the legislative body prior to use. The trustee shall audit each operator in the town at least once per year and shall report on the audits made on a quarterly basis to the legislative body. The legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this Act.

SECTION 6. No operator of a hotel shall advertise or state in any manner whether directly or indirectly that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 7. Taxes collected by an operator which are not remitted to the trustee on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition for penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is hereby declared to be unlawful and shall be punishable upon conviction by a fine not in excess of fifty dollars (\$50.00).

SECTION 8. It shall be the duty of every operator liable for the collection and payment to the town of any tax imposed by this act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the town, which records the Trustee shall have the right to inspect at all reasonable times.

SECTION 9. The trustee in administering and enforcing the provisions of this Act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated or otherwise provided by law for the county clerks.

For his services in administering and enforcing the provisions of this Act, the trustee shall be entitled to retain as a commission one percent (1%) of the taxes collected.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in Tennessee Code Annotated, Title 67, Chapter 23, it being the intent of this Act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the tax levied under the authority of this Act. The trustee shall also possess those powers and duties as provided in Tennessee Code Annotated, Section 67-2301, for the county clerks with respect to the adjustment and settlement with taxpayers all errors of taxes collected by him under authority of this Act and to direct the refunding of same. Notice of any tax paid under protest shall be given to the trustee and the ordinance authorizing levy of the tax shall designate an officer against whom suit may be brought for recovery.

SECTION 10. The trustee is hereby charged with the duty of collection of the tax herein authorized and shall place the proceeds of such tax in the general fund or such other fund as the legislative body may specify by ordinance.

SECTION 11. The provisions of this Act are hereby declared to be severable. If any of its sections, provisions, exceptions, or parts be held unconstitutional or void, the remainder of this Act shall continue to be in full force and effect, it being the legislative intent now hereby declared, that this Act would have been adopted even if such unconstitutional or void matter had not been included herein.

SECTION 12. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the Town of Kimball, not more than ninety (90) days subsequent to its approval by the Governor. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and shall be certified by him to the Secretary of State.

SECTION 13. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, this Act shall take effect upon being approved as provided in Section 12.

PASSED: March 23, 1981

s/Ned R. McWherter  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

s/John S. Wilder  
SPEAKER OF THE SENATE

APPROVED: March 30, 1981

s/Lamar Alexander  
GOVERNOR

This is to certify that according to the official records in this office, House Bill No. 1029, which is Chapter No. 51 of the Private Acts of 1981, was properly ratified and approved and is therefore operative and in effect in accordance with its provisions.

s/Gentry Crowell  
SECRETARY OF STATE