

Senate Bill 262

By: Senators Hill of the 32nd, Balfour of the 9th and Pearson of the 51st

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and  
2 trade, so as to provide for fairness in hotel operating agreements; to provide for a short title;  
3 to provide for definitions; to provide for legislative intent; to provide for confidential  
4 relationships and fiduciary duties in hotel operating agreements unless expressly waived  
5 therein; to provide for retroactive effect; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
9 amended by adding a new chapter at the end thereof, to be designated Chapter 16, to read as  
10 follows:

11 "CHAPTER 16

12 10-16-1.

13 This chapter shall be known and may be cited as the 'Georgia Fairness in Hotel Operating  
14 Agreements Act.'

15 10-16-2.

16 As used in this chapter, the term:

17 (1) 'Hotel' means any establishment which offers overnight accommodations to the  
18 public for hire and which has more than 30 rooms available for that purpose.

19 (2) 'Management firm' means any corporation, firm, partnership, joint venture,  
20 subsidiary, affiliate, or other legal entity that manages, operates, or franchises a hotel  
21 pursuant to a hotel operating agreement with an owner.

1 (3) 'Operating agreement' means a written contract, agreement, instrument, or other  
 2 document between at least two persons, corporations, firms, partnerships, or other legal  
 3 entities that relates to the management, operation, or franchise of a hotel.

4 (4) 'Owner' means any person or group of persons, corporation, firm, partnership, or  
 5 other legal entity that owns a hotel.

6 10-16-3.

7 The General Assembly finds and declares that:

8 (1) It is essential to the economic well-being of this state that hotel operating agreements  
 9 are construed and applied in such a manner as to recognize the realities of the relationship  
 10 between hotel owners and management firms. The typical hotel operating agreement  
 11 involves owners who are passive investors and a sophisticated management firm that  
 12 operates the hotel for a fee. Because the management firm has superior information and  
 13 access to information relating to the hotel's profitability and costs of doing business, as  
 14 well as control or influence over all aspects of a hotel's operations, the owner is forced  
 15 to repose trust and confidence in the management firm;

16 (2) Recent changes in other state laws have statutorily altered the relationship between  
 17 owners and management firms by eliminating the confidential relationships and fiduciary  
 18 duties that are usually implied in hotel operating agreements, thereby putting owners at  
 19 a substantial disadvantage; and

20 (3) Because these state laws have retroactive effect and therefore may affect existing  
 21 hotel operating agreements involving owners who reside in Georgia or who own hotels  
 22 located in Georgia, the public policy of this state is declared to be that all hotel operating  
 23 agreements have a principal-agent relationship and create confidential relationships and  
 24 fiduciary duties between the owner and management firm.

25 10-16-4.

26 All hotel operating agreements executed in this state or governing the operation or  
 27 management of hotels in this state create principal-agent relationships, confidential  
 28 relationships, and fiduciary duties between the owner and management firm. There is an  
 29 implied covenant of good faith and fair dealing in every hotel operating agreement. A court  
 30 may order termination without penalty to owners of a hotel operating agreement upon the  
 31 finding of a breach of fiduciary duty by the management firm.

32 10-16-5.

33 This chapter shall apply retroactively to all hotel operating agreements described in Code  
 34 Section 10-16-4, including those executed prior to the effective date of this chapter."

- 1 **SECTION 2.**
- 2 All laws and parts of laws in conflict with this Act are repealed.