

By: Representative Moak

To: Ways and Means

HOUSE BILL NO. 228

1 AN ACT TO AMEND SECTION 67-3-73, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THAT PERSONS WHO ARE ISSUED ON-PREMISES RETAILER'S PERMITS
3 FOR THE SALE OF ALCOHOLIC BEVERAGES, BEER OR LIGHT WINE FOR
4 CONSUMPTION ON THE LICENSED PREMISES SHALL PURCHASE AND MAINTAIN
5 CERTAIN LIABILITY INSURANCE; TO AMEND SECTIONS 67-1-57 AND
6 67-3-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR
7 RELATED PURPOSES.

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

9 SECTION 1. Section 67-3-73, Mississippi Code of 1972, is
10 amended as follows:

11 67-3-73. (1) The Mississippi Legislature finds and declares
12 that the consumption of intoxicating beverages, rather than the
13 sale or serving or furnishing of such beverages, is the proximate
14 cause of any injury, including death and property damage,
15 inflicted by an intoxicated person upon himself or upon another
16 person.

17 (2) Notwithstanding any other law to the contrary, except as
18 otherwise provided herein, no holder of an alcoholic beverage,
19 beer or light wine permit, or any agent or employee of such
20 holder, who lawfully sells or serves intoxicating beverages to a
21 person who may lawfully purchase such intoxicating beverages,
22 shall be liable to such person or to any other person or to the
23 estate, or survivors of either, for any injury suffered off the
24 licensed premises, including wrongful death and property damage,
25 because of the intoxication of the person to whom the intoxicating
26 beverages were sold or served. Those persons who are issued
27 on-premises retailer's permits for the sale of alcoholic
28 beverages, beer or light wine for consumption on the licensed

premises under Section 67-1-1, et seq., or Section 67-3-1, et seq., shall purchase and maintain liability insurance in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each permit to cover claims made by any person or the estate or survivors of any person for any injury suffered off the licensed premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served. Those persons who have in effect liability insurance as required herein may be sued by anyone affected to the extent of such insurance carried; however, immunity from suit is waived only to the extent of such liability insurance carried and a judgment creditor shall have recourse only to the proceeds or right to proceeds of such liability insurance.

(3) Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage to a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off such social host's premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished. No social host who owns, leases or otherwise lawfully occupies a premises on which, in his absence and without his consent, intoxicating beverages are consumed by a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

(4) The limitation of liability provided by this section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol, or to any holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder when it is shown that the person making a purchase of an alcoholic beverage was at the time of such purchase visibly intoxicated.

66 SECTION 2. Section 67-1-57, Mississippi Code of 1972, is
67 amended as follows:

68 67-1-57. Before a permit is issued the commission shall
69 satisfy itself:

70 (a) That the applicant, if an individual, or if a
71 partnership, each of the members of the partnership, or if a
72 corporation, each of its principal officers and directors, is of
73 good moral character and, in addition, enjoys a reputation of
74 being a peaceable, law-abiding citizen of the community in which
75 he resides, and is generally fit for the trust to be reposed in
76 him, is not less than twenty-one (21) years of age, and has not
77 been convicted of a felony in any state or federal court.

78 (b) That, except in the case of an application for a
79 solicitor's permit, the applicant is the true and actual owner of
80 the business for which the permit is desired, and that he intends
81 to carry on the business authorized for himself and not as the
82 agent of any other person, and that he intends to superintend in
83 person the management of said business or that he will designate a
84 manager to manage the business for him; any such manager must be
85 approved by the commission and must possess all of the
86 qualifications required of a permittee.

87 (c) That the applicant for a package retailer's permit,
88 if an individual, is a resident of the State of Mississippi. If
89 the applicant is a partnership, each member of the partnership
90 must be a resident of the state. If the applicant is a
91 corporation, the designated manager of the corporation must be a
92 resident of the state.

93 (d) That the place for which the permit is to be issued
94 is an appropriate one considering the character of the premises
95 and the surrounding neighborhood.

96 (e) That the place for which the permit is to be issued
97 is within the corporate limits of an incorporated municipality or
98 qualified resort area or club which comes within the provisions of

99 this chapter.

100 (f) That the applicant is not indebted to the state for
101 any taxes, fees or payment of penalties imposed by any law of the
102 State of Mississippi or by any rule or regulation of the
103 commission.

104 (g) That the applicant is not in the habit of using
105 alcoholic beverages to excess and is not physically or mentally
106 incapacitated, and that the applicant has the ability to read and
107 write the English language.

108 (h) That the commission does not believe and has no
109 reason to believe that the applicant will sell or knowingly permit
110 any agent, servant or employee to unlawfully sell liquor in a dry
111 area or in any other manner contrary to law.

112 (i) That the applicant is not residentially domiciled
113 with any person whose permit or license has been cancelled for
114 cause within the twelve (12) months next preceding the date of the
115 present application for a permit.

116 (j) That the commission has not, in the exercise of its
117 discretion which is reserved and preserved to it, refused to grant
118 such permits under the restrictions of this section, as well as
119 under any other pertinent provision of this chapter.

120 (k) That there are not sufficient legal reasons to deny
121 a permit on the ground that the premises for which the permit is
122 sought has previously been operated, used or frequented for any
123 purpose or in any manner that is lewd, immoral or offensive to
124 public decency. In the granting or withholding of any permit to
125 sell alcoholic beverages at retail, the commission in forming its
126 conclusions may give consideration to any recommendations made in
127 writing by the district or county attorney or county, circuit or
128 chancery judge of the county, or the sheriff of the county, or the
129 mayor or chief of police of an incorporated city or town wherein
130 the applicant proposes to conduct his business and to any
131 recommendations made by representatives of the commission.

(1) That no criminal record of the applicant or any of applicant's employees exists, and the commission may therefore require that any applicant and employees of such applicant be photographed and fingerprinted for identification.

(m) That the applicant for an on-premises retailer's permit has purchased and has maintained liability insurance in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) as required by Section 67-3-73, as amended by House Bill No. , 1999 Regular Session.

SECTION 3. Section 67-3-19, Mississippi Code of 1972, is amended as follows:

67-3-19. Where application is made for a permit to engage in the business of a retailer of light wine or beer, the applicant shall show in his application that he possesses the following qualifications:

(a) Applicant must be a person at least twenty-one (21) years of age, of good moral character and a resident of the State of Mississippi.

(b) Applicant shall not have been convicted of a felony, or of pandering or of keeping or maintaining a house of prostitution, or have been convicted within two (2) years of the date of his application of any violation of the laws of this state or the laws of the United States relating to alcoholic liquor.

(c) Applicant shall not have had revoked, except for a violation of Section 67-3-52, within two (2) years next preceding his application, any license or permit issued to him pursuant to the laws of this state, or any other state, to sell alcoholic liquor of any kind.

(d) Applicant shall be the owner of the premises for which the permit is sought or the holder of an existing lease thereon.

(e) Applicant shall not be residentially domiciled with any person whose permit has been revoked for cause, except for a

violation of Section 67-3-52, within two (2) years next preceding the date of the present application for a permit.

(f) The applicant has not had any license or permit to sell beer or light wine at retail revoked, within five (5) years next preceding his application, due to a violation of Section 67-3-52.

(g) Applicant shall not employ any person whose permit has been revoked when such person owned or operated the business on the premises for which a permit is sought or allow such person to have any financial interest in the business of the applicant, until such person is qualified to obtain a permit in his own name.

(h) The applicant is not indebted to the State of Mississippi for any taxes.

(i) If applicant is a partnership, all members of the partnership must be qualified to obtain a permit. Each member of the partnership must be a resident of the State of Mississippi.

(j) If applicant is a corporation, all officers and directors thereof, and any stockholder owning more than five percent (5%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for any individual permittee. However, the requirements as to residence shall not apply to officers, directors, and stockholders of such corporation, although such requirements shall apply to any officer, director, or stockholder who is also the manager of the licensed premises or who is engaged or employed at the licensed premises. The designated manager of the licensed premises must be a resident of the State of Mississippi.

(k) If the applicant is applying for an on-premises retailer's permit, he must show proof that he has purchased and maintained liability insurance in the minimum amount of Two Hundred Fifty Thousand Dollars (\$350,000.00) as required by Section 67-3-73, as amended by House Bill _____, 1999 Regular

198 Session.

199 Any misstatement or concealment of fact in an application
200 shall be ground for denial of the application or for revocation of
201 the permit issued thereon.

202 The commissioner may refuse to issue a permit to an applicant
203 for a place that is frequented by known criminals, prostitutes, or
204 other law violators or troublemakers who disturb the peace and
205 quietude of the community and frequently require the assistance of
206 peace officers to apprehend such law violators or to restore
207 order. The burden of proof of establishing the foregoing shall
208 rest upon the commissioner.

209 SECTION 4. This act shall take effect and be in force from
210 and after July 1, 1999.