

By: Representative Banks

To: Ways and Means

HOUSE BILL NO. 1358

1 AN ACT TO AMEND SECTIONS 27-71-5, 27-71-7, 27-71-29,
2 27-71-303, 27-71-307 AND 27-71-337, MISSISSIPPI CODE OF 1972, TO
3 PROVIDE THAT TWENTY PERCENT OF THE FUNDS GENERATED BY TAXES AND
4 FEES ON ALCOHOLIC BEVERAGES SHALL BE FORWARDED TO THE COUNTIES
5 FROM WHICH SUCH FUNDS WERE GENERATED ON A PROPORTIONATE BASIS; AND
6 FOR RELATED PURPOSES.

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

8 SECTION 1. Section 27-71-5, Mississippi Code of 1972, is
9 amended as follows:

10 27-71-5. (1) Upon each person approved for a permit under
11 the provisions of the Alcoholic Beverage Control Law and
12 amendments thereto, there is levied and imposed for each location
13 for the privilege of engaging and continuing in this state in the
14 business authorized by such permit, an annual privilege license
15 tax in the amount provided in the following schedule:

16 (a) Manufacturer's permit, Class 1, distiller's and/or
17 rectifier's..... \$4,500.00

18 (b) Manufacturer's permit, Class 2, wine manufacturer.
19 \$1,800.00

20 (c) Manufacturer's permit, Class 3, native wine
21 manufacturer per 10,000 gallons or part thereof produced... \$10.00

22 (d) Native wine retailer's permit..... \$50.00

23 (e) Package retailer's permit, each..... \$900.00

24 (f) On-premises retailer's permit, except for clubs and
25 common carriers, each..... \$450.00

26 On purchases exceeding \$5,000.00 and for each additional
27 \$5,000.00, or fraction thereof..... \$225.00

28 (g) On-premises retailer's permit for wine of more than
29 four percent (4%) alcohol by volume, but not more than twenty-one

30 percent (21%) alcohol by volume (each)..... \$225.00
31 On purchases exceeding \$5,000.00 and for each additional
32 \$5,000.00, or fraction thereof..... \$225.00
33 (h) On-premises retailer's permit for clubs.... \$225.00
34 On purchases exceeding \$5,000.00 and for each additional
35 \$5,000.00, or fraction thereof..... \$225.00
36 (i) On-premises retailer's permit for common carriers,
37 per car, plane, or other
38 vehicle..... \$120.00
39 (j) Solicitor's permit, regardless of any other
40 provision of law, solicitor's permits shall be issued only in the
41 discretion of the commission.... \$100.00
42 (k) Filing fee for each application except for an
43 employee identification card..... \$25.00
44 (l) Temporary permit, Class 1, each..... \$10.00
45 (m) Temporary permit, Class 2, each..... \$50.00
46 On-premises purchases exceeding \$5,000.00 and for each
47 additional \$5,000.00, or fraction thereof..... \$225.00
48 (n) (i) Caterer's permit..... \$600.00
49 On purchases exceeding \$5,000.00 and for each additional
50 \$5,000.00, or fraction thereof..... \$250.00
51 (ii) Caterer's permit for holders of on-premises
52 retailer's permit..... \$150.00
53 On purchases exceeding \$5,000.00 and for each additional
54 \$5,000.00, or fraction thereof..... \$250.00
55 (o) Research permit..... \$100.00
56 (p) Filing fee for each application for an employee
57 identification card..... \$5.00
58 In addition to the filing fee imposed by item (k) of this
59 subsection, a fee to be determined by the State Tax Commission may
60 be charged to defray costs incurred to process applications. Such
61 additional fees shall be paid into the State Treasury to the
62 credit of a special fund account, which is hereby created, and
63 expenditures therefrom shall be made only to defray the costs

64 incurred by the State Tax Commission in processing alcoholic
65 beverage applications. Eighty percent (80%) of any unencumbered
66 balance remaining in the special fund account on June 30 of any
67 fiscal year shall lapse into the State General Fund and the
68 remaining twenty percent (20%) shall be forwarded to the counties
69 where such fees were generated on a proportionate basis.

70 All privilege taxes herein imposed shall be paid in advance
71 of doing business. The additional privilege tax imposed for an
72 on-premises retailer's permit based upon purchases shall be due
73 and payable on demand.

74 Any person who has paid the additional privilege license tax
75 imposed by item (f), (g), (h), (m) or (n) of this subsection, and
76 whose permit is renewed, may add any unused fraction of Five
77 Thousand Dollars (\$5,000.00) purchases to the first Five Thousand
78 Dollars (\$5,000.00) purchases authorized by the renewal permit,
79 and no additional license tax will be required until purchases
80 exceed the sum of the two (2) figures.

81 (2) There is imposed and shall be collected from each
82 permittee, except a common carrier, solicitor, holder of an
83 employee identification card or a temporary permittee, by the
84 commission, an additional license tax equal to the amounts imposed
85 under subsection (1) of this section for the privilege of doing
86 business within any municipality or county in which the licensee
87 is located. If the licensee is located within a municipality, the
88 commission shall pay the amount of additional license tax to the
89 municipality, and if outside a municipality the commission shall
90 pay the additional license tax to the county in which the licensee
91 is located. Payments by the commission to the respective local
92 government subdivisions shall be made once each month for any
93 collections during the preceding month.

94 (3) When an application for any permit, other than for
95 renewal of a permit, has been rejected by the commission, such
96 decision shall be final. Appeal may be made in the manner
97 provided by Section 67-1-39. Another application from an

98 applicant who has been denied a permit shall not be reconsidered
99 within a twelve-month period.

100 (4) The number of permits issued by the commission shall not
101 be restricted or limited on a population basis; however, the
102 foregoing limitation shall not be construed to preclude the right
103 of the commission to refuse to issue a permit because of the
104 undesirability of the proposed location.

105 (5) If any person shall engage or continue in any business
106 which is taxable hereunder without having paid the tax as provided
107 herein, such person shall be liable for the full amount of such
108 tax plus a penalty thereon equal to the amount thereof, and, in
109 addition, shall be punished by a fine of not more than One
110 Thousand Dollars (\$1,000.00), or by imprisonment in the county
111 jail for a term of not more than six (6) months, or by both such
112 fine and imprisonment, in the discretion of the court.

113 (6) It shall be unlawful for any person to consume alcoholic
114 beverages on the premises of any hotel restaurant, restaurant,
115 club or the interior of any public place defined in Chapter 1,
116 Title 67, Mississippi Code of 1972, when the owner or manager
117 thereof displays in several conspicuous places inside said
118 establishment and at the entrances thereto a sign containing the
119 following language: NO ALCOHOLIC BEVERAGES ALLOWED.

120 SECTION 2. Section 27-71-7, Mississippi Code of 1972, is
121 amended as follows:

122 27-71-7. (1) There is hereby levied and assessed an excise
123 tax upon each case of alcoholic beverages sold by the commission
124 to be collected from each retail licensee at the time of sale in
125 accordance with the following schedule and distributed in
126 accordance with this chapter:

127 (a) Distilled spirits..... \$2.50 per gallon
128 (b) Sparkling wine and champagne..... \$1.00 per gallon
129 (c) Other wines, including native
130 wines..... \$.35 per gallon

131 (2) (a) In addition to the tax levied by subsection (1) of

132 this section, and in addition to any other markup collected, the
133 Alcoholic Beverage Control Division shall collect a markup of
134 three percent (3%) on all alcoholic beverages, as defined in
135 Section 67-1-5, Mississippi Code of 1972, which are sold by the
136 division. The proceeds of the markup shall be collected by the
137 division from each purchaser at the time of purchase.

138 (b) Until June 30, 1987, the revenue derived from this
139 three percent (3%) markup shall be deposited by the division in
140 the State Treasury to the credit of the "Alcoholism Treatment and
141 Rehabilitation Fund," a special fund which is hereby created in
142 the State Treasury, and shall be used by the Division of Alcohol
143 and Drug Abuse of the State Department of Mental Health and public
144 or private centers or organizations solely for funding of
145 treatment and rehabilitation programs for alcoholics and alcohol
146 abusers which are sponsored by the division or public or private
147 centers or organizations in such amounts as the Legislature may
148 appropriate to the division for use by the division or public or
149 private centers or organizations for such programs. Any tax
150 revenue in the fund which is not encumbered at the end of the
151 fiscal year shall lapse to the General Fund. It is the intent of
152 the Legislature that the State Department of Mental Health shall
153 continue to seek funds from other sources and shall use the funds
154 appropriated for the purposes of this section and Section 27-71-29
155 to match all federal funds which may be available for alcoholism
156 treatment and rehabilitation.

157 From and after July 1, 1987, the revenue derived from this
158 three percent (3%) markup shall be deposited by the division in
159 the State Treasury to the credit of the "Mental Health Programs
160 Fund," a special fund which is hereby created in the State
161 Treasury and shall be used by the State Department of Mental
162 Health for the service programs of the department. Any revenue in
163 the "Alcoholism Treatment and Rehabilitation Fund" which is not
164 encumbered at the end of fiscal year 1987 shall be deposited to
165 the credit of the "Mental Health Programs Fund."

166 SECTION 3. Section 27-71-29, Mississippi Code of 1972, is
167 amended as follows:

168 27-71-29. All taxes levied by this article shall be paid to
169 the State Tax Commission in cash or by personal check, cashier's
170 check, bank exchange, post-office money order or express money
171 order and shall be deposited by the commission in the State
172 Treasury on the same day collected, but no remittances other than
173 cash shall be a final discharge of liability for the tax herein
174 imposed and levied unless and until it has been paid in cash to
175 the State Tax Commission.

176 Eighty percent (80%) of all taxes levied under Section
177 27-71-7(1) and received by the commission under this article shall
178 be paid into the General Fund, and the remaining twenty percent
179 (20%) shall be forwarded to counties where such taxes were
180 generated on a proportionate basis, and the three percent (3%)
181 levied under Section 27-71-7(2) and received by the commission
182 under this article shall be paid into the special fund in the
183 State Treasury designated as the "Alcoholism Treatment and
184 Rehabilitation Fund" as required by law. Any funds derived from
185 the sale of alcoholic beverages in excess of inventory
186 requirements shall be paid not less often than annually into the
187 General Fund.

188 SECTION 4. Section 27-71-303, Mississippi Code of 1972, is
189 amended as follows:

190 27-71-303. Upon each person approved for a permit to engage
191 in the business of selling light wines or beer there is hereby
192 imposed, levied and assessed, to be collected and paid as herein
193 provided, annual privilege taxes in the following amounts:

- 194 (a) Retailers--for each place of business.... \$ 30.00
195 (b) Wholesalers or distributors--for each
196 county..... \$ 100.00
197 (c) Manufacturers--for each place of
198 business..... \$1,000.00
199 (d) Brewpubs--for each place of business..... \$1,000.00

200 Upon each person operating an airline, bus, boat or railroad
201 car upon which light wines or beer may be sold there is hereby
202 imposed, levied and assessed, to be collected and paid, annual
203 privilege taxes of Thirty Dollars (\$30.00) for each airplane, bus,
204 boat or railroad car so operated in this state.

205 Provided, however, the amount of the privilege tax to be paid
206 for a permit issued for a period of less than twelve (12) months
207 shall be that proportionate amount of the annual privilege tax
208 that the number of months, or part of a month, remaining until its
209 expiration date bears to twelve (12) months, but in no case shall
210 the privilege tax be less than Ten Dollars (\$10.00).

211 The tax imposed by this section shall be distributed as
212 provided in this chapter.

213 SECTION 5. Section 27-71-307, Mississippi Code of 1972, is
214 amended as follows:

215 **[Through June 30, 2000, this section shall read as follows:]**

216 27-71-307. (1) (a) In addition to the specific tax imposed
217 in Section 27-71-303, there is hereby imposed, levied, assessed
218 and shall be collected, as hereinafter provided, and distributed
219 as provided by this chapter, an excise or privilege tax upon each
220 person engaged or continuing in the business of wholesaler or
221 distributor of light wines or beer equivalent to Forty-two and
222 Sixty-eight One-hundredths Cents (42.68¢) per gallon upon all
223 light wines and beer acquired for sale or distribution in this
224 state. Such excise or privilege tax is also imposed at the same
225 rate upon each gallon of light wine or beer manufactured by
226 brewpubs, each of which shall accurately and reliably measure the
227 quantity of light wine and beer produced by using a measuring
228 device such as a meter or gauge glass or any other suitable method
229 approved by the commissioner. Such tax is hereby imposed as an
230 additional tax for the privilege of engaging or continuing in
231 business.

232 (b) The excise tax imposed in this section shall be
233 paid to the State Tax Commission monthly on or before the

234 fifteenth day of the month following the month in which the beer
235 or light wine was manufactured or received in this state. Monthly
236 report forms shall be furnished by the commissioner to the
237 wholesalers, distributors and brewpubs.

238 (c) Provided that persons operating a railroad dining
239 car, club car or other car in interstate commerce upon which light
240 wines or beer may be sold and who are licensed under the
241 provisions of Section 67-3-27 and any other law relating to the
242 sale of such beverages shall keep such records of the sales of
243 such light wines and beer in this state as the commissioner shall
244 prescribe and shall submit monthly reports of such sales to the
245 commissioner within fifteen (15) days after the end of each month
246 on a form prescribed therefor by the commissioner, and shall pay
247 the tax due under the provisions of this section at the time such
248 reports are filed.

249 No official crowns, lids, labels or stamps with the word
250 "MISSISSIPPI" or "MS" imprinted thereon or any other evidence of
251 tax payment is required by this section, or may be required under
252 rule or regulation promulgated by the commissioner, to be affixed
253 on or to any part of a beer, light wine or malt cooler bottle, can
254 or other light wine or malt cooler container. For purposes of
255 this section, malt cooler products shall be defined as a flavored
256 malt beverage made from a base of malt beverage and flavored with
257 fruit juices, aromatics and essences of other flavoring in
258 quantities and proportions such that the resulting product
259 possesses a character and flavor distinctive from the base malt
260 beverage and distinguishable from other malt beverages.

261 (2) A licensed wholesaler or distributor of beer or light
262 wine may not import beer or light wine from any source other than
263 a brewer or importer authorized by the commissioner to sell such
264 beer or light wine in Mississippi. Any person who violates the
265 provisions of this subsection, upon conviction thereof, shall be
266 punished by a fine of not more than One Thousand Dollars
267 (\$1,000.00) or by imprisonment in the county jail for not more

268 than six (6) months, or by both such fine and imprisonment, in the
269 discretion of the court and shall be subject to license forfeiture
270 following an appropriate hearing before the State Tax Commission.

271 (3) The wholesaler or distributor shall be allowed credit
272 for tax paid on beer or light wine which is no longer marketable
273 and which is destroyed by same when such destruction is witnessed
274 by an agent of the commissioner and when the amount of the excise
275 tax exceeds One Hundred Dollars (\$100.00). No other loss will be
276 allowed.

277 A brewpub shall be allowed credit for light wine or beer
278 which has passed through the meter, gauge glass or other approved
279 measuring device and which has been soured or damaged. The
280 brewpub shall record the removal of sour or damaged light wine or
281 beer and may take credit after the destruction is witnessed by an
282 agent of the commissioner and when the amount of excise tax
283 exceeds Twenty-five Dollars (\$25.00). No other loss shall be
284 allowed.

285 (4) All manufacturers, brewers and importers of beer or
286 light wine shall file monthly reports as prescribed by the
287 commissioner listing sales to each wholesaler or distributor by
288 date, invoice number, quantity and container size, and any other
289 information deemed necessary.

290 (5) All administrative provisions of the Mississippi Sales
291 Tax Law, including those which fix damages, penalties and interest
292 for nonpayment of taxes and for noncompliance with the provisions
293 of such chapter, and all other requirements and duties imposed
294 upon taxpayers, shall apply to all persons liable for taxes under
295 the provisions of this chapter, and the commissioner shall
296 exercise all the power and authority and perform all the duties
297 with respect to taxpayers under this chapter as are provided in
298 the sales tax law except where there is conflict, then the
299 provisions of this chapter shall control.

300 **[From and after July 1, 2000, this section shall read as**
301 **follows:]**

302 27-71-307. In addition to the specific tax imposed in
303 Section 27-71-303, there is hereby imposed, levied, assessed and
304 shall be collected, as hereinafter provided, and distributed as
305 provided by this chapter, an excise or privilege tax upon each
306 person engaged or continuing in the business of wholesaler or
307 distributor of light wines or beer equivalent to Forty-two and
308 Sixty-eight One-hundredths Cents (42.68¢) per gallon upon all
309 light wines and beer acquired for sale or distribution in this
310 state. Such excise or privilege tax is also imposed at the same
311 rate upon each gallon of light wine or beer manufactured by
312 brewpubs, each of which shall accurately and reliably measure the
313 quantity of light wine and beer produced by using a measuring
314 device such as a meter or gauge glass or any other suitable method
315 approved by the commissioner. Such tax is hereby imposed as an
316 additional tax for the privilege of engaging or continuing in
317 business.

318 The excise tax imposed in this section shall be paid by the
319 wholesaler or distributor to the State Tax Commission monthly on
320 or before the fifteenth day of the month following the month in
321 which the beer or light wine was manufactured or received in this
322 state. Monthly report forms shall be furnished by the
323 commissioner to the wholesalers, distributors and brewpubs.

324 Provided that persons operating a railroad dining car, club
325 car or other car in interstate commerce upon which light wines or
326 beer may be sold and who are licensed under the provisions of
327 Section 67-3-27 and any other law relating to the sale of such
328 beverages shall keep such records of the sales of such light wines
329 and beer in this state as the commissioner shall prescribe and
330 shall submit monthly reports of such sales to the commissioner
331 within fifteen (15) days after the end of each month on a form
332 prescribed therefor by the commissioner, and shall pay the tax due
333 under the provisions of this section at the time such reports are
334 filed.

335 All beer sold, received or stored in this state shall have

336 imprinted by the manufacturer on each bottle, can or other
337 container (including kegs, barrels or such large containers), the
338 word "MISSISSIPPI" or "MS." The word "MISSISSIPPI" or "MS" may be
339 printed, etched, engraved, embossed, ink jet sprayed or marked
340 thereon by any permanent method that makes the word plain and
341 conspicuous. If the bottle is covered by foil or any other
342 material, the word "MISSISSIPPI" or "MS" shall be printed on the
343 label, or elsewhere on the bottle, can or other container, in a
344 manner to make it plain and conspicuous. The design for each type
345 of crown, lid, label and the Mississippi identifying mark shall be
346 submitted first to the commissioner for his approval before used.

347 No official crowns, lids or stamps with the word "MISSISSIPPI" or
348 "MS" imprinted thereon or any other evidence of tax payment shall
349 be required to be affixed on or to any part of a light wine or
350 malt cooler bottle, can or other light wine or malt cooler
351 container. For purposes of this section, malt cooler products
352 shall be defined as a flavored malt beverage made from a base of
353 malt beverage and flavored with fruit juices, aromatics and
354 essences of other flavoring in quantities and proportions such
355 that the resulting product possesses a character and flavor
356 distinctive from the base malt beverage and distinguishable from
357 other malt beverages.

358 A licensed wholesaler or distributor of beer or light wine
359 may not import beer or light wine from any source other than a
360 brewer or importer authorized by the commissioner to sell such
361 beer or light wine in Mississippi.

362 The wholesaler or distributor shall be allowed credit for tax
363 paid on beer or light wine which is no longer marketable and which
364 is destroyed by same when such destruction is witnessed by an
365 agent of the commissioner and when the amount of the excise tax
366 exceeds One Hundred Dollars (\$100.00). No other loss will be
367 allowed.

368 A brewpub shall be allowed credit for light wine or beer
369 which has passed through the meter, gauge glass or other approved

370 measuring device and which has been soured or damaged. The
371 brewpub shall record the removal of sour or damaged light wine or
372 beer and may take credit after the destruction is witnessed by an
373 agent of the commissioner and when the amount of excise tax
374 exceeds Twenty-five Dollars (\$25.00). No other loss shall be
375 allowed.

376 All manufacturers, brewers and importers of beer or light
377 wine shall file monthly reports as prescribed by the commissioner
378 listing sales to each wholesaler or distributor by date, invoice
379 number, quantity and container size, and any other information
380 deemed necessary.

381 All administrative provisions of the Mississippi Sales Tax
382 Law, including those which fix damages, penalties and interest for
383 nonpayment of taxes and for noncompliance with the provisions of
384 such chapter, and all other requirements and duties imposed upon
385 taxpayers, shall apply to all persons liable for taxes under the
386 provisions of this chapter, and the commissioner shall exercise
387 all the power and authority and perform all the duties with
388 respect to taxpayers under this chapter as are provided in the
389 sales tax law except where there is conflict, then the provisions
390 of this chapter shall control.

391 SECTION 6. Section 27-71-337, Mississippi Code of 1972, is
392 amended as follows:

393 27-71-337. All taxes levied by this article and required to
394 be paid to the commissioner shall be payable to the commissioner
395 in cash or by personal check, cashier's check, bank exchange,
396 post-office money order or express money order and eighty percent
397 (80%) shall be deposited by the commissioner into the State
398 Treasury on the same day collected, and the remaining twenty
399 percent (20%) shall be forwarded to the counties from which such
400 taxes were generated on a proportionate basis, provided that no
401 remittances other than cash shall be a final discharge of
402 liability for the tax herein imposed and levied unless and until
403 it has been paid in cash to the commissioner.

404 SECTION 7. This act shall take effect and be in force from
405 and after July 1, 1999.