

By: Roberson, Creel

To: Ways and Means

HOUSE BILL NO. 981

1 AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF RESTAURANT IN THE LOCAL OPTION ALCOHOLIC
3 BEVERAGE CONTROL LAW; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 67-1-5, Mississippi Code of 1972, is
6 amended as follows:

7 67-1-5. For the purposes of this chapter and unless
8 otherwise required by the context:

9 (a) The words "alcoholic beverage" mean any alcoholic
10 liquid, including wines of more than five percent (5%) of alcohol
11 by weight, capable of being consumed as a beverage by a human
12 being, but shall not include wine containing five percent (5%) or
13 less of alcohol by weight and shall not include beer containing
14 not more than five percent (5%) of alcohol by weight, as provided
15 for in Section 67-3-5, Mississippi Code of 1972, but shall include
16 native wines. The words "alcoholic beverage" shall not include
17 ethyl alcohol manufactured or distilled solely for fuel purposes.

18 (b) The word "alcohol" means the product of
19 distillation of any fermented liquid, whatever the origin thereof,
20 and includes synthetic ethyl alcohol, but does not include
21 denatured alcohol or wood alcohol.

22 (c) The words "distilled spirits" mean any beverage
23 containing more than four percent (4%) of alcohol by weight
24 produced by distillation of fermented grain, starch, molasses or
25 sugar, including dilutions and mixtures of these beverages.

26 (d) The words "wine" or "vinous liquor" mean any

27 product obtained from the alcoholic fermentation of the juice of
28 sound, ripe grapes, fruits or berries and made in accordance with
29 the revenue laws of the United States.

30 (e) The word "person" means and includes any
31 individual, partnership, corporation, association or other legal
32 entity whatsoever.

33 (f) The word "manufacturer" means any person engaged in
34 manufacturing, distilling, rectifying, blending or bottling any
35 alcoholic beverage.

36 (g) The word "wholesaler" means any person, other than
37 a manufacturer, engaged in distributing or selling any alcoholic
38 beverage at wholesale for delivery within or without this state
39 when such sale is for the purpose of resale by the purchaser.

40 (h) The word "retailer" means any person who sells,
41 distributes, or offers for sale or distribution, any alcoholic
42 beverage for use or consumption by the purchaser and not for
43 resale.

44 (i) The word "commission" means the State Tax
45 Commission of the State of Mississippi, which shall create a
46 division in its organization to be known as the Alcoholic Beverage
47 Control Division. Any reference to the commission hereafter means
48 the powers and duties of the State Tax Commission with reference
49 to supervision of the Alcoholic Beverage Control Division.

50 (j) The word "division" means the Alcoholic Beverage
51 Control Division of the State Tax Commission.

52 (k) The word "municipality" means any incorporated city
53 or town of this state.

54 (l) The word "hotel" means an establishment within a
55 municipality, or within a qualified resort area approved as such
56 by the commission, where, in consideration of payment, food and
57 lodging are habitually furnished to travelers and wherein are
58 located at least twenty (20) adequately furnished and completely
59 separate sleeping rooms with adequate facilities that persons

60 usually apply for and receive as overnight accommodations. Hotels
61 in towns or cities of more than twenty-five thousand (25,000)
62 population are similarly defined except that they must have fifty
63 (50) or more sleeping rooms. Any such establishment described in
64 this paragraph with less than fifty (50) beds shall operate one or
65 more regular dining rooms designed to be constantly frequented by
66 customers each day. When used in this chapter, the word "hotel"
67 shall also be construed to include any establishment that meets
68 the definition of "bed and breakfast inn" as provided in this
69 section.

70 (m) The word "restaurant" means a place which is
71 regularly and in a bona fide manner used and kept open for the
72 serving of meals to guests for compensation, which has suitable
73 seating facilities for guests, and which has suitable kitchen
74 facilities connected therewith for cooking an assortment of foods
75 and meals commonly ordered at various hours of the day * * *. No
76 place shall qualify as a restaurant under this chapter unless
77 twenty-five percent (25%) or more of the revenue derived from such
78 place shall be from the preparation, cooking and serving of meals
79 and not from the sale of beverages, or unless the value of food
80 given to and consumed by customers is equal to twenty-five percent
81 (25%) or more of total revenue.

82 (n) The word "club" means an association or a
83 corporation:

84 (1) Organized or created under the laws of this
85 state for a period of five (5) years prior to July 1, 1966;

86 (2) Organized not primarily for pecuniary profit
87 but for the promotion of some common object other than the sale or
88 consumption of alcoholic beverages;

89 (3) Maintained by its members through the payment
90 of annual dues;

91 (4) Owning, hiring or leasing a building or space
92 in a building of such extent and character as may be suitable and

93 adequate for the reasonable and comfortable use and accommodation
94 of its members and their guests;

95 (5) The affairs and management of which are
96 conducted by a board of directors, board of governors, executive
97 committee, or similar governing body chosen by the members at a
98 regular meeting held at some periodic interval; and

99 (6) No member, officer, agent or employee of which
100 is paid, or directly or indirectly receives, in the form of a
101 salary or other compensation any profit from the distribution or
102 sale of alcoholic beverages to the club or to members or guests of
103 the club beyond such salary or compensation as may be fixed and
104 voted at a proper meeting by the board of directors or other
105 governing body out of the general revenues of the club.

106 The commission may, in its discretion, waive the five-year
107 provision of this paragraph. In order to qualify under this
108 paragraph, a club must file with the commission, at the time of
109 its application for a license under this chapter, two (2) copies
110 of a list of the names and residences of its members and similarly
111 file, within ten (10) days after the election of any additional
112 member, his name and address. Each club applying for a license
113 shall also file with the commission at the time of the application
114 a copy of its articles of association, charter of incorporation,
115 bylaws or other instruments governing the business and affairs
116 thereof.

117 (o) The term "qualified resort area" means any area or
118 locality outside of the limits of incorporated municipalities in
119 this state commonly known and accepted as a place which regularly
120 and customarily attracts tourists, vacationists and other
121 transients because of its historical, scenic or recreational
122 facilities or attractions, or because of other attributes which
123 regularly and customarily appeal to and attract tourists,
124 vacationists and other transients in substantial numbers; however,
125 no area or locality shall so qualify as a resort area until it has

126 been duly and properly approved as such by the commission.

127 (i) The commission may approve an area or locality
128 outside of the limits of an incorporated municipality that is in
129 the process of being developed as a qualified resort area if such
130 area or locality, when developed, can reasonably be expected to
131 meet the requisites of the definition of the term "qualified
132 resort area." In such a case, the status of qualified resort area
133 shall not take effect until completion of the development.

134 (ii) The term includes any state park which is
135 declared a resort area by the commission; however, such
136 declaration may only be initiated in a written request for resort
137 area status made to the commission by the Executive Director of
138 the Department of Wildlife, Fisheries and Parks, and no permit for
139 the sale of any alcoholic beverage, as defined in this chapter,
140 except an on-premises retailer's permit, shall be issued for a
141 hotel, restaurant or bed and breakfast inn in such park.

142 (iii) The term includes the clubhouses associated
143 with the state park golf courses at the Lefleur's Bluff State
144 Park, the John Kyle State Park, the Percy Quin State Park and the
145 Hugh White State Park. The status of these clubhouses as
146 qualified resort areas does not require any declaration of same by
147 the commission.

148 (p) The words "native wine" shall mean any product,
149 produced in Mississippi for sale, having an alcohol content not to
150 exceed twenty-one percent (21%) by weight and made in accordance
151 with revenue laws of the United States, which shall be obtained
152 primarily from the alcoholic fermentation of the juice of ripe
153 grapes, fruits, berries or vegetables grown and produced in
154 Mississippi; provided that bulk, concentrated or fortified wines
155 used for blending may be produced without this state and used in
156 producing native wines. The commission shall adopt and promulgate
157 rules and regulations to permit a producer to import such bulk
158 and/or fortified wines into this state for use in blending with

159 native wines without payment of any excise tax that would
160 otherwise accrue thereon.

161 (q) The words "native winery" shall mean any place or
162 establishment within the State of Mississippi where native wine is
163 produced in whole or in part for sale.

164 (r) The words "bed and breakfast inn" mean an
165 establishment within a municipality where in consideration of
166 payment, breakfast and lodging are habitually furnished to
167 travelers and wherein are located not less than eight (8) and not
168 more than nineteen (19) adequately furnished and completely
169 separate sleeping rooms with adequate facilities, that persons
170 usually apply for and receive as overnight accommodations;
171 however, such restriction on the minimum number of sleeping rooms
172 shall not apply to establishments on the National Register of
173 Historic Places. No place shall qualify as a bed and breakfast
174 inn under this chapter unless on the date of the initial
175 application for a license under this chapter more than fifty
176 percent (50%) of the sleeping rooms are located in a structure
177 formerly used as a residence.

178 SECTION 2. This act shall take effect and be in force from
179 and after July 1, 2000.