

By: Minor

To: Finance

## SENATE BILL NO. 2700

1 AN ACT TO AMEND SECTION 67-3-52, MISSISSIPPI CODE OF 1972, TO  
2 REMOVE THE JULY 1, 2000, REPEAL DATE ON A PROVISION OF LAW THAT  
3 ENHANCES THE CRIMINAL PENALTIES FOR VIOLATIONS OF CERTAIN LAWS  
4 REGARDING THE SALE AND DISTRIBUTION OF BEER OR LIGHT WINE; TO  
5 AMEND SECTIONS 27-71-307, 27-71-313, 27-71-331, 27-71-333,  
6 27-71-335, 27-71-347, 27-71-505, 67-3-15, 67-3-57 AND 67-3-69,  
7 MISSISSIPPI CODE OF 1972, TO REMOVE JULY 1, 2000, REVERSION  
8 PROVISIONS THAT RELATE TO THE REQUIREMENT THAT TAX STAMPS BE  
9 AFFIXED TO CONTAINERS OF BEER AND LIGHT WINE AND REMOVE CERTAIN  
10 ENHANCED PENALTIES FOR VIOLATIONS OF CERTAIN LAWS REGARDING THE  
11 MANUFACTURE AND SALE OF BEER OR LIGHT WINE; TO REPEAL SECTION  
12 67-3-48, MISSISSIPPI CODE OF 1972, WHICH, FROM AND AFTER JULY 1,  
13 2000, REQUIRES THE CHAIRMAN OF THE STATE TAX COMMISSION TO PROVIDE  
14 SUITABLE MARKINGS OF IDENTIFICATION FOR THE PURPOSE OF TAXATION OF  
15 BEER AND REQUIRES SUCH MARKINGS TO BE USED BY VENDORS; AND FOR  
16 RELATED PURPOSES.

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

18 SECTION 1. Section 67-3-52, Mississippi Code of 1972, is  
19 amended as follows:[WAN1]

20 67-3-52. It shall be unlawful for any person holding a  
21 permit authorizing the sale of beer or light wine at retail to  
22 obtain such beer or light wine from any source outside of the  
23 State of Mississippi. Any person who violates the provisions of  
24 this section, upon conviction thereof, shall be punished by a fine  
25 of not more than One Thousand Dollars (\$1,000.00) or by  
26 imprisonment in the county jail for not more than six (6) months,  
27 or by both such fine and imprisonment, in the discretion of the  
28 court. Any person convicted of violating this section, or any  
29 rules or regulations promulgated by the commissioner with regard  
30 to the unlawful acts described in this section, shall forfeit his  
31 permit. Any person whose permit has been forfeited pursuant to  
32 this section shall not be eligible for a permit issued by the  
33 commissioner for a period of five (5) years after the date of such

34 forfeiture. In addition, no permit shall be issued for the same  
35 location, for which an offender has forfeited a permit pursuant to  
36 this section, to a spouse, offspring or sibling of the offender  
37 when to do so would circumvent the purposes of this section. The  
38 commissioner may assess a retailer who violates this section the  
39 amount of excise taxes due on the unlawfully imported beer or  
40 light wine, together with a penalty in the amount of four (4)  
41 times the state excise taxes due or One Hundred Dollars (\$100.00)  
42 per case, whichever is greater.

43 \* \* \*

44 SECTION 2. Section 27-71-307, Mississippi Code of 1972, is  
45 amended as follows:[WAN2]

46 \* \* \*

47 27-71-307. (1) (a) In addition to the specific tax imposed  
48 in Section 27-71-303, there is hereby imposed, levied, assessed  
49 and shall be collected, as hereinafter provided, an excise or  
50 privilege tax upon each person engaged or continuing in the  
51 business of wholesaler or distributor of light wines or beer  
52 equivalent to Forty-two and Sixty-eight One-hundredths Cents  
53 (42.68¢) per gallon upon all light wines and beer acquired for  
54 sale or distribution in this state. Such excise or privilege tax  
55 is also imposed at the same rate upon each gallon of light wine or  
56 beer manufactured by brewpubs, each of which shall accurately and  
57 reliably measure the quantity of light wine and beer produced by  
58 using a measuring device such as a meter or gauge glass or any  
59 other suitable method approved by the commissioner. Such tax is  
60 hereby imposed as an additional tax for the privilege of engaging  
61 or continuing in business.

62 (b) The excise tax imposed in this section shall be  
63 paid to the State Tax Commission monthly on or before the  
64 fifteenth day of the month following the month in which the beer  
65 or light wine was manufactured or received in this state. Monthly  
66 report forms shall be furnished by the commissioner to the  
67 wholesalers, distributors and brewpubs.

68 (c) Provided that persons operating a railroad dining  
69 car, club car or other car in interstate commerce upon which light  
70 wines or beer may be sold and who are licensed under the

71 provisions of Section 67-3-27 and any other law relating to the  
72 sale of such beverages shall keep such records of the sales of  
73 such light wines and beer in this state as the commissioner shall  
74 prescribe and shall submit monthly reports of such sales to the  
75 commissioner within fifteen (15) days after the end of each month  
76 on a form prescribed therefor by the commissioner, and shall pay  
77 the tax due under the provisions of this section at the time such  
78 reports are filed.

79 No official crowns, lids, labels or stamps with the word  
80 "MISSISSIPPI" or "MS" imprinted thereon or any other evidence of  
81 tax payment is required by this section, or may be required under  
82 rule or regulation promulgated by the commissioner, to be affixed  
83 on or to any part of a beer, light wine or malt cooler bottle, can  
84 or other light wine or malt cooler container. For purposes of  
85 this section, malt cooler products shall be defined as a flavored  
86 malt beverage made from a base of malt beverage and flavored with  
87 fruit juices, aromatics and essences of other flavoring in  
88 quantities and proportions such that the resulting product  
89 possesses a character and flavor distinctive from the base malt  
90 beverage and distinguishable from other malt beverages.

91 (2) A licensed wholesaler or distributor of beer or light  
92 wine may not import beer or light wine from any source other than  
93 a brewer or importer authorized by the commissioner to sell such  
94 beer or light wine in Mississippi. Any person who violates the  
95 provisions of this subsection, upon conviction thereof, shall be  
96 punished by a fine of not more than One Thousand Dollars  
97 (\$1,000.00) or by imprisonment in the county jail for not more  
98 than six (6) months, or by both such fine and imprisonment, in the  
99 discretion of the court and shall be subject to license forfeiture  
100 following an appropriate hearing before the State Tax Commission.

101 (3) The wholesaler or distributor shall be allowed credit  
102 for tax paid on beer or light wine which is no longer marketable  
103 and which is destroyed by same when such destruction is witnessed

104 by an agent of the commissioner and when the amount of the excise  
105 tax exceeds One Hundred Dollars (\$100.00). No other loss will be  
106 allowed.

107 A brewpub shall be allowed credit for light wine or beer  
108 which has passed through the meter, gauge glass or other approved  
109 measuring device and which has been soured or damaged. The  
110 brewpub shall record the removal of sour or damaged light wine or  
111 beer and may take credit after the destruction is witnessed by an  
112 agent of the commissioner and when the amount of excise tax  
113 exceeds Twenty-five Dollars (\$25.00). No other loss shall be  
114 allowed.

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

120 (5) All administrative provisions of the Mississippi Sales  
121 Tax Law, including those which fix damages, penalties and interest  
122 for nonpayment of taxes and for noncompliance with the provisions  
123 of such chapter, and all other requirements and duties imposed  
124 upon taxpayers, shall apply to all persons liable for taxes under  
125 the provisions of this chapter, and the commissioner shall  
126 exercise all the power and authority and perform all the duties  
127 with respect to taxpayers under this chapter as are provided in  
128 the sales tax law except where there is conflict, then the  
129 provisions of this chapter shall control.

130 \* \* \*

131 SECTION 3. Section 27-71-313, Mississippi Code of 1972, is  
132 amended as follows:[WAN3]

133 \* \* \*

134 27-71-313. If any person shall willfully evade the payment  
135 of any tax levied or imposed under this article, he shall be  
136 guilty of a felony, and, upon conviction, shall be punished by a

137 fine of not more than One Thousand Dollars (\$1,000.00) or by  
138 imprisonment in the State Penitentiary for not less than one (1)  
139 year, nor more than ten (10) years, or by both such fine and  
140 imprisonment.

141 \* \* \*

142 SECTION 4. Section 27-71-331, Mississippi Code of 1972, is  
143 amended as follows:[WAN4]

144 \* \* \*

145 27-71-331. If any wholesaler, distributor or brewpub,  
146 subject to the provisions of this article, shall fail to pay any  
147 tax due under the provisions of this article, within the time, and  
148 in the manner, herein provided, the commissioner is authorized to  
149 assess, and collect, such tax, together with interest thereon from  
150 the date such tax became due at the rate of one percent (1%) per  
151 month, and in addition to the amount of the tax due and the  
152 interest accrued thereon, the commissioner may, in his discretion,  
153 assess and collect, from such delinquent taxpayer, a penalty equal  
154 to the amount of the tax found to be due.

155 \* \* \*

156 SECTION 5. Section 27-71-333, Mississippi Code of 1972, is  
157 amended as follows:[WAN5]

158 \* \* \*

159 27-71-333. Whenever it shall be determined by the  
160 commissioner that any wholesaler or distributor having in his  
161 possession, or engaging in the sale or distribution of light wines  
162 or beer, has failed to pay the tax, as provided herein, the  
163 commissioner shall compute the correct amount of tax due and  
164 unpaid and shall notify the taxpayer of the amount as being  
165 actually due and unpaid, and penalties, and interest and shall  
166 state in what manner this article is violated. The taxpayer so  
167 notified shall be given a period of ten (10) days in which to make  
168 objection and show cause why the additional tax, and penalties,  
169 and interest, should not be paid. On petition of the taxpayer, a

170 hearing before the commissioner shall be granted, a final decision  
171 thereon shall be rendered, and the taxpayer notified as early as  
172 practicable. Any tax or deficiency in tax shall be assessed and  
173 paid, together with penalties and interest, if any, applicable  
174 thereto, within ten (10) days after notice and demand by the  
175 commissioner.

176 If no objection be made to the finding of the commissioner,  
177 and no hearing be had before the commissioner within the time  
178 herein specified, the findings of the commissioner shall be final.  
179 If a hearing be had, and the amount of tax due and unpaid be  
180 determined, notice of the amount of such tax, penalties and  
181 interest shall be mailed to the taxpayer, and, if not paid within  
182 ten (10) days thereafter, the commissioner shall forthwith issue a  
183 warrant under official seal directed to the sheriff of any county  
184 of the state commanding him to levy upon and sell the real and  
185 personal property of the person owing the tax, found within his  
186 county, for the payment of the amount thereof, with added damages,  
187 interest and cost of executing the warrant, and to return such  
188 warrant to the commissioner and pay to him money collected by  
189 virtue thereof by a time to be therein specified not more than  
190 sixty (60) days from the date of the warrant. The sheriff shall,  
191 within five (5) days after the receipt of the warrant, file with  
192 the circuit clerk of his county a copy thereof, and thereupon the  
193 circuit clerk shall enter in the judgment roll, in the column for  
194 judgment debtors, the name of the taxpayer mentioned in the  
195 warrant, and in appropriate columns, the amount of the tax, or  
196 portion thereof and damages for which the warrant is issued, and  
197 the date when such copy is filed; and thereupon the amount of such  
198 warrant or warrants so docketed shall become a lien upon the title  
199 to and interest in the real and personal property, including  
200 choses in action, of the person against whom it is issued in the  
201 same manner as a judgment duly enrolled in the office of such  
202 clerk. The sheriff thereupon shall proceed upon the same in all

203 respects, with like effect, and in the same manner prescribed by  
204 law in respect to executions issued against property upon judgment  
205 or attachment proceedings of a court of record; and he shall be  
206 entitled to the same fee for his service in executing the warrant  
207 as now allowed by law for like service, to be collected in the  
208 same manner as provided by law for like service.

209 \* \* \*

210 SECTION 6. Section 27-71-335, Mississippi Code of 1972, is  
211 amended as follows:[WAN6]

212 \* \* \*

213 27-71-335. Any beer found at any point within this state  
214 which has been in the possession of any wholesaler or distributor  
215 for a period of more than forty-eight (48) hours and any light  
216 wines or beer transported into this state from a point outside  
217 this state, or from point to point within this state in violation  
218 of the provisions of this article, or any light wines or beer held  
219 or possessed by any person within this state on which the legal  
220 and proper tax has not been paid when due, whether such person be  
221 a wholesaler, retailer or distributor, or individual, and whether  
222 such beer be for sale or storage or individual use, except beer in  
223 possession of a licensed wholesaler or distributor for a period of  
224 time less than forty-eight (48) hours after receipt of same within  
225 this state, and light wines or beer held in storage by licensed  
226 manufacturers or producers, are hereby declared to be contraband  
227 goods, and there is hereby imposed and assessed, as tax and  
228 penalty, to be collected by the commissioner, an amount equal to  
229 the amount of the excise tax otherwise imposed under the  
230 Mississippi Wine and Beer Tax Law, plus a penalty of one hundred  
231 percent (100%) of the amount of such tax; or, at the option of the  
232 commissioner, the same may be seized by the commissioner or his  
233 agents or any sheriff, or other lawful officer, and shall be dealt  
234 with in the following manner, to wit:

235 Such officer seizing said light wines or beer shall

236 immediately make complaint under oath before the proper justice  
237 court judge, stating the facts connected with said seizure by him,  
238 giving the name or names of the person or persons found in  
239 possession or control of such light wines or beer, and giving the  
240 name of the owner of such light wines or beer, if the same be  
241 known to him, whereupon the said justice court judge shall summon  
242 into his court all interested parties, and may issue a writ of  
243 seizure, if said property or any part of it is not in the  
244 possession of the officer seizing same, for the seizure of said  
245 light wines or beer and the summoning of the interested parties  
246 into court, as in proceedings for the enforcement of purchase  
247 money security interests in the property. If any person claims  
248 that the light wines or beer were unlawfully seized or that the  
249 tax thereon had been paid prior to such seizure, he may file his  
250 claim therefor under oath, stating in detail why said light wines  
251 or beer or any of it so seized should not be confiscated, and said  
252 affidavit shall state the market value of the property so claimed  
253 by him, which amount as so fixed shall determine the jurisdiction  
254 of the court as to the amount involved or the value of the  
255 property.

256         If the affidavit fixes the value of the property at Two  
257 Hundred Dollars (\$200.00) or less, the said justice court judge  
258 shall finally dispose of the issue in the case joined under his  
259 direction, but if the affidavit fixes the value of the property at  
260 more than Two Hundred Dollars (\$200.00), the justice court judge  
261 before whom the case is returnable shall forthwith present said  
262 case to the circuit court of the county or county court having  
263 jurisdiction to try the case, where the issue shall, under the  
264 direction of the circuit court, or county court, be joined between  
265 the State of Mississippi and the said claimant, and the case there  
266 tried as in other cases. If no claim be interposed by any party  
267 in interest on or before the return day of the summons and writ of  
268 seizure, the justice court judge on the return day shall hear the



269 cause, and dispose of the property, and may order such light wines  
270 or beer to be destroyed. In the event the property is claimed by  
271 any party in interest and issue joined in any court having  
272 jurisdiction of the case, such court trying the case shall have  
273 the rights of the state and the claimant determined in a trial  
274 according to the rules of procedure for such court, and if it be  
275 determined that any property involved in said trial was kept or  
276 possessed in violation of any provisions of this article or that  
277 any tax due thereon had not been paid prior to the seizure of such  
278 property, it shall be ordered destroyed. Any person so owning or  
279 possessing such light wines or beer shall be guilty of misdemeanor  
280 and, upon conviction thereof, shall be fined not more than One  
281 Thousand Dollars (\$1,000.00), or be sentenced to serve a period in  
282 the county jail of not more than six (6) months, or both in the  
283 discretion of the court. But in all such trials and proceedings  
284 as provided for in this section the claimant may, before he shall  
285 file his claim, be required to execute a solvent bond in  
286 sufficient amount to cover all costs that may likely accrue,  
287 conditioned that he will pay all costs of the case that may be  
288 adjudged against him, and in the event the claimant fails to  
289 establish his claim or any part of it to said property, it may be  
290 taxed for all, or any part of the costs of the case, and judgment  
291 shall go against his sureties for all costs adjudged against him.

292 \* \* \*

293 SECTION 7. Section 27-71-347, Mississippi Code of 1972, is  
294 amended as follows:[WAN7]

295 \* \* \*

296 27-71-347. Except as otherwise provided in this article, any  
297 person who violates any provision of this article, or any rule or  
298 regulation promulgated by the commissioner under authority of this  
299 article, shall be guilty of a misdemeanor, and, upon conviction  
300 thereof, shall be punished by a fine of not more than Five Hundred  
301 Dollars (\$500.00), or by imprisonment in the county jail for not

302 more than six (6) months, or by both such fine and imprisonment,  
303 in the discretion of the court. Any person convicted of violating  
304 any of the provisions of this article, or any rules or regulations  
305 promulgated by the commissioner under authority of this article,  
306 shall forfeit his permit, and shall not thereafter be permitted to  
307 engage in any business taxable under the provisions of this  
308 article.

309 \* \* \*

310 SECTION 8. Section 27-71-505, Mississippi Code of 1972, is  
311 amended as follows:[WAN8]

312 \* \* \*

313 27-71-505. The commissioner may revoke any or all permits  
314 issued by him to sell beer or wine manufactured by any person who  
315 shall fail or refuse to furnish the information required by  
316 Section 27-71-501 of this article, and he may revoke the permit of  
317 any person who shall fail or refuse to furnish the information  
318 required by Section 27-71-503 of this article, and said revocation  
319 may apply to any or all brands of such beverages, if the  
320 manufacturer or holder of the permit shall fail or refuse to  
321 comply with the rules and regulations promulgated by him.

322 \* \* \*

323 SECTION 9. Section 67-3-15, Mississippi Code of 1972, is  
324 amended as follows:[WAN9]

325 \* \* \*

326 67-3-15. Any person who shall brew or manufacture or sell  
327 any beer or light wine without first having secured a permit  
328 and/or license from the commissioner authorizing the brewing or  
329 manufacture or sale of such liquor, shall be guilty of a  
330 misdemeanor and, upon conviction thereof, be punished by a fine of  
331 not more than One Thousand Dollars (\$1,000.00) or imprisonment in  
332 the county jail for not more than one (1) year, or both, in the  
333 discretion of the court. Any person so convicted may not apply  
334 for any permit or license issued by the commissioner until five

335 (5) years have elapsed from the date of such conviction.

336 \* \* \*

337 SECTION 10. Section 67-3-57, Mississippi Code of 1972, is  
338 amended as follows:[WAN10]

339 \* \* \*

340 67-3-57. It shall be unlawful for any retailer to possess,  
341 sell or offer to sell, or to possess for purpose of sale, any  
342 light wine or beer at his place of business before securing a  
343 permit required by this chapter.

344 It shall be unlawful for any person to possess, sell or offer  
345 to sell any light wine or beer at his place of business after  
346 revocation of his permit or to purchase, to sell or offer to sell  
347 any light wine or beer during the period of suspension of his  
348 permit.

349 \* \* \*

350 SECTION 11. Section 67-3-69, Mississippi Code of 1972, is  
351 amended as follows:[WAN11]

352 \* \* \*

353 67-3-69. (1) Except as to Sections 67-3-17, 67-3-23,  
354 67-3-27, 67-3-55 and 67-3-57, any violation of any provision of  
355 this chapter or of any rule or regulation of the commissioner,  
356 shall be a misdemeanor and, where the punishment therefor is not  
357 elsewhere prescribed herein, shall be punished by a fine of not  
358 more than Five Hundred Dollars (\$500.00) or imprisonment for not  
359 more than six (6) months, or both, in the discretion of the court.

360 If any person so convicted shall be the holder of any permit or  
361 license issued by the commissioner under authority of this  
362 chapter, such permit or license shall from and after the date of  
363 such conviction be void and the holder thereof shall not  
364 thereafter, for a period of one (1) year from the date of such  
365 conviction, be entitled to any permit or license for any purpose  
366 authorized by this chapter. Upon conviction of the holder of any  
367 permit or license, the appropriate law enforcement officer shall

368 seize the permit or license and transmit it to the commissioner.

369 (2) (a) Any person who shall violate any provision of  
370 Section 67-3-17, 67-3-23, 67-3-27 or 67-3-55 shall be guilty of a  
371 misdemeanor, and upon conviction thereof shall be punished by a  
372 fine of not more than Five Hundred Dollars (\$500.00) or by  
373 imprisonment in the county jail for not more than six (6) months,  
374 or by both such fine and imprisonment, in the discretion of the  
375 court.

376 (b) Any person who shall violate any provision of  
377 Section 67-3-57 shall be guilty of a misdemeanor, and upon  
378 conviction thereof, shall be punished by a fine of not more than  
379 One Thousand Dollars (\$1,000.00) or by imprisonment in the county  
380 jail for not more than one (1) year, or by both, in the discretion  
381 of the court. Any person convicted of violating any provision of  
382 the sections referred to in this subsection shall forfeit his  
383 permit, and shall not thereafter be permitted to engage in any  
384 business taxable under the provisions of Sections 27-71-301  
385 through 27-71-347.

386 (3) If the holder of a permit, or the employee of the holder  
387 of a permit, shall be convicted of selling any beer or wine to any  
388 person under the age of twenty-one (21) years from the licensed  
389 premises in violation of Section 67-3-53(b), then, in addition to  
390 any other penalty provided for by law, the holder of the permit  
391 may be punished as follows:

392 (a) For the first offense on the licensed premises, the  
393 holder of the permit may be fined in an amount not to exceed Five  
394 Hundred Dollars (\$500.00) and/or the sale of beer or wine on the  
395 premises from which the sale occurred may be prohibited for three  
396 (3) months.

397 (b) For a second offense occurring on the licensed  
398 premises within twelve (12) months of the first offense, the  
399 holder of the permit may be fined in an amount not to exceed One  
400 Thousand Dollars (\$1,000.00) and/or the sale of beer or wine on

401 the premises from which the sale occurred may be prohibited for  
402 six (6) months.

403 (c) For a third or subsequent offense occurring on the  
404 licensed premises within twelve (12) months of the first, the  
405 holder of the permit may be fined in an amount not to exceed Five  
406 Thousand Dollars (\$5,000.00) and/or the sale of beer or wine on  
407 the premises from which the sale occurred may be prohibited for  
408 one (1) year.

409 (4) A person who sells any beer or wine to a person under  
410 the age of twenty-one (21) years shall not be guilty of a  
411 violation of Section 67-3-53(b) if the person under the age of  
412 twenty-one (21) years represents himself to be twenty-one (21)  
413 years of age or older by displaying an apparently valid  
414 Mississippi driver's license containing a physical description  
415 consistent with his appearance or by displaying some other  
416 apparently valid identification document containing a picture and  
417 physical description consistent with his appearance for the  
418 purpose of inducing the person to sell beer or wine to him.

419 (5) If the holder of a permit to operate a brewpub is  
420 convicted of violating the provisions of Section 67-3-22(3), then,  
421 in addition to any other provision provided for by law, the holder  
422 of the permit shall be punished as follows:

423 (a) For the first offense, the holder of a permit to  
424 operate a brewpub may be fined in an amount not to exceed Five  
425 Hundred Dollars (\$500.00).

426 (b) For a second offense occurring within twelve (12)  
427 months of the first offense, the holder of a permit to operate a  
428 brewpub may be fined an amount not to exceed One Thousand Dollars  
429 (\$1,000.00).

430 (c) For a third or subsequent offense occurring within  
431 twelve (12) months of the first offense, the holder of a permit to  
432 operate a brewpub may be fined an amount not to exceed Five  
433 Thousand Dollars (\$5,000.00) and the permit to operate a brewpub

434 shall be suspended for thirty (30) days.

435 \* \* \*

436 SECTION 12. Section 67-3-48, Mississippi Code of 1972,  
437 which, from and after July 1, 2000, requires the Chairman of the  
438 State Tax Commission to provide suitable markings of  
439 identification for the purpose of taxation of beer and requires  
440 such markings to be used by vendors, is repealed.

441 SECTION 13. This act shall take effect and be in force from  
442 and after its passage.