

By: Minor

To: Finance

SENATE BILL NO. 2700
(As Passed the Senate)

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.