

By: Gordon

To: Finance

SENATE BILL NO. 2977

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) \* \* \* "Alcoholic beverage" means 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) \* \* \* "Alcohol" means the product of distillation  
19 of any fermented liquid, whatever the origin thereof, and includes  
20 synthetic ethyl alcohol, but does not include denatured alcohol or  
21 wood alcohol.

22 (c) \* \* \* "Distilled spirits" means 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) \* \* \* "Wine" or "vinous liquor" means any product

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

30 (e) \* \* \* "Person" means and includes any individual,  
31 partnership, corporation, association or other legal entity  
32 whatsoever.

33 (f) \* \* \* "Manufacturer" means any person engaged in  
34 manufacturing, distilling, rectifying, blending or bottling any  
35 alcoholic beverage.

36 (g) \* \* \* "Wholesaler" means any person, other than a  
37 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) \* \* \* "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) \* \* \* "Commission" means the State Tax Commission  
45 of the State of Mississippi, which shall create a division in its  
46 organization to be known as the Alcoholic Beverage Control  
47 Division. Any reference to the commission hereafter means the  
48 powers and duties of the State Tax Commission with reference to  
49 supervision of the Alcoholic Beverage Control Division.

50 (j) \* \* \* "Division" means the Alcoholic Beverage  
51 Control Division of the State Tax Commission.

52 (k) \* \* \* "Municipality" means any incorporated city or  
53 town of this state.

54 (l) \* \* \* "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) \* \* \* "Restaurant" means a place which is regularly  
71 and in a bona fide manner used and kept open for the serving of  
72 meals to guests for compensation, which has suitable seating  
73 facilities for guests, and which has suitable kitchen facilities  
74 connected therewith for cooking an assortment of foods and meals  
75 commonly ordered at various hours of the day \* \* \*. No place  
76 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) \* \* \* "Club" means an association or a corporation:

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

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

88 (iii) Maintained by its members through the  
89 payment of annual dues;

90 (iv) Owning, hiring or leasing a building or space  
91 in a building of such extent and character as may be suitable and  
92 adequate for the reasonable and comfortable use and accommodation

93 of its members and their guests;

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

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

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

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

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

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

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

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

159 otherwise accrue thereon.

160           (q) \* \* \* "Native winery" \* \* \* means any place or  
161 establishment within the State of Mississippi where native wine is  
162 produced in whole or in part for sale.

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

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