

By: Gordon

To: Finance

SENATE BILL NO. 2977
(As Passed the Senate)

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 TO INCLUDE CLUBHOUSES ASSOCIATED WITH
4 GATED GOLF COMMUNITIES IN THE DEFINITION OF THE TERM "QUALIFIED
5 RESORT AREA"; TO AMEND SECTION 67-1-7, MISSISSIPPI CODE OF 1972,
6 TO AUTHORIZE THE SALE OF ALCOHOLIC BEVERAGES AT SUCH CLUBHOUSES
7 REGARDLESS OF WHETHER THE COUNTY IN WHICH THE CLUBHOUSE IS LOCATED
8 HAS VOTED IN FAVOR OF COMING OUT FROM UNDER THE DRY LAW; TO AMEND
9 SECTIONS 67-3-7 AND 67-3-13, MISSISSIPPI CODE OF 1972, TO
10 AUTHORIZE THE SALE OF LIGHT WINE OR BEER AT QUALIFIED RESORT AREAS
11 IN COUNTIES IN WHICH THE SALE OF LIGHT WINE OR BEER IS OTHERWISE
12 PROHIBITED; AND FOR RELATED PURPOSES.

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

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

16 67-1-5. For the purposes of this chapter and unless
17 otherwise required by the context:

18 (a) * * * "Alcoholic beverage" means any alcoholic
19 liquid, including wines of more than five percent (5%) of alcohol
20 by weight, capable of being consumed as a beverage by a human
21 being, but shall not include wine containing five percent (5%) or
22 less of alcohol by weight and shall not include beer containing
23 not more than five percent (5%) of alcohol by weight, as provided
24 for in Section 67-3-5, Mississippi Code of 1972, but shall include
25 native wines. The words "alcoholic beverage" shall not include
26 ethyl alcohol manufactured or distilled solely for fuel purposes.

27 (b) * * * "Alcohol" means the product of distillation
28 of any fermented liquid, whatever the origin thereof, and includes
29 synthetic ethyl alcohol, but does not include denatured alcohol or
30 wood alcohol.

31 (c) * * * "Distilled spirits" means any beverage

32 containing more than four percent (4%) of alcohol by weight
33 produced by distillation of fermented grain, starch, molasses or
34 sugar, including dilutions and mixtures of these beverages.

35 (d) * * * "Wine" or "vinous liquor" means any product
36 obtained from the alcoholic fermentation of the juice of sound,
37 ripe grapes, fruits or berries and made in accordance with the
38 revenue laws of the United States.

39 (e) * * * "Person" means and includes any individual,
40 partnership, corporation, association or other legal entity
41 whatsoever.

42 (f) * * * "Manufacturer" means any person engaged in
43 manufacturing, distilling, rectifying, blending or bottling any
44 alcoholic beverage.

45 (g) * * * "Wholesaler" means any person, other than a
46 manufacturer, engaged in distributing or selling any alcoholic
47 beverage at wholesale for delivery within or without this state
48 when such sale is for the purpose of resale by the purchaser.

49 (h) * * * "Retailer" means any person who sells,
50 distributes, or offers for sale or distribution, any alcoholic
51 beverage for use or consumption by the purchaser and not for
52 resale.

53 (i) * * * "Commission" means the State Tax Commission
54 of the State of Mississippi, which shall create a division in its
55 organization to be known as the Alcoholic Beverage Control
56 Division. Any reference to the commission hereafter means the
57 powers and duties of the State Tax Commission with reference to
58 supervision of the Alcoholic Beverage Control Division.

59 (j) * * * "Division" means the Alcoholic Beverage
60 Control Division of the State Tax Commission.

61 (k) * * * "Municipality" means any incorporated city or
62 town of this state.

63 (l) * * * "Hotel" means an establishment within a
64 municipality, or within a qualified resort area approved as such

65 by the commission, where, in consideration of payment, food and
66 lodging are habitually furnished to travelers and wherein are
67 located at least twenty (20) adequately furnished and completely
68 separate sleeping rooms with adequate facilities that persons
69 usually apply for and receive as overnight accommodations. Hotels
70 in towns or cities of more than twenty-five thousand (25,000)
71 population are similarly defined except that they must have fifty
72 (50) or more sleeping rooms. Any such establishment described in
73 this paragraph with less than fifty (50) beds shall operate one or
74 more regular dining rooms designed to be constantly frequented by
75 customers each day. When used in this chapter, the word "hotel"
76 shall also be construed to include any establishment that meets
77 the definition of "bed and breakfast inn" as provided in this
78 section.

79 (m) * * * "Restaurant" means a place which is regularly
80 and in a bona fide manner used and kept open for the serving of
81 meals to guests for compensation, which has suitable seating
82 facilities for guests, and which has suitable kitchen facilities
83 connected therewith for cooking an assortment of foods and meals
84 commonly ordered at various hours of the day * * *. No place
85 shall qualify as a restaurant under this chapter unless
86 twenty-five percent (25%) or more of the revenue derived from such
87 place shall be from the preparation, cooking and serving of meals
88 and not from the sale of beverages, or unless the value of food
89 given to and consumed by customers is equal to twenty-five percent
90 (25%) or more of total revenue.

91 (n) * * * "Club" means an association or a corporation:

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

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

97 (iii) Maintained by its members through the

98 payment of annual dues;

99 (iv) Owning, hiring or leasing a building or space
100 in a building of such extent and character as may be suitable and
101 adequate for the reasonable and comfortable use and accommodation
102 of its members and their guests;

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

107 (vi) No member, officer, agent or employee of
108 which is paid, or directly or indirectly receives, in the form of
109 a salary or other compensation any profit from the distribution or
110 sale of alcoholic beverages to the club or to members or guests of
111 the club beyond such salary or compensation as may be fixed and
112 voted at a proper meeting by the board of directors or other
113 governing body out of the general revenues of the club.

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

125 (o) * * * "Qualified resort area" means any area or
126 locality outside of the limits of incorporated municipalities in
127 this state commonly known and accepted as a place which regularly
128 and customarily attracts tourists, vacationists and other
129 transients because of its historical, scenic or recreational
130 facilities or attractions, or because of other attributes which

131 regularly and customarily appeal to and attract tourists,
132 vacationists and other transients in substantial numbers; however,
133 no area or locality shall so qualify as a resort area until it has
134 been duly and properly approved as such by the commission.

135 (i) The commission may approve an area or locality
136 outside of the limits of an incorporated municipality that is in
137 the process of being developed as a qualified resort area if such
138 area or locality, when developed, can reasonably be expected to
139 meet the requisites of the definition of the term "qualified
140 resort area." In such a case, the status of qualified resort area
141 shall not take effect until completion of the development.

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

150 (iii) The term includes the clubhouses associated
151 with the state park golf courses at the Lefleur's Bluff State
152 Park, the John Kyle State Park, the Percy Quin State Park and the
153 Hugh White State Park and the clubhouses associated with any gated
154 golf community. The status of these clubhouses as qualified
155 resort areas does not require any declaration of same by the
156 commission.

157 (p) * * * "Native wine" * * * means any product,
158 produced in Mississippi for sale, having an alcohol content not to
159 exceed twenty-one percent (21%) by weight and made in accordance
160 with revenue laws of the United States, which shall be obtained
161 primarily from the alcoholic fermentation of the juice of ripe
162 grapes, fruits, berries or vegetables grown and produced in
163 Mississippi; provided that bulk, concentrated or fortified wines

164 used for blending may be produced without this state and used in
165 producing native wines. The commission shall adopt and promulgate
166 rules and regulations to permit a producer to import such bulk
167 and/or fortified wines into this state for use in blending with
168 native wines without payment of any excise tax that would
169 otherwise accrue thereon.

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

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

187 SECTION 2. Section 67-1-7, Mississippi Code of 1972, is
188 amended as follows:[WAN1]

189 67-1-7. (1) Except as otherwise provided in 67-9-1 for the
190 transportation and possession of limited amounts of alcoholic
191 beverages for the use of an alcohol processing permittee, and
192 subject to all of the provisions and restrictions contained in
193 this chapter, the manufacture, sale, distribution, possession and
194 transportation of alcoholic beverages shall be lawful, subject to
195 the restrictions hereinafter imposed, in those counties and
196 municipalities of this state in which, at a local option election

197 called and held for that purpose under the provisions of this
198 chapter, a majority of the qualified electors voting in such
199 election shall vote in favor thereof. The manufacture, sale and
200 distribution of alcoholic beverages shall not be permissible or
201 lawful in counties except in (a) incorporated municipalities
202 located within such counties, (b) qualified resort areas within
203 such counties approved as such by the State Tax Commission, or (c)
204 clubs within such counties, whether within a municipality or not.

205 The manufacture, sale, distribution and possession of native
206 wines shall be lawful in any location within any such county
207 except those locations where the manufacture, sale or distribution
208 is prohibited by law other than this section or by regulations of
209 the commission.

210 (2) Notwithstanding the foregoing, within any state park or
211 any state park facility which has been declared a qualified resort
212 area by the commission and any clubhouse that is a qualified
213 resort area under Section 67-1-5(o)(iii), an on-premises
214 retailer's permittee may lawfully sell alcoholic beverages for
215 consumption on his licensed premises regardless of whether or not
216 the county or municipality in which the park or clubhouse is
217 located has voted in favor of coming out from under the dry law.

218 SECTION 3. Section 67-3-7, Mississippi Code of 1972, is
219 amended as follows:[WAN2]

220 67-3-7. (1) If any county, at an election held for the
221 purpose under the election laws of the state, shall by a majority
222 vote of the duly qualified electors voting in the election
223 determine that the transportation, storage, sale, distribution,
224 receipt and/or manufacture of wine and beer of an alcoholic
225 content of not more than five percent (5%) by weight shall not be
226 permitted in such county, then the same shall not be permitted
227 therein except as authorized under Section 67-9-1 and as may be
228 otherwise authorized in this section. An election to determine
229 whether such transportation, storage, sale, distribution, receipt

230 and/or manufacture of such beverages shall be excluded from any
231 county in the state, shall on a petition of twenty percent (20%)
232 of the duly qualified electors of such county, be ordered by the
233 board of supervisors thereof, for such county only. No election
234 on the question shall be held in any one (1) county more often
235 than once in five (5) years.

236 In counties which have elected, or may elect by a majority
237 vote of the duly qualified electors voting in the election, that
238 the transportation, storage, sale, distribution, receipt and/or
239 manufacture of wine or beer of an alcoholic content of not more
240 than five percent (5%) by weight shall not be permitted in said
241 county, an election may be held in the same manner as the election
242 hereinabove provided on the question of whether or not said
243 transportation, storage, sale, distribution, receipt and/or
244 manufacture of said beverages shall be permitted in such county.
245 Such election shall be ordered by the board of supervisors of such
246 county on a petition of twenty percent (20%) of the duly qualified
247 electors of such county. No election on this question can be
248 ordered more often than once in five (5) years.

249 (2) Nothing in this section shall make it unlawful to
250 possess beer or wine, as defined herein, in any municipality which
251 has heretofore or which may hereafter vote in an election,
252 pursuant to Section 67-3-9, in which a majority of the qualified
253 electors vote in favor of permitting the sale and the receipt,
254 storage and transportation for the purpose of sale of beer or wine
255 as defined herein.

256 (3) Nothing in this section shall make it unlawful to:

257 (a) Possess light wine or beer at a qualified resort
258 area as defined in Section 67-1-5;

259 (b) Transport light wine or beer to a qualified resort
260 area as defined in Section 67-1-5;

261 (c) Sell light wine or beer at a qualified resort area
262 as defined in Section 67-1-5 if such light wine or beer is sold by

263 a person with a permit to engage in the business or as a retailer
264 of light wine or beer.

265 SECTION 4. Section 67-3-13, Mississippi Code of 1972, is
266 amended as follows:[WAN3]

267 67-3-13. (1) Except as otherwise provided herein and as
268 authorized under * * * this section and Section 67-9-1, in any
269 county which has at any time since February 26, 1934, elected, or
270 which may hereafter elect, to prohibit the transportation,
271 storage, sale, distribution, receipt and/or manufacture of wine
272 and beer of an alcoholic content of not more than four percent
273 (4%) by weight in such county, it is hereby declared to be
274 unlawful to possess such beverages therein. In any county which,
275 after July 1, 1998, elects to prohibit the transportation,
276 storage, sale, distribution, receipt and/or manufacture of wine
277 and beer of an alcoholic content of not more than five percent
278 (5%) by weight in such county, it is hereby declared to be
279 unlawful to possess such beer therein. Any person found
280 possessing any beer or wine of any quantity whatsoever in such
281 county shall, on conviction, be imprisoned not more than ninety
282 (90) days or fined not more than Five Hundred Dollars (\$500.00),
283 or be both so fined and imprisoned.

284 (2) Notwithstanding the provisions of subsection (1) of this
285 section, in any county or municipality in which the
286 transportation, storage, sale, distribution, receipt and/or
287 manufacture of light wine and beer is prohibited, it shall not be
288 unlawful for a permitted wholesaler or distributor to possess
289 light wine and beer when such light wine and beer is held therein
290 solely for the purpose of storage and for distribution to other
291 counties and municipalities in which possession of such beverages
292 is lawful.

293 (3) Notwithstanding the provisions of subsections (1) and
294 (2) of this section, in any county in which transportation,
295 storage, sale, distribution, receipt and/or manufacture of light

296 wine and beer is prohibited, it shall not be unlawful:

297 (a) To posses light wine or beer at a resort area as
298 defined in Section 67-1-5;

299 (b) To distribute and transport light wine or beer to a
300 resort area as defined in Section 67-1-5.

301 SECTION 5. This act shall take effect and be in force from
302 and after July 1, 2000.