

By: Minor

To: Finance

SENATE BILL NO. 2978
(As Passed the Senate)

1 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A RESPONSIBLE
2 ALCOHOL VENDOR PROGRAM DESIGNED TO ELIMINATE THE SALE OF ALCOHOLIC
3 BEVERAGES, BEER AND LIGHT WINE TO UNDERAGE PERSONS AND TO
4 ENCOURAGE THE RESPONSIBLE SALE OF ALCOHOLIC BEVERAGES, BEER AND
5 LIGHT WINE; TO PROVIDE THAT THE STATE TAX COMMISSION SHALL OVERSEE
6 THE PROGRAM; TO PROVIDE THAT THE COMMISSION SHALL APPROVE ALL
7 SERVER TRAINING COURSES AND ISSUE PERMITS TO APPROVED PROVIDERS;
8 TO PROVIDE THAT APPROVED PROVIDERS SHALL ISSUE SERVER CERTIFICATES
9 TO SERVERS UPON SUCCESSFUL COMPLETION OF A SERVER TRAINING COURSE;
10 TO PROVIDE THAT IF A VENDOR'S EMPLOYEE SELLS ALCOHOLIC BEVERAGES,
11 BEER OR LIGHT WINE TO UNDERAGE OR VISIBLY INTOXICATED PERSONS THE
12 VENDORS PERMIT SHALL NOT BE SUSPENDED OR REVOKED BY THE COMMISSION
13 FOR THE FIRST OFFENSE COMMITTED ON THE PERMITTED PREMISES WITHIN A
14 TWELVE-MONTH PERIOD IF ALL SERVERS OF THE VENDOR POSSES A VALID
15 SERVER'S CERTIFICATION AT THE TIME OF THE VIOLATION OR ALL SERVERS
16 HAVE APPLIED FOR SERVER'S CERTIFICATION WITHIN 30 DAYS AFTER
17 COMMENCING EMPLOYMENT, AND THE VENDOR WAS WITHOUT KNOWLEDGE OF THE
18 VIOLATION OR DID NOT PARTICIPATE IN OR COMMIT THE VIOLATION; TO
19 PROVIDE THAT IF THERE ARE SUBSEQUENT VIOLATIONS WITHIN THE
20 TWELVE-MONTH PERIOD, SERVER TRAINING SHALL NOT BE CONSIDERED AS A
21 MITIGATING FACTOR; TO PROVIDE FOR FEES FOR APPROVED PROVIDER
22 PERMITS; TO AMEND SECTIONS 67-1-37, 67-1-71 AND 67-3-29,
23 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
24 PURPOSES.

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

26 SECTION 1. This act shall be known and may be cited as the
27 "Responsible Alcohol Vendor Law" of the State of Mississippi.

28 SECTION 2. The purpose of this section is to eliminate the
29 sale of alcoholic beverages, beer and light wine to, and the
30 consumption of alcoholic beverages, beer, and light wine by
31 underage persons; to reduce intoxication and to reduce accidents,
32 injuries, and death in the state which are related to
33 intoxication; and to encourage the responsible sale of alcoholic
34 beverages, beer and light wine by vendors throughout the state and
35 provide for the mitigation of administrative penalties against
36 vendors who comply with responsible practices in accordance with
37 this act.

38 SECTION 3. As used in this act:

39 (a) "Commission" means the State Tax Commission.

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

42 (c) "Vendor" means any person holding a permit to sell
43 alcoholic beverages, beer or light wine, for on-premises
44 consumption or off-premises consumption.

45 (d) "Server" means any employee of a vendor who is
46 authorized to sell, serve, or mix alcoholic beverages, beer or
47 light wine in the normal course of his or her employment or deals
48 with the customers who purchase or consume alcoholic beverages,
49 beer or light wine.

50 (e) "Server certification" means the certificate issued
51 to a server upon completion of an approved server training course.

52 (f) "Approved provider" means a person approved by the
53 commission to provide server training courses.

54 (g) "Trainer" means an individual employed or
55 authorized by an approved training provider to conduct an alcohol
56 server education course wherein the successful completion of the
57 course by the student will result in the issuance of a server
58 certification.

59 SECTION 4. (1) The commission shall oversee the Responsible
60 Alcohol Vendor Program designed to educate vendors and their
61 employees and customers about selling, serving, and consuming
62 alcoholic beverages, beer and light wine in a responsible manner.

63 The commission shall:

64 (a) Approve server training courses for vendors and
65 servers;

66 (b) Issue and renew approved provider permits.
67 Approved provider permits shall be considered a privilege license
68 and if not expired, suspended or revoked, remain valid within the
69 State of Mississippi.

70 (2) The commission shall approve all server training courses

71 prior to implementation and issue permits to approved providers.
72 The permits for approved providers shall be valid for two (2)
73 years. The commission may promulgate rules and regulations
74 setting forth additional requirements for providers and/or
75 individual trainers.

76 (3) Approved providers shall retain record of all person
77 trained for a period of three (3) years after the date of such
78 training and shall make this information available to the
79 commission upon request or as required by regulation.

80 SECTION 5. Approved providers shall issue server
81 certificates to servers upon successful completion of a server
82 training course offered by an approved provider. Server
83 certificates shall be valid for a period of two (2) years from the
84 date of completion of the training course and shall be issued and
85 renewed by approved providers in accordance with the rules and
86 regulations promulgated by the commission.

87 SECTION 6. The commission may suspend or revoke and approved
88 provider's permit or impose a fine for noncompliance with this act
89 or for any violation of the federal, state or local laws or
90 regulations. The procedure for the suspension, revocation or
91 denial of a permit, or for the imposition of fines, shall be the
92 same as are otherwise set forth in Chapter 1, Title 67,
93 Mississippi Code of 1972, suspension or revocation of alcoholic
94 beverage permits.

95 SECTION 7. (1) If vendor's employee sells alcoholic
96 beverages, beer or light wine to an underage or visibly
97 intoxicated person, the vendor's permit shall not be suspended or
98 revoked by the commission for the first offense committed on the
99 permitted premises within a twelve-month period if:

100 (a) All servers of the vendor possessed a valid
101 server's certification at the time of the violation or all servers
102 had applied for server's certification within thirty (30) days
103 after commencing employment; and

104 (b) The vendor was without knowledge of the violation
105 or did not participate in or commit such violation.

106 (2) If there are subsequent violations at the permitted
107 premises, within a twelve-month period, the commission shall not
108 consider server training in mitigation of a vendor's
109 administrative penalties or fines for the unlawful sale or service
110 of an alcoholic beverage, beer or light wine.

111 (3) The vendor shall have the burden of proof in showing
112 that his or her employees were trained or had applied for training
113 within thirty (30) days of commencing employment.

114 SECTION 8. The commission, may promulgate rules and
115 regulations to effectuate the program in accordance with the
116 Mississippi Administrative Procedures Law, including, but not
117 limited to, rules and regulations related to the development ,
118 establishment, and maintenance of the program. The commission
119 shall effect the formation of an industry advisory council to
120 provide comment on the proposed initial rules and regulations.

121 SECTION 9. The commission may promulgate rules and
122 regulations regarding fees for approved provider permits to be
123 issued under this act. The commission may assess a permit fee not
124 to exceed Five Hundred Dollars (\$500.00) upon any person,
125 organization or entity seeking classification as an approved
126 provider. This permit shall remain valid for a period of two (2)
127 years, unless suspended or revoked by the commission. The
128 commission may renew an approved provider permit upon request and
129 assess a permit renewal fee not to exceed One Hundred Dollars
130 (\$100.00).

131 SECTION 10. Section 67-1-37, Mississippi Code of 1972, is
132 amended as follows:

133 67-1-37. The State Tax Commission, under its duties and
134 powers with respect to the Alcoholic Beverage Control Division
135 therein, shall have the following powers, functions and duties:

136 (a) To issue or refuse to issue any permit provided for

137 by this chapter, or to extend the permit or remit in whole or any
138 part of the permit monies when the permit cannot be used due to a
139 natural disaster or Act of God.

140 (b) To revoke, suspend or cancel, for violation of or
141 noncompliance with the provisions of this chapter, or the law
142 governing the production and sale of native wines, or any lawful
143 rules and regulations of the commission issued hereunder, or for
144 other sufficient cause, any permit issued by it under the
145 provisions of this chapter; however, no such permit shall be
146 revoked, suspended or cancelled except after a hearing of which
147 the permit holder shall have been given reasonable notice and an
148 opportunity to be heard. The board shall be authorized to suspend
149 the permit of any permit holder for being out of compliance with
150 an order for support, as defined in Section 93-11-153. The
151 procedure for suspension of a permit for being out of compliance
152 with an order for support, and the procedure for the reissuance or
153 reinstatement of a permit suspended for that purpose, and the
154 payment of any fees for the reissuance or reinstatement of a
155 permit suspended for that purpose, shall be governed by Section
156 93-11-157 or 93-11-163, as the case may be. If there is any
157 conflict between any provision of Section 93-11-157 or 93-11-163
158 and any provision of this chapter, the provisions of Section
159 93-11-157 or 93-11-163, as the case may be, shall control.

160 (c) To prescribe forms of permits and applications for
161 permits and of all reports which it deems necessary in
162 administering this chapter.

163 (d) To fix standards, not in conflict with those
164 prescribed by any law of this state or of the United States, to
165 secure the use of proper ingredients and methods of manufacture of
166 alcoholic beverages.

167 (e) To issue rules regulating the advertising of
168 alcoholic beverages in the state in any class of media and
169 permitting advertising of the retail price of alcoholic beverages.

170 (f) To issue reasonable rules and regulations, not
171 inconsistent with the federal laws or regulations, requiring
172 informative labeling of all alcoholic beverages offered for sale
173 within this state and providing for the standards of fill and
174 shapes of retail containers of alcoholic beverages; however, such
175 containers shall not contain less than fifty (50) milliliters by
176 liquid measure.

177 (g) Subject to the provisions of subsection (3) of
178 Section 67-1-51, to issue rules and regulations governing the
179 issuance of retail permits for premises located near or around
180 schools, colleges, universities, churches and other public
181 institutions, and specifying the distances therefrom within which
182 no such permit shall be issued. The alcoholic beverage control
183 division shall not allow the sale or consumption of alcoholic
184 beverages in or on the campus of any public school or college, and
185 no alcoholic beverage shall be for sale or consumed at any public
186 athletic event at any grammar or high school or any college.

187 (h) To adopt and promulgate, repeal and amend, such
188 rules, regulations, standards, requirements and orders, not
189 inconsistent with this chapter or any law of this state or of the
190 United States, as it deems necessary to control the manufacture,
191 importation, transportation, distribution and sale of alcoholic
192 liquor, whether intended for beverage or nonbeverage use in a
193 manner not inconsistent with the provisions of this chapter or any
194 other statute, including the native wine laws.

195 (i) To call upon other administrative departments of
196 the state, county and municipal governments, county and city
197 police departments and upon prosecuting officers for such
198 information and assistance as it may deem necessary in the
199 performance of its duties.

200 (j) To prepare and submit to the Governor during the
201 month of January of each year a detailed report of its official
202 acts during the preceding fiscal year ending June 30, including

203 such recommendations as it may see fit to make, and to transmit a
204 like report to each member of the Legislature of this state upon
205 the convening thereof at its next regular session.

206 (k) To inspect, or cause to be inspected, any premises
207 where alcoholic liquors intended for sale are manufactured,
208 stored, distributed or sold, and to examine or cause to be
209 examined all books and records pertaining to the business
210 conducted therein.

211 (l) In the conduct of any hearing authorized to be held
212 by the commission, to hear testimony and take proof material for
213 its information in the discharge of its duties under this chapter;
214 to issue subpoenas, which shall be effective in any part of this
215 state, requiring the attendance of witnesses and the production of
216 books and records; to administer or cause to be administered
217 oaths; and to examine or cause to be examined any witness under
218 oath. Any court of record, or any judge thereof, may by order
219 duly entered require the attendance of witnesses and the
220 production of relevant books subpoenaed by the commission, and
221 such court or judge may compel obedience to its or his order by
222 proceedings for contempt.

223 (m) To investigate the administration of laws in
224 relation to alcoholic liquors in this and other states and any
225 foreign countries, and to recommend from time to time to the
226 Governor and through him to the Legislature of this state such
227 amendments to this chapter, if any, as it may think desirable.

228 (n) To designate hours and days when alcoholic
229 beverages may be sold in different localities in the state which
230 permit such sale.

231 (o) To assign employees to posts of duty at locations
232 where they will be most beneficial for the control of alcoholic
233 beverages, to remove, to dismiss, to suspend without pay, to act
234 as a trial board in hearings based upon charges against employees.
235 After twelve (12) months' service, no employee shall be removed,

236 dismissed, demoted or suspended without just cause and only after
237 being furnished with reasons for such removal, dismissal, demotion
238 or suspension, and upon request given a hearing in his own
239 defense.

240 (p) All hearings conducted by the commission shall be
241 open to the public, and, when deemed necessary, a written
242 transcript shall be made of the testimony introduced thereat.

243 (q) To adopt and promulgate rules and regulations for
244 suspension or revocation of identification cards of employees of
245 permittees for violations of the alcoholic beverage control laws,
246 rules or regulations.

247 (r) To adopt and promulgate rules and regulations for
248 Responsible Alcohol Vendor Law.

249 SECTION 11. Section 67-1-71, Mississippi Code of 1972, is
250 amended as follows:

251 67-1-71. The commission may revoke or suspend any permit
252 issued by it for a violation by the permittee of any of the
253 provisions of this chapter or of the regulations promulgated under
254 it by the commission.

255 Permits must be revoked or suspended for the following
256 causes:

257 (a) Conviction of the permittee for the violation of
258 any of the provisions of this chapter;

259 (b) Willful failure or refusal by any permittee to
260 comply with any of the provisions of this chapter or of any rule
261 or regulation adopted pursuant thereto;

262 (c) The making of any materially false statement in any
263 application for a permit;

264 (d) Conviction of one or more of the clerks, agents or
265 employees of the permittee, of any violation of this chapter upon
266 the premises covered by such permit within a period of time as
267 designated by the rules or regulations of the commission;

268 (e) The possession on the premises of any retail

269 permittee of any alcoholic beverages upon which the tax has not
270 been paid;

271 (f) The willful failure of any permittee to keep the
272 records or make the reports required by this chapter, or to allow
273 an inspection of such records by any duly authorized person;

274 (g) The suspension or revocation of a permit issued to
275 the permittee by the federal government, or conviction of
276 violating any federal law relating to alcoholic beverages;

277 (h) The failure to furnish any bond required by this
278 chapter within fifteen (15) days after notice from the commission;
279 and

280 (i) The conducting of any form of illegal gambling on
281 the premises of any permittee or on any premises connected
282 therewith or the presence on any such premises of any gambling
283 device with the knowledge of the permittee.

284 The provisions of item (i) of this section shall not apply to
285 gambling or the presence of any gambling devices, with knowledge
286 of the permittee, on board a cruise vessel in the waters within
287 the State of Mississippi, which lie adjacent to the State of
288 Mississippi south of the three (3) most southern counties in the
289 State of Mississippi, or on any vessel as defined in Section
290 27-109-1 whenever such vessel is on the Mississippi River or
291 navigable waters within any county bordering on the Mississippi
292 River. The commission may, in its discretion, issue on-premises
293 retailer's permits to a common carrier of the nature described in
294 this paragraph.

295 In exercising its authority under this section, the
296 commission shall recognize the defense created for permittees
297 certified under the Responsible Alcohol Vendor Law.

298 No permit shall be revoked except after a hearing by the
299 commission with reasonable notice to the permittee and an
300 opportunity for him to appear and defend.

301 In addition to the causes specified in this section and other

302 provisions of this chapter, the commission shall be authorized to
303 suspend the permit of any permit holder for being out of
304 compliance with an order for support, as defined in Section
305 93-11-153. The procedure for suspension of a permit for being out
306 of compliance with an order for support, and the procedure for the
307 reissuance or reinstatement of a permit suspended for that
308 purpose, and the payment of any fees for the reissuance or
309 reinstatement of a permit suspended for that purpose, shall be
310 governed by Section 93-11-157 or 93-11-163, as the case may be.
311 If there is any conflict between any provision of Section
312 93-11-157 or 93-11-163 and any provision of this chapter, the
313 provisions of Section 93-11-157 or 93-11-163, as the case may be,
314 shall control.

315 SECTION 12. Section 67-3-29, Mississippi Code of 1972, is
316 amended as follows:

317 67-3-29. (1) The commissioner shall revoke any permit
318 granted by authority of this chapter to any person who shall
319 violate any of the provisions of this chapter or the revenue laws
320 of this state relating to engaging in transporting, storing,
321 selling, distributing, possessing, receiving or manufacturing of
322 wines or beers, or any person who shall hereafter be convicted of
323 the unlawful sale of intoxicating liquor, or any person who shall
324 allow or permit any form of illegal gambling or immorality on the
325 premises described in such permit.

326 (2) If any person exercising any privilege taxable under the
327 provisions of Chapter 71 of Title 27, Mississippi Code of 1972,
328 shall willfully neglect or refuse to comply with the provisions of
329 such chapter, or any rules or regulations promulgated by the
330 commissioner under authority of such chapter, or the provisions of
331 this chapter, the commissioner shall be authorized to revoke the
332 permit theretofore issued to such person, after giving to such
333 person ten (10) days notice of the intention of the commissioner
334 to revoke such permit. The commissioner may, however, suspend

335 such permit instead of revoking same if, in his opinion,
336 sufficient cause is shown for a suspension rather than revocation.
337 Any person whose permit shall have been revoked by the
338 commissioner shall be thereafter prohibited from exercising any
339 privilege under the provisions of Chapter 71 of Title 27,
340 Mississippi Code of 1972, for a period of two (2) years from the
341 date of such revocation. The commissioner may, however, for good
342 cause shown, grant a new permit upon such conditions as the
343 commissioner may prescribe. Any person whose permit shall have
344 been suspended by the commissioner shall be prohibited from
345 exercising any privilege under the provisions of Chapter 71 of
346 Title 27, Mississippi Code of 1972, during the period of such
347 suspension. Failure of such person to comply with the terms of
348 the suspension shall be cause for revocation of his permit, in
349 addition to the other penalties provided by law.

350 (3) In addition to the reasons specified in this section and
351 other provisions of this chapter, the commissioner shall be
352 authorized to suspend the permit of any permit holder for being
353 out of compliance with an order for support, as defined in Section
354 93-11-153. The procedure for suspension of a permit for being out
355 of compliance with an order for support, and the procedure for the
356 reissuance or reinstatement of a permit suspended for that
357 purpose, and the payment of any fees for the reissuance or
358 reinstatement of a permit suspended for that purpose, shall be
359 governed by Section 93-11-157 or 93-11-163, as the case may be.
360 If there is any conflict between any provision of Section
361 93-11-157 or 93-11-163 and any provision of this chapter, the
362 provisions of Section 93-11-157 or 93-11-163, as the case may be,
363 shall control.

364 (4) In exercising its authority under this section, the
365 commission shall recognize the defense created for permittees
366 certified under the Responsible Alcohol Vendor Law.

367 SECTION 13. This act shall take effect and be in force from

368 and after July 1, 2000.