

By: Ross, Kirby

To: Finance

SENATE BILL NO. 3078  
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 67-1-14, MISSISSIPPI CODE OF 1972, TO  
2 AUTHORIZE A CERTAIN MUNICIPALITY LOCATED IN A COUNTY WHICH HAS  
3 VOTED AGAINST COMING OUT FROM UNDER THE DRY TO HOLD AN ELECTION TO  
4 VOTE TO COME OUT FROM UNDER THE DRY LAW; TO RESTRICT THE SALE OF  
5 ALCOHOLIC BEVERAGES IN SUCH MUNICIPALITY TO HOTELS AND  
6 RESTAURANTS; TO AUTHORIZE SUCH MUNICIPALITY TO REGULATE THE TYPES  
7 OF ESTABLISHMENTS THAT QUALIFY AS A HOTEL OR A RESTAURANT; TO  
8 AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
9 THERETO; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Section 67-1-14, Mississippi Code of 1972, is  
12 amended as follows:[WAN1]

13 67-1-14. (1) The legalizing provisions of this chapter may  
14 be effective, applicable and operative in any municipality located  
15 in a county which has voted against coming out from under the dry  
16 law if a local option election shall be called and held in such  
17 municipality in the manner and with the results hereinafter  
18 provided.

19 (2) (a) Any municipality in this state (i) having a  
20 population of not less than six thousand (6,000) according to the  
21 latest federal census, all or any portion of which is located  
22 within five (5) miles of the Tennessee-Tombigbee Waterway, or  
23 (ii) having a population of less than three thousand (3,000)  
24 according to the latest federal decennial census, all or any  
25 portion of which is located within one (1) mile of the Jackson  
26 International Airport, and which is located in a county which has  
27 voted against coming out from under the dry law, may, at an  
28 election held for the purpose under the election laws applicable  
29 to such municipality, either prohibit or permit, except as

30 otherwise provided under Section 67-9-1, the sale, and the  
31 receipt, storage and transportation for the purpose of sale, of  
32 alcoholic beverages. An election to determine whether such sale  
33 and possession shall be permitted in municipalities wherein its  
34 sale and possession is prohibited by law shall be ordered by the  
35 municipal governing authorities upon the presentation of a  
36 petition to such governing authorities containing the names of at  
37 least twenty percent (20%) of the duly qualified voters of such  
38 municipality asking for such election. In like manner, an  
39 election to determine whether such sale and possession shall be  
40 prohibited in municipalities wherein its sale is permitted by law  
41 shall be ordered by the municipal governing authorities upon the  
42 presentation of a petition to such governing authorities  
43 containing the names of at least twenty percent (20%) of the duly  
44 qualified voters of such municipality asking for such election.  
45 No election on either question shall be held by any one (1)  
46 municipality more often than once in two (2) years.

47 Thirty (30) days' notice shall be given to the qualified  
48 electors of such municipality, in the manner prescribed by law,  
49 upon the question of either permitting or prohibiting such sale  
50 and possession, such notice to contain a statement of the question  
51 to be voted on at the election. The ballots to be used in the  
52 election shall have the following words printed thereon: "For the  
53 legal sale of alcoholic liquors," and the words "Against the legal  
54 sale of alcoholic liquors" next below. In marking his ballot the  
55 voter shall make a cross (X) opposite the words of his choice.

56 If in the election a majority of the qualified electors  
57 voting in the election shall vote "for the legal sale of alcoholic  
58 liquors," then the municipal governing authorities shall pass the  
59 necessary order permitting the legal sale of such alcoholic  
60 beverages in such municipality. If in the election a majority of  
61 the qualified electors voting in the election shall vote "against  
62 the legal sale of alcoholic liquors," then the municipal governing  
63 authorities shall pass the necessary order prohibiting the sale of  
64 alcoholic beverages in such municipality.

65 (b) The provisions of this subsection shall also apply  
66 to any municipality having a population of not less than six

67 thousand (6,000) according to the latest federal census, a portion  
68 of which is located in a county which has voted against coming out  
69 from under the dry law and a portion of which is located in a  
70 county which has voted in favor of coming out from under the dry  
71 law. For the purpose of determining whether or not such a  
72 municipality meets the threshold population of six thousand  
73 (6,000) which will qualify the municipality to hold an election  
74 under this subsection, the entire population of the municipality  
75 shall be considered; however, the petition to hold the election  
76 authorized in this subsection shall be ordered by the municipal  
77 governing authorities upon the presentation of a petition to such  
78 governing authorities containing the names of at least twenty  
79 percent (20%) of the duly qualified voters of such municipality  
80 who reside in that portion of the municipality located in a county  
81 which has voted against coming out from under the dry law and the  
82 election shall be held only in that portion of the municipality.  
83 In all other respects, the authority for the holding of elections  
84 and the manner in which such elections shall be conducted shall be  
85 as prescribed in paragraph (a) of this subsection; and, after  
86 proper certification of election results, the municipal governing  
87 authorities shall pass the appropriate order to permit or prohibit  
88 the legal sale of alcoholic beverages in that portion of the  
89 municipality located in a county which has voted against coming  
90 out from under the dry law.

91 (c) If a municipality in this state having a population  
92 of less than three thousand (3,000) according to the latest  
93 federal decennial census, all or any portion of which is located  
94 within one (1) mile of the Jackson International Airport, votes to  
95 come out from under the dry law, the sale of alcoholic beverages  
96 shall be limited to restaurants and hotels. The governing  
97 authorities of such municipality shall have the authority to adopt  
98 ordinances regulating the types of establishments that qualify as  
99 a hotel or a restaurant.

100 SECTION 2. Section 67-1-5, Mississippi Code of 1972, is  
101 amended as follows:[WAN2]

102 67-1-5. For the purposes of this chapter and unless  
103 otherwise required by the context:

104 (a) \* \* \* "Alcoholic beverage" means any alcoholic  
105 liquid, including wines of more than five percent (5%) of alcohol  
106 by weight, capable of being consumed as a beverage by a human  
107 being, but shall not include wine containing five percent (5%) or  
108 less of alcohol by weight and shall not include beer containing  
109 not more than five percent (5%) of alcohol by weight, as provided  
110 for in Section 67-3-5, Mississippi Code of 1972, but shall include  
111 native wines. The words "alcoholic beverage" shall not include  
112 ethyl alcohol manufactured or distilled solely for fuel purposes.

113 (b) \* \* \* "Alcohol" means the product of distillation  
114 of any fermented liquid, whatever the origin thereof, and includes  
115 synthetic ethyl alcohol, but does not include denatured alcohol or  
116 wood alcohol.

117 (c) \* \* \* "Distilled spirits" means any beverage  
118 containing more than four percent (4%) of alcohol by weight  
119 produced by distillation of fermented grain, starch, molasses or  
120 sugar, including dilutions and mixtures of these beverages.

121 (d) \* \* \* "Wine" or "vinous liquor" means any product  
122 obtained from the alcoholic fermentation of the juice of sound,  
123 ripe grapes, fruits or berries and made in accordance with the  
124 revenue laws of the United States.

125 (e) \* \* \* "Person" means and includes any individual,  
126 partnership, corporation, association or other legal entity  
127 whatsoever.

128 (f) \* \* \* "Manufacturer" means any person engaged in  
129 manufacturing, distilling, rectifying, blending or bottling any  
130 alcoholic beverage.

131 (g) \* \* \* "Wholesaler" means any person, other than a  
132 manufacturer, engaged in distributing or selling any alcoholic

133 beverage at wholesale for delivery within or without this state  
134 when such sale is for the purpose of resale by the purchaser.

135 (h) \* \* \* "Retailer" means any person who sells,  
136 distributes, or offers for sale or distribution, any alcoholic  
137 beverage for use or consumption by the purchaser and not for  
138 resale.

139 (i) \* \* \* "Commission" means the State Tax Commission  
140 of the State of Mississippi, which shall create a division in its  
141 organization to be known as the Alcoholic Beverage Control  
142 Division. Any reference to the commission hereafter means the  
143 powers and duties of the State Tax Commission with reference to  
144 supervision of the Alcoholic Beverage Control Division.

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

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

149 (l) \* \* \* "Hotel" means an establishment within a  
150 municipality, or within a qualified resort area approved as such  
151 by the commission, where, in consideration of payment, food and  
152 lodging are habitually furnished to travelers and wherein are  
153 located at least twenty (20) adequately furnished and completely  
154 separate sleeping rooms with adequate facilities that persons  
155 usually apply for and receive as overnight accommodations. Hotels  
156 in towns or cities of more than twenty-five thousand (25,000)  
157 population are similarly defined except that they must have fifty  
158 (50) or more sleeping rooms. Any such establishment described in  
159 this paragraph with less than fifty (50) beds shall operate one or  
160 more regular dining rooms designed to be constantly frequented by  
161 customers each day. When used in this chapter, the word "hotel"  
162 shall also be construed to include any establishment that meets  
163 the definition of "bed and breakfast inn" as provided in this  
164 section. A municipality described in Section 67-1-14(2)(c) that  
165 has voted to come out from under the dry law shall have the

166 authority to adopt ordinances that place qualifications on hotels  
167 located within its corporate limits that are more restrictive than  
168 those provided for elsewhere in this paragraph.

169 (m) \* \* \* "Restaurant" means a place which is regularly  
170 and in a bona fide manner used and kept open for the serving of  
171 meals to guests for compensation, which has suitable seating  
172 facilities for guests, and which has suitable kitchen facilities  
173 connected therewith for cooking an assortment of foods and meals  
174 commonly ordered at various hours of the day; the service of such  
175 food as sandwiches and salads only shall not be deemed in  
176 compliance with this requirement. No place shall qualify as a  
177 restaurant under this chapter unless twenty-five percent (25%) or  
178 more of the revenue derived from such place shall be from the  
179 preparation, cooking and serving of meals and not from the sale of  
180 beverages, or unless the value of food given to and consumed by  
181 customers is equal to twenty-five percent (25%) or more of total  
182 revenue. A municipality described in Section 67-1-14(2)(c) that  
183 has voted to come out from under the dry law shall have the  
184 authority to adopt ordinances that place qualifications on hotels  
185 located within its corporate limits that are more restrictive than  
186 those provided for elsewhere in this paragraph.

187 (n) \* \* \* "Club" means an association or a corporation:  
188 (i) Organized or created under the laws of this  
189 state for a period of five (5) years prior to July 1, 1966;  
190 (ii) Organized not primarily for pecuniary profit  
191 but for the promotion of some common object other than the sale or  
192 consumption of alcoholic beverages;  
193 (iii) Maintained by its members through the  
194 payment of annual dues;  
195 (iv) Owning, hiring or leasing a building or space  
196 in a building of such extent and character as may be suitable and  
197 adequate for the reasonable and comfortable use and accommodation  
198 of its members and their guests;

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

203           (vi) No member, officer, agent or employee of  
204 which is paid, or directly or indirectly receives, in the form of  
205 a salary or other compensation any profit from the distribution or  
206 sale of alcoholic beverages to the club or to members or guests of  
207 the club beyond such salary or compensation as may be fixed and  
208 voted at a proper meeting by the board of directors or other  
209 governing body out of the general revenues of the club.

210           The commission may, in its discretion, waive the five-year  
211 provision of this paragraph. In order to qualify under this  
212 paragraph, a club must file with the commission, at the time of  
213 its application for a license under this chapter, two (2) copies  
214 of a list of the names and residences of its members and similarly  
215 file, within ten (10) days after the election of any additional  
216 member, his name and address. Each club applying for a license  
217 shall also file with the commission at the time of the application  
218 a copy of its articles of association, charter of incorporation,  
219 bylaws or other instruments governing the business and affairs  
220 thereof.

221           (o) \* \* \* "Qualified resort area" means any area or  
222 locality outside of the limits of incorporated municipalities in  
223 this state commonly known and accepted as a place which regularly  
224 and customarily attracts tourists, vacationists and other  
225 transients because of its historical, scenic or recreational  
226 facilities or attractions, or because of other attributes which  
227 regularly and customarily appeal to and attract tourists,  
228 vacationists and other transients in substantial numbers; however,  
229 no area or locality shall so qualify as a resort area until it has  
230 been duly and properly approved as such by the commission.

231           (i) The commission may approve an area or locality

232 outside of the limits of an incorporated municipality that is in  
233 the process of being developed as a qualified resort area if such  
234 area or locality, when developed, can reasonably be expected to  
235 meet the requisites of the definition of the term "qualified  
236 resort area." In such a case, the status of qualified resort area  
237 shall not take effect until completion of the development.

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

246 (iii) The term includes the clubhouses associated  
247 with the state park golf courses at the Lefleur's Bluff State  
248 Park, the John Kyle State Park, the Percy Quin State Park and the  
249 Hugh White State Park. The status of these clubhouses as  
250 qualified resort areas does not require any declaration of same by  
251 the commission.

252 (p) \* \* \* "Native wine" \* \* \* means any product,  
253 produced in Mississippi for sale, having an alcohol content not to  
254 exceed twenty-one percent (21%) by weight and made in accordance  
255 with revenue laws of the United States, which shall be obtained  
256 primarily from the alcoholic fermentation of the juice of ripe  
257 grapes, fruits, berries or vegetables grown and produced in  
258 Mississippi; provided that bulk, concentrated or fortified wines  
259 used for blending may be produced without this state and used in  
260 producing native wines. The commission shall adopt and promulgate  
261 rules and regulations to permit a producer to import such bulk  
262 and/or fortified wines into this state for use in blending with  
263 native wines without payment of any excise tax that would  
264 otherwise accrue thereon.

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

268           (r) \* \* \* "Bed and breakfast inn" means an  
269 establishment within a municipality where in consideration of  
270 payment, breakfast and lodging are habitually furnished to  
271 travelers and wherein are located not less than eight (8) and not  
272 more than nineteen (19) adequately furnished and completely  
273 separate sleeping rooms with adequate facilities, that persons  
274 usually apply for and receive as overnight accommodations;  
275 however, such restriction on the minimum number of sleeping rooms  
276 shall not apply to establishments on the National Register of  
277 Historic Places. No place shall qualify as a bed and breakfast  
278 inn under this chapter unless on the date of the initial  
279 application for a license under this chapter more than fifty  
280 percent (50%) of the sleeping rooms are located in a structure  
281 formerly used as a residence.

282           SECTION 3. This act shall take effect and be in force from  
283 and after July 1, 2000.