H. B. No. 588

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001

By: Representative Moak
To: Ways and Means

HOUSE BILL NO. 588

AN ACT TO AMEND SECTION 67-3-73, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT PERSONS WHO ARE ISSUED ON-PREMISES RETAILER'S PERMITS FOR THE SALE OF ALCOHOLIC BEVERAGES, BEER OR LIGHT WINE FOR CONSUMPTION ON THE LICENSED PREMISES SHALL PURCHASE AND MAINTAIN CERTAIN LIABILITY INSURANCE; TO AMEND SECTIONS 67-1-57 AND 67-3-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 67-3-73, Mississippi Code of 1972, is amended as follows:

67-3-73. (1) The Mississippi Legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.

(2) Notwithstanding any other law to the contrary, except as otherwise provided herein, no holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder, who lawfully sells or serves intoxicating beverages to a person who may lawfully purchase such intoxicating beverages, shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the licensed premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served. Those persons who are issued on-premises retailer's permits for the sale of alcoholic beverages, beer or light wine for consumption on the licensed premises under Section 67-1-1, et seq., or Section 67-3-1, et
seq., shall purchase and maintain liability insurance in a minimum
amount of Two Hundred Fifty Thousand Dollars ($250,000.00) for
each permit to cover claims made by any person or the estate or
survivors of any person for any injury suffered off the licensed
premises, including wrongful death and property damage, because of
the intoxication of the person to whom the intoxicating beverages
were sold or served. Those persons who have in effect liability
insurance as required herein may be sued by anyone affected to the
extent of such insurance carried; however, immunity from suit is
waived only to the extent of such liability insurance carried and
a judgment creditor shall have recourse only to the proceeds or
right to proceeds of such liability insurance.

(3) Notwithstanding any other law to the contrary, no social
host who serves or furnishes any intoxicating beverage to a person
who may lawfully consume such intoxicating beverage shall be
liable to such person or to any other person or to the estate, or
survivors of either, for any injury suffered off such social
host's premises, including wrongful death and property damage,
because of the intoxication of the person to whom the intoxicating
beverages were served or furnished. No social host who owns,
leases or otherwise lawfully occupies a premises on which, in his
absence and without his consent, intoxicating beverages are
consumed by a person who may lawfully consume such intoxicating
beverage shall be liable to such person or to any other person or
to the estate, or survivors of either, for any injury suffered off
the premises, including wrongful death and property damage,
because of the intoxication of the person who consumed the
intoxicating beverages.

(4) The limitation of liability provided by this section
shall not apply to any person who causes or contributes to the
consumption of alcoholic beverages by force or by falsely
representing that a beverage contains no alcohol, or to any holder
of an alcoholic beverage, beer or light wine permit, or any agent
or employee of such holder when it is shown that the person making
a purchase of an alcoholic beverage was at the time of such
purchase visibly intoxicated.

SECTION 2. Section 67-1-57, Mississippi Code of 1972, is
amended as follows:

67-1-57. Before a permit is issued the commission shall
satisfy itself:

(a) That the applicant, if an individual, or if a
partnership, each of the members of the partnership, or if a
corporation, each of its principal officers and directors, is of
good moral character and, in addition, enjoys a reputation of
being a peaceable, law-abiding citizen of the community in which
he resides, and is generally fit for the trust to be reposed in
him, is not less than twenty-one (21) years of age, and has not
been convicted of a felony in any state or federal court.

(b) That, except in the case of an application for a
solicitor's permit, the applicant is the true and actual owner of
the business for which the permit is desired, and that he intends
to carry on the business authorized for himself and not as the
agent of any other person, and that he intends to superintend in
person the management of said business or that he will designate a
manager to manage the business for him; any such manager must be
approved by the commission and must possess all of the
qualifications required of a permittee.

(c) That the applicant for a package retailer's permit,
if an individual, is a resident of the State of Mississippi. If
the applicant is a partnership, each member of the partnership
must be a resident of the state. If the applicant is a
corporation, the designated manager of the corporation must be a
resident of the state.

(d) That the place for which the permit is to be issued
is an appropriate one considering the character of the premises
and the surrounding neighborhood.
(e) That the place for which the permit is to be issued is within the corporate limits of an incorporated municipality or qualified resort area or club which comes within the provisions of this chapter.

(f) That the applicant is not indebted to the state for any taxes, fees or payment of penalties imposed by any law of the State of Mississippi or by any rule or regulation of the commission.

(g) That the applicant is not in the habit of using alcoholic beverages to excess and is not physically or mentally incapacitated, and that the applicant has the ability to read and write the English language.

(h) That the commission does not believe and has no reason to believe that the applicant will sell or knowingly permit any agent, servant or employee to unlawfully sell liquor in a dry area or in any other manner contrary to law.

(i) That the applicant is not residentially domiciled with any person whose permit or license has been cancelled for cause within the twelve (12) months next preceding the date of the present application for a permit.

(j) That the commission has not, in the exercise of its discretion which is reserved and preserved to it, refused to grant such permits under the restrictions of this section, as well as under any other pertinent provision of this chapter.

(k) That there are not sufficient legal reasons to deny a permit on the ground that the premises for which the permit is sought has previously been operated, used or frequented for any purpose or in any manner that is lewd, immoral or offensive to public decency. In the granting or withholding of any permit to sell alcoholic beverages at retail, the commission in forming its conclusions may give consideration to any recommendations made in writing by the district or county attorney or county, circuit or chancery judge of the county, or the sheriff of the county, or the
mayor or chief of police of an incorporated city or town wherein
the applicant proposes to conduct his business and to any
recommendations made by representatives of the commission.

(1) That no criminal record of the applicant or any of
applicant's employees exists, and the commission may therefore
require that any applicant and employees of such applicant be
photographed and fingerprinted for identification.

(m) That the applicant for an on-premises retailer's
permit has purchased and has maintained liability insurance in the
minimum amount of Two Hundred Fifty Thousand Dollars ($250,000.00)
as required by Section 67-3-73, as amended by House Bill No.
2000 Regular Session.

SECTION 3. Section 67-3-19, Mississippi Code of 1972, is
amended as follows:

67-3-19. Where application is made for a permit to engage in
the business of a retailer of light wine or beer, the applicant
shall show in his application that he possesses the following
qualifications:

(a) Applicant must be a person at least twenty-one (21)
years of age, of good moral character and a resident of the State
of Mississippi.

(b) Applicant shall not have been convicted of a
felony, or of pandering or of keeping or maintaining a house of
prostitution, or have been convicted within two (2) years of the
date of his application of any violation of the laws of this state
or the laws of the United States relating to alcoholic liquor.

(c) Applicant shall not have had revoked, except for a
violation of Section 67-3-52, within two (2) years next preceding
his application, any license or permit issued to him pursuant to
the laws of this state, or any other state, to sell alcoholic
liquor of any kind.
(d) Applicant shall be the owner of the premises for which the permit is sought or the holder of an existing lease thereon.

(e) Applicant shall not be residentially domiciled with any person whose permit has been revoked for cause, except for a violation of Section 67-3-52, within two (2) years next preceding the date of the present application for a permit.

(f) The applicant has not had any license or permit to sell beer or light wine at retail revoked, within five (5) years next preceding his application, due to a violation of Section 67-3-52.

(g) Applicant shall not employ any person whose permit has been revoked when such person owned or operated the business on the premises for which a permit is sought or allow such person to have any financial interest in the business of the applicant, until such person is qualified to obtain a permit in his own name.

(h) The applicant is not indebted to the State of Mississippi for any taxes.

(i) If applicant is a partnership, all members of the partnership must be qualified to obtain a permit. Each member of the partnership must be a resident of the State of Mississippi.

(j) If applicant is a corporation, all officers and directors thereof, and any stockholder owning more than five percent (5%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for any individual permittee. However, the requirements as to residence shall not apply to officers, directors, and stockholders of such corporation, although such requirements shall apply to any officer, director, or stockholder who is also the manager of the licensed premises or who is engaged or employed at the licensed premises. The designated manager of the licensed premises must be a resident of the State of Mississippi.
(k) If the applicant is applying for an on-premises retailer's permit, he must show proof that he has purchased and maintained liability insurance in the minimum amount of Two Hundred Fifty Thousand Dollars ($350,000.00) as required by Section 67-3-73, as amended by House Bill , 2000 Regular Session.

Any misstatement or concealment of fact in an application shall be ground for denial of the application or for revocation of the permit issued thereon.

The commissioner may refuse to issue a permit to an applicant for a place that is frequented by known criminals, prostitutes, or other law violators or troublemakers who disturb the peace and quietude of the community and frequently require the assistance of peace officers to apprehend such law violators or to restore order. The burden of proof of establishing the foregoing shall rest upon the commissioner.

SECTION 4. This act shall take effect and be in force from and after July 1, 2001.