

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 2125

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 POSSESS 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 intoxication;
33 and to encourage the responsible sale of alcoholic beverages, beer
34 and light wine by vendors throughout the state and provide for the
35 mitigation of administrative penalties against vendors who comply
36 with responsible practices in accordance with this act.

37 SECTION 3. As used in this act:

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

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

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

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

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

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

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

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

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

65 (b) Issue and renew approved provider permits.

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

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

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

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

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

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

99 (a) All servers of the vendor possessed a valid
100 server's certification at the time of the violation or all servers

101 had applied for server's certification within thirty (30) days
102 after commencing employment; and

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

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

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

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

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

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

132 67-1-37. The State Tax Commission, under its duties and
133 powers with respect to the Alcoholic Beverage Control Division
134 therein, shall have the following powers, functions and duties:

135 (a) To issue or refuse to issue any permit provided for
136 by this chapter, or to extend the permit or remit in whole or any
137 part of the permit monies when the permit cannot be used due to a
138 natural disaster or Act of God.

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

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

162 (d) To fix standards, not in conflict with those
163 prescribed by any law of this state or of the United States, to

164 secure the use of proper ingredients and methods of manufacture of
165 alcoholic beverages.

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

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

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

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

194 (i) To call upon other administrative departments of
195 the state, county and municipal governments, county and city
196 police departments and upon prosecuting officers for such

197 information and assistance as it may deem necessary in the
198 performance of its duties.

199 (j) To prepare and submit to the Governor during the
200 month of January of each year a detailed report of its official
201 acts during the preceding fiscal year ending June 30, including
202 such recommendations as it may see fit to make, and to transmit a
203 like report to each member of the Legislature of this state upon
204 the convening thereof at its next regular session.

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

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

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

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

230 (o) To assign employees to posts of duty at locations
231 where they will be most beneficial for the control of alcoholic
232 beverages, to remove, to dismiss, to suspend without pay, to act
233 as a trial board in hearings based upon charges against employees.
234 After twelve (12) months' service, no employee shall be removed,
235 dismissed, demoted or suspended without just cause and only after
236 being furnished with reasons for such removal, dismissal, demotion
237 or suspension, and upon request given a hearing in his own
238 defense.

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

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

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

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

250 67-1-71. The commission may revoke or suspend any permit
251 issued by it for a violation by the permittee of any of the
252 provisions of this chapter or of the regulations promulgated under
253 it by the commission.

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

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

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

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

263 (d) Conviction of one * * * or more of the clerks,
264 agents or employees of the permittee, of any violation of this
265 chapter upon the premises covered by such permit within a period
266 of time as designated by the rules or regulations of the
267 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, 2001.