

By: Senator(s) Cuevas

To: Finance

SENATE BILL NO. 2780

1 AN ACT TO AMEND SECTION 67-1-51, MISSISSIPPI CODE OF 1972, TO
 2 AUTHORIZE THE STATE TAX COMMISSION TO ISSUE A PERMIT TO AUTHORIZE
 3 PERSONS TO PURCHASE ALCOHOLIC BEVERAGES FOR THE PURPOSES OF
 4 MECHANICALLY ETCHING DESIGNS ON THE BOTTLES; TO AUTHORIZE THE SALE
 5 OF SUCH BOTTLES AT RETAIL; TO AMEND SECTION 27-71-5, MISSISSIPPI
 6 CODE OF 1972, TO PROVIDE A PRIVILEGE LICENSE TAX FOR A
 7 MECHANICALLY ETCHED BOTTLE RETAILERS PERMIT; TO AMEND SECTIONS
 8 27-71-15, 67-1-41 AND 67-1-43, IN CONFORMITY THERETO; AND FOR
 9 RELATED PURPOSES.

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

11 SECTION 1. Section 67-1-51, Mississippi Code of 1972, is
 12 amended as follows:

13 67-1-51. (1) Permits which may be issued by the commission
 14 shall be as follows:

15 (a) Manufacturer's permit. A manufacturer's permit
 16 shall permit the manufacture, importation in bulk, bottling and
 17 storage of alcoholic liquor and its distribution and sale to
 18 manufacturers holding permits under this chapter in this state and
 19 to persons outside the state who are authorized by law to purchase
 20 the same, and to sell exclusively to the commission.

21 Manufacturer's permits shall be of the following classes:

22 Class 1. Distiller's and/or rectifier's permit, which
 23 shall authorize the holder thereof to operate a distillery for the
 24 production of distilled spirits by distillation or redistillation
 25 and/or to operate a rectifying plant for the purifying, refining,
 26 mixing, blending, flavoring or reducing in proof of distilled
 27 spirits and alcohol.

28 Class 2. Wine manufacturer's permit, which shall
29 authorize the holder thereof to manufacture, import in bulk,
30 bottle and store wine or vinous liquor.

31 Class 3. Native wine producer's permit, which shall
32 authorize the holder thereof to produce, bottle, store and sell
33 native wines.

34 (b) Package retailer's permit. Except as otherwise
35 provided in this paragraph, a package retailer's permit shall
36 authorize the holder thereof to operate a store exclusively for
37 the sale at retail in original sealed and unopened packages of
38 alcoholic beverages, including native wines, not to be consumed on
39 the premises where sold. Alcoholic beverages shall not be sold by
40 any retailer in any package or container containing less than
41 fifty (50) milliliters by liquid measure. In addition to the sale
42 at retail of packages of alcoholic beverages, the holder of a
43 package retailer's permit is authorized to sell at retail
44 corkscrews, wine glasses, soft drinks, ice, juices, mixers and
45 other beverages commonly used to mix with alcoholic beverages.
46 Nonalcoholic beverages sold by the holder of a package retailer's
47 permit shall not be consumed on the premises where sold.

48 (c) On-premises retailer's permit. An on-premises
49 retailer's permit shall authorize the sale of alcoholic beverages,
50 including native wines, for consumption on the licensed premises
51 only. Such a permit shall issue only to qualified hotels,
52 restaurants and clubs, and to common carriers with adequate
53 facilities for serving passengers. In resort areas, whether
54 inside or outside of a municipality, the commission may, in its
55 discretion, issue on-premises retailer's permits to such
56 establishments as it deems proper. An on-premises retailer's
57 permit when issued to a common carrier shall authorize the sale
58 and serving of alcoholic beverages aboard any licensed vehicle
59 while moving through any county of the state; however, the sale of

60 such alcoholic beverages shall not be permitted while such vehicle
61 is stopped in a county that has not legalized such sales.

62 (d) Solicitor's permit. A solicitor's permit shall
63 authorize the holder thereof to act as salesman for a manufacturer
64 or wholesaler holding a proper permit, to solicit on behalf of his
65 employer orders for alcoholic beverages, and to otherwise promote
66 his employer's products in a legitimate manner. Such a permit
67 shall authorize the representation of and employment by one (1)
68 principal only. However, the permittee may also, in the
69 discretion of the commission, be issued additional permits to
70 represent other principals. No such permittee shall buy or sell
71 alcoholic beverages for his own account, and no such beverage
72 shall be brought into this state in pursuance of the exercise of
73 such permit otherwise than through a permit issued to a wholesaler
74 or manufacturer in the state.

75 (e) Native wine retailer's permit. A native wine
76 retailer's permit shall be issued only to a holder of a Class 3
77 manufacturer's permit, and shall authorize the holder thereof to
78 make retail sales of native wines to consumers for on-premises
79 consumption or to consumers in originally sealed and unopened
80 containers at an establishment located on the premises of or in
81 the immediate vicinity of a native winery.

82 (f) Temporary retailer's permit. A temporary
83 retailer's permit shall permit the purchase and resale of
84 alcoholic beverages, including native wines, during legal hours on
85 the premises described in the temporary permit only.

86 Temporary retailer's permits shall be of the following
87 classes:

88 Class 1. A temporary one-day permit may be issued to
89 bona fide nonprofit civic or charitable organizations authorizing
90 the sale of alcoholic beverages, including native wine, for
91 consumption on the premises described in the temporary permit
92 only. Class 1 permits may be issued only to applicants

93 demonstrating to the commission, by affidavit submitted ten (10)
94 days prior to the proposed date or such other time as the
95 commission may determine, that they meet the qualifications of
96 Sections 67-1-11, 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57
97 (excluding paragraph (e)) and 67-1-59. Class 1 permittees shall
98 obtain all alcoholic beverages from package retailers located in
99 the county in which the temporary permit is issued. Alcoholic
100 beverages remaining in stock upon expiration of the temporary
101 permit may be returned by the permittee to the package retailer
102 for a refund of the purchase price upon consent of the package
103 retailer or may be kept by the permittee exclusively for personal
104 use and consumption, subject to all laws pertaining to the illegal
105 sale and possession of alcoholic beverages. The commission,
106 following review of the affidavit and the requirements of the
107 applicable statutes and regulations, may issue the permit.

108 Class 2. A temporary permit, not to exceed seventy (70)
109 days, may be issued to prospective permittees seeking to transfer
110 a permit authorized in either paragraph (b) or (c) of this
111 section. A Class 2 permit may be issued only to applicants
112 demonstrating to the commission, by affidavit, that they meet the
113 qualifications of Sections 67-1-5(1), (m), (n), (o), (p) or (q),
114 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57 and 67-1-59. The
115 commission, following a preliminary review of the affidavit and
116 the requirements of the applicable statutes and regulations, may
117 issue the permit.

118 Class 2 temporary permittees must purchase their
119 alcoholic beverages directly from the commission or, with approval
120 of the commission, purchase the remaining stock of the previous
121 permittee. If the proposed applicant of a Class 1 or Class 2
122 temporary permit falsifies information contained in the
123 application or affidavit, the applicant shall never again be
124 eligible for a retail alcohol beverage permit and shall be subject
125 to prosecution for perjury.

126 (g) Caterer's permit. A caterer's permit shall permit
127 the purchase of alcoholic beverages by a person engaging in
128 business as a caterer and the resale of alcoholic beverages by
129 such person in conjunction with such catering business. No person
130 shall qualify as a caterer unless forty percent (40%) or more of
131 the revenue derived from such catering business shall be from the
132 serving of prepared food and not from the sale of alcoholic
133 beverages and unless such person has obtained a permit for such
134 business from the Department of Health. A caterer's permit shall
135 not authorize the sale of alcoholic beverages on the premises of
136 the person engaging in business as a caterer; however, the holder
137 of an on-premises retailer's permit may hold a caterer's permit.
138 All sales of alcoholic beverages by holders of a caterer's permit
139 shall be made at the location being catered by the caterer, and
140 such sales may be made only for consumption at the catered
141 location. Such sales shall be made pursuant to any other
142 conditions and restrictions which apply to sales made by
143 on-premises retail permittees. The holder of a caterer's permit
144 or his employees shall remain at the catered location as long as
145 alcoholic beverages are being sold pursuant to the permit issued
146 under this paragraph (g), and the permittee and employees at such
147 location shall each have personal identification cards issued by
148 the Alcoholic Beverage Control Division of the commission. No
149 unsold alcoholic beverages may be left at the catered location by
150 the permittee upon the conclusion of his business at that
151 location. Appropriate law enforcement officers and Alcoholic
152 Beverage Control Division personnel may enter a catered location
153 on private property in order to enforce laws governing the sale or
154 serving of alcoholic beverages.

155 (h) Research Permit. A research permit shall authorize
156 the holder thereof to operate a research facility for the
157 professional research of alcoholic beverages. Such permit shall
158 authorize the holder of the permit to import and purchase limited

159 amounts of alcoholic beverages from the commission or from
160 importers, wineries and distillers of alcoholic beverages for
161 professional research.

162 (i) Alcohol processing permit. An alcohol processing
163 permit shall authorize the holder thereof to purchase, transport
164 and possess alcoholic beverages for the exclusive use in cooking,
165 processing or manufacturing products which contain alcoholic
166 beverages as an integral ingredient. An alcohol processing permit
167 shall not authorize the sale of alcoholic beverages on the
168 premises of the person engaging in the business of cooking,
169 processing or manufacturing products which contain alcoholic
170 beverages. The amounts of alcoholic beverages allowed under an
171 alcohol processing permit shall be set by the commission.

172 (j) Mechanically etched bottle retailer permit. A
173 mechanically etched bottle retailer permit shall authorize the
174 holder thereof to purchase alcoholic beverages from any licensed
175 wholesaler or distributor within Mississippi for the purpose of
176 mechanically etching designs on the bottles and to sell at retail
177 the finished product. Such a permit shall authorize a holder or
178 an agent of the holder to deliver finished etched bottle products
179 to the purchaser. The permittee shall be required to comply with
180 all other rules and regulations of the commission.

181 (2) Except as otherwise provided in subsection (4) of this
182 section, retail permittees may hold more than one (1) retail
183 permit, at the discretion of the commission.

184 (3) Except as otherwise provided in this subsection, no
185 authority shall be granted to any person to manufacture, sell or
186 store for sale any intoxicating liquor as specified in this
187 chapter within four hundred (400) feet of any church, school,
188 kindergarten or funeral home. However, within an area zoned
189 commercial or business, such minimum distance shall be not less
190 than one hundred (100) feet.

191 A church or funeral home may waive the distance restrictions
192 imposed in this subsection in favor of allowing issuance by the
193 commission of a permit, pursuant to subsection (1) of this
194 section, to authorize activity relating to the manufacturing, sale
195 or storage of alcoholic beverages which would otherwise be
196 prohibited under the minimum distance criterion. Such waiver
197 shall be in written form from the owner, the governing body, or
198 the appropriate officer of the church or funeral home having the
199 authority to execute such a waiver, and the waiver shall be filed
200 with and verified by the commission before becoming effective.

201 The distance restrictions imposed in this subsection shall
202 not apply to the sale or storage of alcoholic beverages at a bed
203 and breakfast inn listed in the National Register of Historic
204 Places.

205 (4) No person, either individually or as a member of a firm,
206 partnership or association, or as a stockholder, officer or
207 director in a corporation, shall own or control any interest in
208 more than one (1) package retailer's permit, nor shall such
209 person's spouse, if living in the same household of such person,
210 any relative of such person, if living in the same household of
211 such person, or any other person living in the same household with
212 such person own any interest in any other package retailer's
213 permit.

214 SECTION 2. Section 27-71-5, Mississippi Code of 1972, is
215 amended as follows:

216 27-71-5. (1) Upon each person approved for a permit under
217 the provisions of the Alcoholic Beverage Control Law and
218 amendments thereto, there is levied and imposed for each location
219 for the privilege of engaging and continuing in this state in the
220 business authorized by such permit, an annual privilege license
221 tax in the amount provided in the following schedule:

222 (a) Manufacturer's permit, Class 1, distiller's and/or
223 rectifier's..... \$4,500.00

224 (b) Manufacturer's permit, Class 2, wine manufacturer
225 \$1,800.00

226 (c) Manufacturer's permit, Class 3, native wine
227 manufacturer per 10,000 gallons or part thereof produced
228 \$10.00

229 (d) Native wine retailer's permit..... \$50.00

230 (e) Package retailer's permit, each..... \$900.00

231 (f) On-premises retailer's permit, except for clubs and
232 common carriers, each..... \$450.00
233 On purchases exceeding \$5,000.00 and for each additional
234 \$5,000.00, or fraction thereof..... \$225.00

235 (g) On-premises retailer's permit for wine of more than
236 four percent (4%) alcohol by volume, but not more than twenty-one
237 percent (21%) alcohol by volume (each)..... \$225.00
238 On purchases exceeding \$5,000.00 and for each additional
239 \$5,000.00, or fraction thereof..... \$225.00

240 (h) On-premises retailer's permit for clubs.... \$225.00
241 On purchases exceeding \$5,000.00 and for each additional
242 \$5,000.00, or fraction thereof..... \$225.00

243 (i) On-premises retailer's permit for common carriers,
244 per car, plane, or other vehicle..... \$120.00

245 (j) Solicitor's permit, regardless of any other
246 provision of law, solicitor's permits shall be issued only in the
247 discretion of the commission..... \$100.00

248 (k) Filing fee for each application except for an
249 employee identification card..... \$25.00

250 (l) Temporary permit, Class 1, each..... \$10.00

251 (m) Temporary permit, Class 2, each..... \$50.00
252 On-premises purchases exceeding \$5,000.00 and for each
253 additional \$5,000.00, or fraction thereof..... \$225.00

254 (n) (i) Caterer's permit..... \$600.00
255 On purchases exceeding \$5,000.00 and for each additional
256 \$5,000.00, or fraction thereof..... \$250.00

257	(ii) Caterer's permit for holders of on-premises	
258	retailer's permit.....	\$150.00
259	On purchases exceeding \$5,000.00 and for each additional	
260	\$5,000.00, or fraction thereof.....	\$250.00
261	(o) Research permit.....	\$100.00
262	(p) Filing fee for each application for an employee	
263	identification card.....	\$5.00
264	(q) <u>Mechanically etched bottle retailer</u>	
265	<u>permit.....</u>	<u>\$1,800.00</u>

266 In addition to the filing fee imposed by item (k) of this
267 subsection, a fee to be determined by the State Tax Commission may
268 be charged to defray costs incurred to process applications. Such
269 additional fees shall be paid into the State Treasury to the
270 credit of a special fund account, which is hereby created, and
271 expenditures therefrom shall be made only to defray the costs
272 incurred by the State Tax Commission in processing alcoholic
273 beverage applications. Any unencumbered balance remaining in the
274 special fund account on June 30 of any fiscal year shall lapse
275 into the State General Fund.

276 All privilege taxes herein imposed shall be paid in advance
277 of doing business. The additional privilege tax imposed for an
278 on-premises retailer's permit based upon purchases shall be due
279 and payable on demand.

280 Any person who has paid the additional privilege license tax
281 imposed by item (f), (g), (h), (m) or (n) of this subsection, and
282 whose permit is renewed, may add any unused fraction of Five
283 Thousand Dollars (\$5,000.00) purchases to the first Five Thousand
284 Dollars (\$5,000.00) purchases authorized by the renewal permit,
285 and no additional license tax will be required until purchases
286 exceed the sum of the two (2) figures.

287 (2) There is imposed and shall be collected from each
288 permittee, except a common carrier, solicitor, holder of an
289 employee identification card or a temporary permittee, by the

290 commission, an additional license tax equal to the amounts imposed
291 under subsection (1) of this section for the privilege of doing
292 business within any municipality or county in which the licensee
293 is located. If the licensee is located within a municipality, the
294 commission shall pay the amount of additional license tax to the
295 municipality, and if outside a municipality the commission shall
296 pay the additional license tax to the county in which the licensee
297 is located. Payments by the commission to the respective local
298 government subdivisions shall be made once each month for any
299 collections during the preceding month.

300 (3) When an application for any permit, other than for
301 renewal of a permit, has been rejected by the commission, such
302 decision shall be final. Appeal may be made in the manner
303 provided by Section 67-1-39. Another application from an
304 applicant who has been denied a permit shall not be reconsidered
305 within a twelve-month period.

306 (4) The number of permits issued by the commission shall not
307 be restricted or limited on a population basis; however, the
308 foregoing limitation shall not be construed to preclude the right
309 of the commission to refuse to issue a permit because of the
310 undesirability of the proposed location.

311 (5) If any person shall engage or continue in any business
312 which is taxable hereunder without having paid the tax as provided
313 herein, such person shall be liable for the full amount of such
314 tax plus a penalty thereon equal to the amount thereof, and, in
315 addition, shall be punished by a fine of not more than One
316 Thousand Dollars (\$1,000.00), or by imprisonment in the county
317 jail for a term of not more than six (6) months, or by both such
318 fine and imprisonment, in the discretion of the court.

319 (6) It shall be unlawful for any person to consume alcoholic
320 beverages on the premises of any hotel restaurant, restaurant,
321 club or the interior of any public place defined in Chapter 1,
322 Title 67, Mississippi Code of 1972, when the owner or manager

323 thereof displays in several conspicuous places inside said
324 establishment and at the entrances thereto a sign containing the
325 following language: NO ALCOHOLIC BEVERAGES ALLOWED.

326 SECTION 3. Section 27-71-15, Mississippi Code of 1972, is
327 amended as follows:

328 27-71-15. Except as otherwise provided in Section 67-9-1 for
329 the transportation of limited amounts of alcoholic beverages for
330 the use of an alcohol processing permittee, if transportation
331 requires passage through a county which has not authorized the
332 sale of alcoholic beverages, such transportation shall be by a
333 sealed vehicle. Such seal shall remain unbroken until the vehicle
334 shall reach the place of business operated by the permittee. The
335 operator of any vehicle transporting alcoholic beverages shall
336 have in his possession an invoice issued by the commission at the
337 time of the wholesale sale or an invoice from the holder of a
338 mechanically etched bottle retailer permit covering the
339 merchandise transported by the vehicle. The commission is
340 authorized to issue regulations controlling the transportation of
341 alcoholic beverages.

342 When the restrictions imposed by this section and by the
343 regulation of the commission have not been violated, the person
344 transporting alcoholic beverages through a county wherein the sale
345 of alcoholic beverages is prohibited shall not be guilty of
346 unlawful possession and such merchandise shall be immune from
347 seizure.

348 SECTION 4. Section 67-1-41, Mississippi Code of 1972, is
349 amended as follows:

350 67-1-41. (1) The State Tax Commission is hereby created a
351 wholesale distributor and seller of alcoholic beverages, not
352 including malt liquors, within the State of Mississippi. It is
353 granted the sole right to import and sell such intoxicating
354 liquors at wholesale within the state, and no person who is
355 granted the right to sell, distribute or receive such liquors at

356 retail shall purchase any such intoxicating liquors from any
357 source other than the commission except as authorized in
358 subsections (4) and (9), provided that retailers and consumers may
359 purchase native wines directly from the producer and may purchase
360 mechanically etched bottles containing alcoholic beverages
361 directly from the holder of a mechanically etched bottle retailer
362 permit. The commission may establish warehouses, purchase
363 intoxicating liquors in such quantities and from such sources as
364 it may deem desirable and sell the same to authorized permittees
365 within the state including, at the discretion of the commission,
366 any retail distributors operating within any military post or
367 qualified resort areas within the boundaries of the state, keeping
368 a correct and accurate record of all such transactions and
369 exercising such control over the distribution of alcoholic
370 beverages as seem right and proper in keeping with the provisions
371 or purposes of this chapter.

372 The commission is empowered to borrow such working capital as
373 may be required, not to exceed the sum of Nine Hundred Thousand
374 Dollars (\$900,000.00). Such loan shall be repaid from the
375 earnings of the wholesale liquor business.

376 The commission is hereby authorized to use and to promulgate
377 rules for the affixing of identification stamps to each container
378 of alcoholic liquor.

379 (2) No person for the purpose of sale shall manufacture,
380 distill, brew, sell, possess, export, transport, distribute,
381 warehouse, store, solicit, take orders for, bottle, rectify,
382 blend, treat, mix or process any alcoholic beverage except in
383 accordance with authority granted under this chapter, or as
384 otherwise provided by law for native wines.

385 (3) No alcoholic beverage intended for sale or resale shall
386 be imported, shipped or brought into this state for delivery to
387 any person other than as provided in this chapter, or as otherwise
388 provided by law for native wines.

389 (4) The commission may promulgate rules and regulations
390 which authorize on-premises retailers to purchase limited amounts
391 of alcoholic beverages from package retailers and for package
392 retailers to purchase limited amounts of alcoholic beverages from
393 other package retailers. The commission shall develop and provide
394 forms to be completed by the on-premises retailers and the package
395 retailers verifying the transaction. The completed forms shall be
396 forwarded to the commission within a period of time prescribed by
397 the commission.

398 (5) The commission may promulgate rules which authorize the
399 holder of a package retailer's permit to permit individual retail
400 purchasers of packages of alcoholic beverages to return, for
401 exchange, credit or refund, limited amounts of original sealed and
402 unopened packages of alcoholic beverages purchased by such
403 individual from the package retailer.

404 (6) The commission shall maintain all forms to be completed
405 by applicants necessary for licensure by the commission at all
406 district offices of the commission.

407 (7) The commission may promulgate rules which authorize the
408 manufacturer of an alcoholic beverage or wine to import, transport
409 and furnish or give a sample of alcoholic beverages or wines to
410 the holders of package retailer's permits, on-premises retailer's
411 permits, native wine retailer's permits and temporary retailer's
412 permits who have not previously purchased the brand of that
413 manufacturer from the commission. For each holder of the
414 designated permits, the manufacturer may furnish not more than
415 five hundred (500) milliliters of any brand of alcoholic beverage
416 and not more than three (3) liters of any brand of wine.

417 (8) The commission may promulgate rules disallowing open
418 product sampling of alcoholic beverages or wines by the holders of
419 package retailer's permits and permitting open product sampling of
420 alcoholic beverages by the holders of on-premises retailer's
421 permits. Permitted sample products shall be plainly identified

422 "sample" and the actual sampling must occur in the presence of the
423 manufacturer's representatives during the legal operating hours of
424 on-premises retailers.

425 (9) The commission may promulgate rules and regulations that
426 authorize the holder of a research permit to import and purchase
427 limited amounts of alcoholic beverages from importers, wineries
428 and distillers of alcoholic beverages or from the commission. The
429 commission shall develop and provide forms to be completed by the
430 research permittee verifying each transaction. The completed
431 forms shall be forwarded to the commission within a period of time
432 prescribed by the commission. The records and inventory of
433 alcoholic beverages shall be open to inspection at any time by the
434 Director of the Alcoholic Beverage Control Division or any duly
435 authorized agent.

436 SECTION 5. Section 67-1-43, Mississippi Code of 1972, is
437 amended as follows:

438 67-1-43. Any authorized retail distributor who shall
439 purchase or receive intoxicating liquor from any source except
440 from the commission or the holder of a mechanically etched bottle
441 retailer permit, unless authorized by rules and regulations of the
442 commission promulgated under subsection (4) of Section 67-1-41,
443 shall be guilty of a misdemeanor and upon conviction thereof shall
444 be punished by a fine of not less than Five Hundred Dollars
445 (\$500.00), nor more than Two Thousand Dollars (\$2,000.00), to
446 which may be added imprisonment in the county jail for not more
447 than six (6) months. Any authorization of such person to sell
448 intoxicating beverages may be revoked as provided by law.

449 This section shall not apply to any authorized retail
450 distributor who shall purchase native wines directly from the
451 producer.

452 SECTION 6. This act shall take effect and be in force from
453 and after July 1, 2001.