SENATE BILL NO. 2433

AN ACT TO AMEND SECTION 67-1-51, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE TAX COMMISSION TO ISSUE A PERMIT TO AUTHORIZE THE HOLDER OF A SALON LICENSE TO PURCHASE WINE AND PROVIDE FREE SAMPLES OF SUCH WINE TO PATRONS OF THE SALON ON THE PREMISES OF SUCH SALON; TO AMEND SECTION 27-71-5, MISSISSIPPI CODE OF 1972, TO PROVIDE A PRIVILEGE TAX FOR A SALON WINE PERMIT; AND FOR RELATED PURPOSES.

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

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

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

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

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

Class 2. Wine manufacturer's permit, which shall authorize the holder thereof to manufacture, import in bulk, bottle and store wine or vinous liquor.
Class 3. Native wine producer's permit, which shall authorize the holder thereof to produce, bottle, store and sell native wines.

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

(c) On-premises retailer's permit. An on-premises retailer's permit shall authorize the sale of alcoholic beverages, including native wines, for consumption on the licensed premises only. Such a permit shall issue only to qualified hotels, restaurants and clubs, and to common carriers with adequate facilities for serving passengers. In resort areas, whether inside or outside of a municipality, the commission may, in its discretion, issue on-premises retailer's permits to such establishments, as it deems proper. An on-premises retailer's permit when issued to a common carrier shall authorize the sale and serving of alcoholic beverages aboard any licensed vehicle while moving through any county of the state; however, the sale of such alcoholic beverages shall not be permitted while such vehicle is stopped in a county that has not legalized such sales.

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

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

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

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

**Class 1.** A temporary one-day permit may be issued to
bona fide nonprofit civic or charitable organizations authorizing
the sale of alcoholic beverages, including native wine, for
consumption on the premises described in the temporary permit
only. Class 1 permits may be issued only to applicants
demonstrating to the commission, by affidavit submitted ten (10)
days prior to the proposed date or such other time as the
commission may determine, that they meet the qualifications of
Sections 67-1-11, 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57
(excluding paragraph (e)) and 67-1-59. Class 1 permittees shall obtain all alcoholic beverages from package retailers located in the county in which the temporary permit is issued. Alcoholic beverages remaining in stock upon expiration of the temporary permit may be returned by the permittee to the package retailer for a refund of the purchase price upon consent of the package retailer or may be kept by the permittee exclusively for personal use and consumption, subject to all laws pertaining to the illegal sale and possession of alcoholic beverages. The commission, following review of the affidavit and the requirements of the applicable statutes and regulations, may issue the permit.

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

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

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

(h) Research permit. A research permit shall authorize
the holder thereof to operate a research facility for the
professional research of alcoholic beverages. Such permit shall
authorize the holder of the permit to import and purchase limited
amounts of alcoholic beverages from the commission or from
importers, wineries and distillers of alcoholic beverages for
professional research.
(i) Alcohol processing permit. An alcohol processing permit shall authorize the holder thereof to purchase, transport and possess alcoholic beverages for the exclusive use in cooking, processing or manufacturing products which contain alcoholic beverages as an integral ingredient. An alcohol processing permit shall not authorize the sale of alcoholic beverages on the premises of the person engaging in the business of cooking, processing or manufacturing products which contain alcoholic beverages. The amounts of alcoholic beverages allowed under an alcohol processing permit shall be set by the commission.

(j) Salon wine permit. A salon wine permit shall be issued only to a holder of a salon license issued pursuant to Section 73-7-17, and shall authorize the holder thereof to purchase wine from a licensed wholesaler or distributor and provide free samples of such wine to patrons of the salon on the premises of the permittee's salon. The permittee shall be required to comply with all other rules and regulations of the commission.

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

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

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

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

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

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

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

(a) Manufacturer's permit, Class 1, distiller's and/or rectifier's............................................. $4,500.00
(b) Manufacturer's permit, Class 2, wine manufacturer.......................................................$1,800.00
(c) Manufacturer's permit, Class 3, native wine manufacturer per 10,000 gallons or part thereof produced... $10.00
(d) Native wine retailer's permit...................... $50.00
(e) Package retailer's permit, each .......... $900.00

(f) On-premises retailer's permit, except for clubs and common carriers, each ......................... $450.00

On purchases exceeding $5,000.00 and for each additional $5,000.00, or fraction thereof ........... $225.00

(g) On-premises retailer's permit for wine of more than four percent (4%) alcohol by volume, but not more than twenty-one percent (21%) alcohol by volume (each) .......... $225.00

On purchases exceeding $5,000.00 and for each additional $5,000.00, or fraction thereof ........... $225.00

(h) On-premises retailer's permit for clubs .... $225.00

On purchases exceeding $5,000.00 and for each additional $5,000.00, or fraction thereof ........... $225.00

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

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

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

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

(m) Temporary permit, Class 2, each ............. $50.00

On-premises purchases exceeding $5,000.00 and for each additional $5,000.00, or fraction thereof .......... $225.00

(n) (i) Caterer's permit ......................... $600.00

On purchases exceeding $5,000.00 and for each additional $5,000.00, or fraction thereof .......... $250.00

(ii) Caterer's permit for holders of on-premises retailer's permit ........................................ $150.00

On purchases exceeding $5,000.00 and for each additional $5,000.00, or fraction thereof .......... $250.00

(o) Research permit ............................ $100.00
(p) Filing fee for each application for an employee identification card................................. $5.00

(q) Salon wine permit...............................$225.00

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

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

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

(2) There is imposed and shall be collected from each permittee, except a common carrier, solicitor, holder of an employee identification card or a temporary permittee, by the commission, an additional license tax equal to the amounts imposed under subsection (1) of this section for the privilege of doing business within any municipality or county in which the licensee is located. If the licensee is located within a municipality, the commission shall pay the amount of additional license tax to the municipality, and if outside a municipality the commission shall
pay the additional license tax to the county in which the licensee is located. Payments by the commission to the respective local government subdivisions shall be made once each month for any collections during the preceding month.

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

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

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

(6) It shall be unlawful for any person to consume alcoholic beverages on the premises of any hotel restaurant, restaurant, club or the interior of any public place defined in Chapter 1, Title 67, Mississippi Code of 1972, when the owner or manager thereof displays in several conspicuous places inside said establishment and at the entrances thereto a sign containing the following language: NO ALCOHOLIC BEVERAGES ALLOWED.

SECTION 3. This act shall take effect and be in force from and after July 1, 2002.