

By: Senator(s) Gordon

To: Finance

SENATE BILL NO. 2758

1 AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE DEFINITION OF RESTAURANT IN THE LOCAL OPTION ALCOHOLIC  
 3 BEVERAGE CONTROL LAW AND TO INCLUDE CLUBHOUSES ASSOCIATED WITH  
 4 GATED GOLF COMMUNITIES IN THE DEFINITION OF THE TERM "QUALIFIED  
 5 RESORT AREA"; TO AMEND SECTION 67-1-7, MISSISSIPPI CODE OF 1972,  
 6 TO AUTHORIZE THE SALE OF ALCOHOLIC BEVERAGES AT SUCH CLUBHOUSES  
 7 REGARDLESS OF WHETHER THE COUNTY IN WHICH THE CLUBHOUSE IS LOCATED  
 8 HAS VOTED IN FAVOR OF COMING OUT FROM UNDER THE DRY LAW; TO AMEND  
 9 SECTIONS 67-3-7 AND 67-3-13, MISSISSIPPI CODE OF 1972, TO  
 10 AUTHORIZE THE SALE OF LIGHT WINE OR BEER AT QUALIFIED RESORT AREAS  
 11 IN COUNTIES IN WHICH THE SALE OF LIGHT WINE OR BEER IS OTHERWISE  
 12 PROHIBITED; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 67-1-5, Mississippi Code of 1972, is  
 15 amended as follows:

16 67-1-5. For the purposes of this chapter and unless  
 17 otherwise required by the context:

18 (a) \* \* \* "Alcoholic beverage" means any alcoholic  
 19 liquid, including wines of more than five percent (5%) of alcohol  
 20 by weight, capable of being consumed as a beverage by a human  
 21 being, but shall not include wine containing five percent (5%) or  
 22 less of alcohol by weight and shall not include beer containing  
 23 not more than five percent (5%) of alcohol by weight, as provided  
 24 for in Section 67-3-5, Mississippi Code of 1972, but shall include  
 25 native wines. The words "alcoholic beverage" shall not include  
 26 ethyl alcohol manufactured or distilled solely for fuel purposes.

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

31 (c) \* \* \* "Distilled spirits" means any beverage  
 32 containing more than four percent (4%) of alcohol by weight



33 produced by distillation of fermented grain, starch, molasses or  
34 sugar, including dilutions and mixtures of these beverages.

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

39 (e) \* \* \* "Person" means and includes any individual,  
40 partnership, corporation, association or other legal entity  
41 whatsoever.

42 (f) \* \* \* "Manufacturer" means any person engaged in  
43 manufacturing, distilling, rectifying, blending or bottling any  
44 alcoholic beverage.

45 (g) \* \* \* "Wholesaler" means any person, other than a  
46 manufacturer, engaged in distributing or selling any alcoholic  
47 beverage at wholesale for delivery within or without this state  
48 when such sale is for the purpose of resale by the purchaser.

49 (h) \* \* \* "Retailer" means any person who sells,  
50 distributes, or offers for sale or distribution, any alcoholic  
51 beverage for use or consumption by the purchaser and not for  
52 resale.

53 (i) \* \* \* "Commission" means the State Tax Commission  
54 of the State of Mississippi, which shall create a division in its  
55 organization to be known as the Alcoholic Beverage Control  
56 Division. Any reference to the commission hereafter means the  
57 powers and duties of the State Tax Commission with reference to  
58 supervision of the Alcoholic Beverage Control Division.

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

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

63 (l) \* \* \* "Hotel" means an establishment within a  
64 municipality, or within a qualified resort area approved as such  
65 by the commission, where, in consideration of payment, food and



66 lodging are habitually furnished to travelers and wherein are  
67 located at least twenty (20) adequately furnished and completely  
68 separate sleeping rooms with adequate facilities that persons  
69 usually apply for and receive as overnight accommodations. Hotels  
70 in towns or cities of more than twenty-five thousand (25,000)  
71 population are similarly defined except that they must have fifty  
72 (50) or more sleeping rooms. Any such establishment described in  
73 this paragraph with less than fifty (50) beds shall operate one or  
74 more regular dining rooms designed to be constantly frequented by  
75 customers each day. When used in this chapter, the word "hotel"  
76 shall also be construed to include any establishment that meets  
77 the definition of "bed and breakfast inn" as provided in this  
78 section.

79 (m) \* \* \* "Restaurant" means a place which is regularly  
80 and in a bona fide manner used and kept open for the serving of  
81 meals to guests for compensation, which has suitable seating  
82 facilities for guests, and which has suitable kitchen facilities  
83 connected therewith for cooking an assortment of foods and meals  
84 commonly ordered at various hours of the day \* \* \*. No place  
85 shall qualify as a restaurant under this chapter unless  
86 twenty-five percent (25%) or more of the revenue derived from such  
87 place shall be from the preparation, cooking and serving of meals  
88 and not from the sale of beverages, or unless the value of food  
89 given to and consumed by customers is equal to twenty-five percent  
90 (25%) or more of total revenue.

91 (n) \* \* \* "Club" means an association or a corporation:

92 (i) Organized or created under the laws of this  
93 state for a period of five (5) years prior to July 1, 1966;

94 (ii) Organized not primarily for pecuniary profit  
95 but for the promotion of some common object other than the sale or  
96 consumption of alcoholic beverages;

97 (iii) Maintained by its members through the  
98 payment of annual dues;



99                    (iv)    Owning, hiring or leasing a building or space  
100 in a building of such extent and character as may be suitable and  
101 adequate for the reasonable and comfortable use and accommodation  
102 of its members and their guests;

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

107                    (vi)    No member, officer, agent or employee of  
108 which is paid, or directly or indirectly receives, in the form of  
109 a salary or other compensation any profit from the distribution or  
110 sale of alcoholic beverages to the club or to members or guests of  
111 the club beyond such salary or compensation as may be fixed and  
112 voted at a proper meeting by the board of directors or other  
113 governing body out of the general revenues of the club.

114                    The commission may, in its discretion, waive the five-year  
115 provision of this paragraph. In order to qualify under this  
116 paragraph, a club must file with the commission, at the time of  
117 its application for a license under this chapter, two (2) copies  
118 of a list of the names and residences of its members and similarly  
119 file, within ten (10) days after the election of any additional  
120 member, his name and address. Each club applying for a license  
121 shall also file with the commission at the time of the application  
122 a copy of its articles of association, charter of incorporation,  
123 bylaws or other instruments governing the business and affairs  
124 thereof.

125                    (o) \* \* \* "Qualified resort area" means any area or  
126 locality outside of the limits of incorporated municipalities in  
127 this state commonly known and accepted as a place which regularly  
128 and customarily attracts tourists, vacationists and other  
129 transients because of its historical, scenic or recreational  
130 facilities or attractions, or because of other attributes which  
131 regularly and customarily appeal to and attract tourists,



132 vacationists and other transients in substantial numbers; however,  
133 no area or locality shall so qualify as a resort area until it has  
134 been duly and properly approved as such by the commission.

135 (i) The commission may approve an area or locality  
136 outside of the limits of an incorporated municipality that is in  
137 the process of being developed as a qualified resort area if such  
138 area or locality, when developed, can reasonably be expected to  
139 meet the requisites of the definition of the term "qualified  
140 resort area." In such a case, the status of qualified resort area  
141 shall not take effect until completion of the development.

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

150 (iii) The term includes the clubhouses associated  
151 with the state park golf courses at the Lefleur's Bluff State  
152 Park, the John Kyle State Park, the Percy Quin State Park and the  
153 Hugh White State Park and the clubhouses associated with any gated  
154 golf community. The status of these clubhouses as qualified  
155 resort areas does not require any declaration of same by the  
156 commission.

157 (p) \* \* \* "Native wine" means any product, produced in  
158 Mississippi for sale, having an alcohol content not to exceed  
159 twenty-one percent (21%) by weight and made in accordance with  
160 revenue laws of the United States, which shall be obtained  
161 primarily from the alcoholic fermentation of the juice of ripe  
162 grapes, fruits, berries or vegetables grown and produced in  
163 Mississippi; provided that bulk, concentrated or fortified wines  
164 used for blending may be produced without this state and used in



165 producing native wines. The commission shall adopt and promulgate  
166 rules and regulations to permit a producer to import such bulk  
167 and/or fortified wines into this state for use in blending with  
168 native wines without payment of any excise tax that would  
169 otherwise accrue thereon.

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

173 (r) \* \* \* "Bed and breakfast inn" means an  
174 establishment within a municipality where in consideration of  
175 payment, breakfast and lodging are habitually furnished to  
176 travelers and wherein are located not less than eight (8) and not  
177 more than nineteen (19) adequately furnished and completely  
178 separate sleeping rooms with adequate facilities, that persons  
179 usually apply for and receive as overnight accommodations;  
180 however, such restriction on the minimum number of sleeping rooms  
181 shall not apply to establishments on the National Register of  
182 Historic Places. No place shall qualify as a bed and breakfast  
183 inn under this chapter unless on the date of the initial  
184 application for a license under this chapter more than fifty  
185 percent (50%) of the sleeping rooms are located in a structure  
186 formerly used as a residence.

187 **SECTION 2.** Section 67-1-7, Mississippi Code of 1972, is  
188 amended as follows:

189 67-1-7. (1) Except as otherwise provided in Section 67-9-1  
190 for the transportation and possession of limited amounts of  
191 alcoholic beverages for the use of an alcohol processing  
192 permittee, and subject to all of the provisions and restrictions  
193 contained in this chapter, the manufacture, sale, distribution,  
194 possession and transportation of alcoholic beverages shall be  
195 lawful, subject to the restrictions hereinafter imposed, in those  
196 counties and municipalities of this state in which, at a local  
197 option election called and held for that purpose under the



198 provisions of this chapter, a majority of the qualified electors  
199 voting in such election shall vote in favor thereof. The  
200 manufacture, sale and distribution of alcoholic beverages shall  
201 not be permissible or lawful in counties except in (a)  
202 incorporated municipalities located within such counties, (b)  
203 qualified resort areas within such counties approved as such by  
204 the State Tax Commission, or (c) clubs within such counties,  
205 whether within a municipality or not. The manufacture, sale,  
206 distribution and possession of native wines shall be lawful in any  
207 location within any such county except those locations where the  
208 manufacture, sale or distribution is prohibited by law other than  
209 this section or by regulations of the commission.

210 (2) Notwithstanding the foregoing, within any state park or  
211 any state park facility which has been declared a qualified resort  
212 area by the commission and any clubhouse that is a qualified  
213 resort area under Section 67-1-5(o)(iii), an on-premises  
214 retailer's permittee may lawfully sell alcoholic beverages for  
215 consumption on his licensed premises regardless of whether or not  
216 the county or municipality in which the park or clubhouse is  
217 located has voted in favor of coming out from under the dry law.

218 **SECTION 3.** Section 67-3-7, Mississippi Code of 1972, is  
219 amended as follows:

220 67-3-7. (1) If any county, at an election held for the  
221 purpose under the election laws of the state, shall by a majority  
222 vote of the duly qualified electors voting in the election  
223 determine that the transportation, storage, sale, distribution,  
224 receipt and/or manufacture of wine and beer of an alcoholic  
225 content of not more than five percent (5%) by weight shall not be  
226 permitted in such county, then the same shall not be permitted  
227 therein except as authorized under Section 67-9-1 and as may be  
228 otherwise authorized in this section. An election to determine  
229 whether such transportation, storage, sale, distribution, receipt  
230 and/or manufacture of such beverages shall be excluded from any



231 county in the state, shall on a petition of twenty percent (20%)  
232 of the duly qualified electors of such county, be ordered by the  
233 board of supervisors thereof, for such county only. No election  
234 on the question shall be held in any one (1) county more often  
235 than once in five (5) years.

236 In counties which have elected, or may elect by a majority  
237 vote of the duly qualified electors voting in the election, that  
238 the transportation, storage, sale, distribution, receipt and/or  
239 manufacture of wine or beer of an alcoholic content of not more  
240 than five percent (5%) by weight shall not be permitted in said  
241 county, an election may be held in the same manner as the election  
242 hereinabove provided on the question of whether or not said  
243 transportation, storage, sale, distribution, receipt and/or  
244 manufacture of said beverages shall be permitted in such county.  
245 Such election shall be ordered by the board of supervisors of such  
246 county on a petition of twenty percent (20%) of the duly qualified  
247 electors of such county. No election on this question can be  
248 ordered more often than once in five (5) years.

249 (2) Nothing in this section shall make it unlawful to  
250 possess beer or wine, as defined herein, in any municipality which  
251 has heretofore or which may hereafter vote in an election,  
252 pursuant to Section 67-3-9, in which a majority of the qualified  
253 electors vote in favor of permitting the sale and the receipt,  
254 storage and transportation for the purpose of sale of beer or wine  
255 as defined herein.

256 (3) Nothing in this section shall make it unlawful to:

257 (a) Possess light wine or beer at a qualified resort  
258 area as defined in Section 67-1-5;

259 (b) Transport light wine or beer to a qualified resort  
260 area as defined in Section 67-1-5;

261 (c) Sell light wine or beer at a qualified resort area  
262 as defined in Section 67-1-5 if such light wine or beer is sold by





263 a person with a permit to engage in the business or as a retailer  
264 of light wine or beer.

265 **SECTION 4.** Section 67-3-13, Mississippi Code of 1972, is  
266 amended as follows:

267 67-3-13. (1) Except as otherwise provided herein and as  
268 authorized under \* \* \* this section and Section 67-9-1, in any  
269 county which has at any time since February 26, 1934, elected, or  
270 which may hereafter elect, to prohibit the transportation,  
271 storage, sale, distribution, receipt and/or manufacture of wine  
272 and beer of an alcoholic content of not more than four percent  
273 (4%) by weight in such county, it is hereby declared to be  
274 unlawful to possess such beverages therein. In any county which,  
275 after July 1, 1998, elects to prohibit the transportation,  
276 storage, sale, distribution, receipt and/or manufacture of wine  
277 and beer of an alcoholic content of not more than five percent  
278 (5%) by weight in such county, it is hereby declared to be  
279 unlawful to possess such beer therein. Any person found  
280 possessing any beer or wine of any quantity whatsoever in such  
281 county shall, on conviction, be imprisoned not more than ninety  
282 (90) days or fined not more than Five Hundred Dollars (\$500.00),  
283 or be both so fined and imprisoned.

284 (2) Notwithstanding the provisions of subsection (1) of this  
285 section, in any county or municipality in which the  
286 transportation, storage, sale, distribution, receipt and/or  
287 manufacture of light wine and beer is prohibited, it shall not be  
288 unlawful for a permitted wholesaler or distributor to possess  
289 light wine and beer when such light wine and beer is held therein  
290 solely for the purpose of storage and for distribution to other  
291 counties and municipalities in which possession of such beverages  
292 is lawful.

293 (3) Notwithstanding the provisions of subsections (1) and  
294 (2) of this section, in any county in which transportation,



295 storage, sale, distribution, receipt and/or manufacture of light  
296 wine and beer is prohibited, it shall not be unlawful:

297 (a) To possess light wine or beer at a resort area as  
298 defined in Section 67-1-5;

299 (b) To distribute and transport light wine or beer to a  
300 resort area as defined in Section 67-1-5.

301 **SECTION 5.** This act shall take effect and be in force from  
302 and after July 1, 2002.

