SENATE BILL NO. 2758

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

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

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

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

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

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

(c) * * * "Distilled spirits" means any beverage containing more than four percent (4%) of alcohol by weight.
produced by distillation of fermented grain, starch, molasses or sugar, including dilutions and mixtures of these beverages.

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

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

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

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

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

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

(j) "Division" means the Alcoholic Beverage Control Division of the State Tax Commission.

(k) "Municipality" means any incorporated city or town of this state.

(l) "Hotel" means an establishment within a municipality, or within a qualified resort area approved as such by the commission, where, in consideration of payment, food and
lodging are habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations. Hotels in towns or cities of more than twenty-five thousand (25,000) population are similarly defined except that they must have fifty (50) or more sleeping rooms. Any such establishment described in this paragraph with less than fifty (50) beds shall operate one or more regular dining rooms designed to be constantly frequented by customers each day. When used in this chapter, the word "hotel" shall also be construed to include any establishment that meets the definition of "bed and breakfast inn" as provided in this section.

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

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

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

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

(iii) Maintained by its members through the payment of annual dues;
(iv) Owning, hiring or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests;

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

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

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

(o) * * * "Qualified resort area" means any area or locality outside of the limits of incorporated municipalities in this state commonly known and accepted as a place which regularly and customarily attracts tourists, vacationists and other transients because of its historical, scenic or recreational facilities or attractions, or because of other attributes which regularly and customarily appeal to and attract tourists,
vacationists and other transients in substantial numbers; however, no area or locality shall so qualify as a resort area until it has been duly and properly approved as such by the commission.

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

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

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

(p) "Native wine" means any product, produced in Mississippi for sale, having an alcohol content not to exceed twenty-one percent (21%) by weight and made in accordance with revenue laws of the United States, which shall be obtained primarily from the alcoholic fermentation of the juice of ripe grapes, fruits, berries or vegetables grown and produced in Mississippi; provided that bulk, concentrated or fortified wines used for blending may be produced without this state and used in
producing native wines. The commission shall adopt and promulgate rules and regulations to permit a producer to import such bulk and/or fortified wines into this state for use in blending with native wines without payment of any excise tax that would otherwise accrue thereon.

(p) "Native winery" means any place or establishment within the State of Mississippi where native wine is produced in whole or in part for sale.

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

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

67-1-7. (1) Except as otherwise provided in Section 67-9-1 for the transportation and possession of limited amounts of alcoholic beverages for the use of an alcohol processing permittee, and subject to all of the provisions and restrictions contained in this chapter, the manufacture, sale, distribution, possession and transportation of alcoholic beverages shall be lawful, subject to the restrictions hereinafter imposed, in those counties and municipalities of this state in which, at a local option election called and held for that purpose under the
provisions of this chapter, a majority of the qualified electors
voting in such election shall vote in favor thereof. The
manufacture, sale and distribution of alcoholic beverages shall
not be permissible or lawful in counties except in (a)
incorporated municipalities located within such counties, (b)
qualified resort areas within such counties approved as such by
the State Tax Commission, or (c) clubs within such counties,
whether within a municipality or not. The manufacture, sale,
distribution and possession of native wines shall be lawful in any
location within any such county except those locations where the
manufacture, sale or distribution is prohibited by law other than
this section or by regulations of the commission.

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

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

67-3-7. (1) If any county, at an election held for the
purpose under the election laws of the state, shall by a majority
vote of the duly qualified electors voting in the election
determine that the transportation, storage, sale, distribution,
receipt and/or manufacture of wine and beer of an alcoholic
content of not more than five percent (5%) by weight shall not be
permitted in such county, then the same shall not be permitted
therein except as authorized under Section 67-9-1 and as may be
otherwise authorized in this section. An election to determine
whether such transportation, storage, sale, distribution, receipt
and/or manufacture of such beverages shall be excluded from any
county in the state, shall on a petition of twenty percent (20%) of the duly qualified electors of such county, be ordered by the board of supervisors thereof, for such county only. No election on the question shall be held in any one (1) county more often than once in five (5) years.

In counties which have elected, or may elect by a majority vote of the duly qualified electors voting in the election, that the transportation, storage, sale, distribution, receipt and/or manufacture of wine or beer of an alcoholic content of not more than five percent (5%) by weight shall not be permitted in said county, an election may be held in the same manner as the election hereinabove provided on the question of whether or not said transportation, storage, sale, distribution, receipt and/or manufacture of said beverages shall be permitted in such county.

Such election shall be ordered by the board of supervisors of such county on a petition of twenty percent (20%) of the duly qualified electors of such county. No election on this question can be ordered more often than once in five (5) years.

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

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

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

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

(c) Sell light wine or beer at a qualified resort area as defined in Section 67-1-5 if such light wine or beer is sold by
a person with a permit to engage in the business or as a retailer of light wine or beer.

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

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

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

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, in any county in which transportation,
storage, sale, distribution, receipt and/or manufacture of light
wine and beer is prohibited, it shall not be unlawful:

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

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

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