SENATE BILL NO. 2807

AN ACT TO AMEND SECTION 67-1-51, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE TAX COMMISSION TO ISSUE A PERMIT TO AUTHORIZE PERSONS TO PURCHASE ALCOHOLIC BEVERAGES FOR THE PURPOSES OF MECHANICALLY ETCHING DESIGNS ON THE BOTTLES; TO AUTHORIZE THE SALE OF SUCH BOTTLES AT RETAIL; TO AMEND SECTION 27-71-5, MISSISSIPPI CODE OF 1972, TO PROVIDE A PRIVILEGE LICENSE TAX FOR A MECHANICALLY ETCHED BOTTLE RETAILERS PERMIT; TO AMEND SECTIONS 67-1-41 AND 67-1-43, IN CONFORMITY THERETO; 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
retailer'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 Sections 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) Mechanically etched bottle retailer permit. A mechanically etched bottle retailer permit shall authorize the holder thereof to purchase alcoholic beverages from any licensed wholesaler or distributor within Mississippi for the purpose of mechanically etching designs on the bottles and to sell at retail the finished product. 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) Mechanically etched bottle retailer

permit...................................................$900.00

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

67-1-41. (1) The State Tax Commission is hereby created a
wholesale distributor and seller of alcoholic beverages, not
including malt liquors, within the State of Mississippi. It is
granted the sole right to import and sell such intoxicating
liquors at wholesale within the state, and no person who is
granted the right to sell, distribute or receive such liquors at
retail shall purchase any such intoxicating liquors from any
source other than the commission except as authorized in
subsections (4) and (9), provided that retailers and consumers may
purchase native wines directly from the producer and may purchase
mechanically etched bottles containing alcoholic beverages
directly from the holder of a mechanically etched bottle retailer
permit. The commission may establish warehouses, purchase
intoxicating liquors in such quantities and from such sources as
it may deem desirable and sell the same to authorized permittees
within the state including, at the discretion of the commission,
any retail distributors operating within any military post or
qualified resort areas within the boundaries of the state, keeping
a correct and accurate record of all such transactions and
exercising such control over the distribution of alcoholic
beverages as seem right and proper in keeping with the provisions
or purposes of this chapter.

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

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

(2) No person for the purpose of sale shall manufacture,
distill, brew, sell, possess, export, transport, distribute,
warehouse, store, solicit, take orders for, bottle, rectify,
blend, treat, mix or process any alcoholic beverage except in
accordance with authority granted under this chapter, or as
otherwise provided by law for native wines.
(3) No alcoholic beverage intended for sale or resale shall be imported, shipped or brought into this state for delivery to any person other than as provided in this chapter, or as otherwise provided by law for native wines.

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

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

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

(7) The commission may promulgate rules which authorize the manufacturer of an alcoholic beverage or wine to import, transport and furnish or give a sample of alcoholic beverages or wines to the holders of package retailer's permits, on-premises retailer's permits, native wine retailer's permits and temporary retailer's permits who have not previously purchased the brand of that manufacturer from the commission. For each holder of the designated permits, the manufacturer may furnish not more than five hundred (500) milliliters of any brand of alcoholic beverage and not more than three (3) liters of any brand of wine.
(8) The commission may promulgate rules disallowing open product sampling of alcoholic beverages or wines by the holders of package retailer's permits and permitting open product sampling of alcoholic beverages by the holders of on-premises retailer's permits. Permitted sample products shall be plainly identified "sample" and the actual sampling must occur in the presence of the manufacturer's representatives during the legal operating hours of on-premises retailers.

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

SECTION 4. Section 67-1-43, Mississippi Code of 1972, is amended as follows:

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

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