

By: Representative McCoy

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1286

1 AN ACT TO AMEND SECTIONS 67-1-37, 67-3-31, 67-3-37 AND
2 67-3-74, MISSISSIPPI CODE OF 1972, TO EXTEND UNTIL JULY 1, 2005,
3 THE REPEAL DATE ON THE PROVISIONS THAT AUTHORIZE THE ENFORCEMENT
4 AGENTS OF THE ALCOHOLIC BEVERAGE CONTROL DIVISION OF THE STATE TAX
5 COMMISSION TO ENFORCE CERTAIN PROVISIONS OF THE LIGHT WINE AND
6 BEER LAWS; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 67-1-37, Mississippi Code of 1972, is
9 amended as follows:

10 **[Until July 1, 2005, this section will read as follows:]**

11 67-1-37. The State Tax Commission, under its duties and
12 powers with respect to the Alcoholic Beverage Control Division
13 therein, shall have the following powers, functions and duties:

14 (a) To issue or refuse to issue any permit provided for
15 by this chapter, or to extend the permit or remit in whole or any
16 part of the permit monies when the permit cannot be used due to a
17 natural disaster or Act of God.

18 (b) To revoke, suspend or cancel, for violation of or
19 noncompliance with the provisions of this chapter, or the law
20 governing the production and sale of native wines, or any lawful
21 rules and regulations of the commission issued hereunder, or for
22 other sufficient cause, any permit issued by it under the
23 provisions of this chapter; however, no such permit shall be
24 revoked, suspended or cancelled except after a hearing of which
25 the permit holder shall have been given reasonable notice and an
26 opportunity to be heard. The board shall be authorized to suspend
27 the permit of any permit holder for being out of compliance with
28 an order for support, as defined in Section 93-11-153. The
29 procedure for suspension of a permit for being out of compliance



30 with an order for support, and the procedure for the reissuance or
31 reinstatement of a permit suspended for that purpose, and the
32 payment of any fees for the reissuance or reinstatement of a
33 permit suspended for that purpose, shall be governed by Section
34 93-11-157 or Section 93-11-163, as the case may be. If there is
35 any conflict between any provision of Section 93-11-157 or Section
36 93-11-163 and any provision of this chapter, the provisions of
37 Section 93-11-157 or Section 93-11-163, as the case may be, shall
38 control.

39 (c) To prescribe forms of permits and applications for
40 permits and of all reports which it deems necessary in
41 administering this chapter.

42 (d) To fix standards, not in conflict with those
43 prescribed by any law of this state or of the United States, to
44 secure the use of proper ingredients and methods of manufacture of
45 alcoholic beverages.

46 (e) To issue rules regulating the advertising of
47 alcoholic beverages in the state in any class of media and
48 permitting advertising of the retail price of alcoholic beverages.

49 (f) To issue reasonable rules and regulations, not
50 inconsistent with the federal laws or regulations, requiring
51 informative labeling of all alcoholic beverages offered for sale
52 within this state and providing for the standards of fill and
53 shapes of retail containers of alcoholic beverages; however, such
54 containers shall not contain less than fifty (50) milliliters by
55 liquid measure.

56 (g) Subject to the provisions of subsection (3) of
57 Section 67-1-51, to issue rules and regulations governing the
58 issuance of retail permits for premises located near or around
59 schools, colleges, universities, churches and other public
60 institutions, and specifying the distances therefrom within which
61 no such permit shall be issued. The Alcoholic Beverage Control
62 Division shall not allow the sale or consumption of alcoholic



63 beverages in or on the campus of any public school or college, and
64 no alcoholic beverage shall be for sale or consumed at any public
65 athletic event at any grammar or high school or any college.

66 (h) To adopt and promulgate, repeal and amend, such
67 rules, regulations, standards, requirements and orders, not
68 inconsistent with this chapter or any law of this state or of the
69 United States, as it deems necessary to control the manufacture,
70 importation, transportation, distribution and sale of alcoholic
71 liquor, whether intended for beverage or nonbeverage use in a
72 manner not inconsistent with the provisions of this chapter or any
73 other statute, including the native wine laws.

74 (i) To call upon other administrative departments of
75 the state, county and municipal governments, county and city
76 police departments and upon prosecuting officers for such
77 information and assistance as it may deem necessary in the
78 performance of its duties.

79 (j) To prepare and submit to the Governor during the
80 month of January of each year a detailed report of its official
81 acts during the preceding fiscal year ending June 30, including
82 such recommendations as it may see fit to make, and to transmit a
83 like report to each member of the Legislature of this state upon
84 the convening thereof at its next regular session.

85 (k) To inspect, or cause to be inspected, any premises
86 where alcoholic liquors intended for sale are manufactured,
87 stored, distributed or sold, and to examine or cause to be
88 examined all books and records pertaining to the business
89 conducted therein.

90 (l) In the conduct of any hearing authorized to be held
91 by the commission, to hear testimony and take proof material for
92 its information in the discharge of its duties under this chapter;
93 to issue subpoenas, which shall be effective in any part of this
94 state, requiring the attendance of witnesses and the production of
95 books and records; to administer or cause to be administered



96 oaths; and to examine or cause to be examined any witness under
97 oath. Any court of record, or any judge thereof, may by order
98 duly entered require the attendance of witnesses and the
99 production of relevant books subpoenaed by the commission, and
100 such court or judge may compel obedience to its or his order by
101 proceedings for contempt.

102 (m) To investigate the administration of laws in
103 relation to alcoholic liquors in this and other states and any
104 foreign countries, and to recommend from time to time to the
105 Governor and through him to the Legislature of this state such
106 amendments to this chapter, if any, as it may think desirable.

107 (n) To designate hours and days when alcoholic
108 beverages may be sold in different localities in the state which
109 permit such sale.

110 (o) To assign employees to posts of duty at locations
111 where they will be most beneficial for the control of alcoholic
112 beverages, to remove, to dismiss, to suspend without pay, to act
113 as a trial board in hearings based upon charges against employees.
114 After twelve (12) months' service, no employee shall be removed,
115 dismissed, demoted or suspended without just cause and only after
116 being furnished with reasons for such removal, dismissal, demotion
117 or suspension, and upon request given a hearing in his own
118 defense.

119 (p) All hearings conducted by the commission shall be
120 open to the public, and, when deemed necessary, a written
121 transcript shall be made of the testimony introduced thereat.

122 (q) To adopt and promulgate rules and regulations for
123 suspension or revocation of identification cards of employees of
124 permittees for violations of the alcoholic beverage control laws,
125 rules or regulations.

126 (r) To enforce the provisions made unlawful by Sections
127 67-3-13, 67-3-15, 67-3-53 and 67-3-70.



128 **[From and after July 1, 2005, this section will read as**
129 **follows:]**

130 67-1-37. The State Tax Commission, under its duties and
131 powers with respect to the Alcoholic Beverage Control Division
132 therein, shall have the following powers, functions and duties:

133 (a) To issue or refuse to issue any permit provided for
134 by this chapter, or to extend the permit or remit in whole or any
135 part of the permit monies when the permit cannot be used due to a
136 natural disaster or Act of God.

137 (b) To revoke, suspend or cancel, for violation of or
138 noncompliance with the provisions of this chapter, or the law
139 governing the production and sale of native wines, or any lawful
140 rules and regulations of the commission issued hereunder, or for
141 other sufficient cause, any permit issued by it under the
142 provisions of this chapter; however, no such permit shall be
143 revoked, suspended or cancelled except after a hearing of which
144 the permit holder shall have been given reasonable notice and an
145 opportunity to be heard. The board shall be authorized to suspend
146 the permit of any permit holder for being out of compliance with
147 an order for support, as defined in Section 93-11-153. The
148 procedure for suspension of a permit for being out of compliance
149 with an order for support, and the procedure for the reissuance or
150 reinstatement of a permit suspended for that purpose, and the
151 payment of any fees for the reissuance or reinstatement of a
152 permit suspended for that purpose, shall be governed by Section
153 93-11-157 or 93-11-163, as the case may be. If there is any
154 conflict between any provision of Section 93-11-157 or 93-11-163
155 and any provision of this chapter, the provisions of Section
156 93-11-157 or 93-11-163, as the case may be, shall control.

157 (c) To prescribe forms of permits and applications for
158 permits and of all reports which it deems necessary in
159 administering this chapter.



160 (d) To fix standards, not in conflict with those
161 prescribed by any law of this state or of the United States, to
162 secure the use of proper ingredients and methods of manufacture of
163 alcoholic beverages.

164 (e) To issue rules regulating the advertising of
165 alcoholic beverages in the state in any class of media and
166 permitting advertising of the retail price of alcoholic beverages.

167 (f) To issue reasonable rules and regulations, not
168 inconsistent with the federal laws or regulations, requiring
169 informative labeling of all alcoholic beverages offered for sale
170 within this state and providing for the standards of fill and
171 shapes of retail containers of alcoholic beverages; however, such
172 containers shall not contain less than fifty (50) milliliters by
173 liquid measure.

174 (g) Subject to the provisions of subsection (3) of
175 Section 67-1-51, to issue rules and regulations governing the
176 issuance of retail permits for premises located near or around
177 schools, colleges, universities, churches and other public
178 institutions, and specifying the distances therefrom within which
179 no such permit shall be issued. The Alcoholic Beverage Control
180 Division shall not allow the sale or consumption of alcoholic
181 beverages in or on the campus of any public school or college, and
182 no alcoholic beverage shall be for sale or consumed at any public
183 athletic event at any grammar or high school or any college.

184 (h) To adopt and promulgate, repeal and amend, such
185 rules, regulations, standards, requirements and orders, not
186 inconsistent with this chapter or any law of this state or of the
187 United States, as it deems necessary to control the manufacture,
188 importation, transportation, distribution and sale of alcoholic
189 liquor, whether intended for beverage or nonbeverage use in a
190 manner not inconsistent with the provisions of this chapter or any
191 other statute, including the native wine laws.



192 (i) To call upon other administrative departments of
193 the state, county and municipal governments, county and city
194 police departments and upon prosecuting officers for such
195 information and assistance as it may deem necessary in the
196 performance of its duties.

197 (j) To prepare and submit to the Governor during the
198 month of January of each year a detailed report of its official
199 acts during the preceding fiscal year ending June 30, including
200 such recommendations as it may see fit to make, and to transmit a
201 like report to each member of the Legislature of this state upon
202 the convening thereof at its next regular session.

203 (k) To inspect, or cause to be inspected, any premises
204 where alcoholic liquors intended for sale are manufactured,
205 stored, distributed or sold, and to examine or cause to be
206 examined all books and records pertaining to the business
207 conducted therein.

208 (l) In the conduct of any hearing authorized to be held
209 by the commission, to hear testimony and take proof material for
210 its information in the discharge of its duties under this chapter;
211 to issue subpoenas, which shall be effective in any part of this
212 state, requiring the attendance of witnesses and the production of
213 books and records; to administer or cause to be administered
214 oaths; and to examine or cause to be examined any witness under
215 oath. Any court of record, or any judge thereof, may by order
216 duly entered require the attendance of witnesses and the
217 production of relevant books subpoenaed by the commission, and
218 such court or judge may compel obedience to its or his order by
219 proceedings for contempt.

220 (m) To investigate the administration of laws in
221 relation to alcoholic liquors in this and other states and any
222 foreign countries, and to recommend from time to time to the
223 Governor and through him to the Legislature of this state such
224 amendments to this chapter, if any, as it may think desirable.



225 (n) To designate hours and days when alcoholic
226 beverages may be sold in different localities in the state which
227 permit such sale.

228 (o) To assign employees to posts of duty at locations
229 where they will be most beneficial for the control of alcoholic
230 beverages, to remove, to dismiss, to suspend without pay, to act
231 as a trial board in hearings based upon charges against employees.
232 After twelve (12) months' service, no employee shall be removed,
233 dismissed, demoted or suspended without just cause and only after
234 being furnished with reasons for such removal, dismissal, demotion
235 or suspension, and upon request given a hearing in his own
236 defense.

237 (p) All hearings conducted by the commission shall be
238 open to the public, and, when deemed necessary, a written
239 transcript shall be made of the testimony introduced thereat.

240 (q) To adopt and promulgate rules and regulations for
241 suspension or revocation of identification cards of employees of
242 permittees for violations of the alcoholic beverage control laws,
243 rules or regulations.

244 **SECTION 2.** Section 67-3-31, Mississippi Code of 1972, is
245 amended as follows:

246 **[Until July 1, 2005, this section will read as follows:]**

247 67-3-31. Proceedings for the revocation or suspension of any
248 permit authorizing the sale of beer or wine at retail for a
249 violation of any of the provisions of Section 67-3-53 may be
250 brought in the circuit or county court of the county in which the
251 licensed premises are located. Such proceedings shall be entitled
252 in the name of the state and against the permittee and shall be
253 instituted by filing a complaint with the clerk of the court. The
254 complaint may be filed by the county prosecuting attorney of the
255 county upon his own initiative or, then by the district attorney
256 of the district in which the county is located, and it shall be
257 mandatory upon the county prosecuting attorney, or district



258 attorney, as the case may be, to file a complaint when requested
259 to do so by a peace officer or any person as hereinafter provided.
260 Any peace officer within his jurisdiction or any enforcement
261 officer of the Alcoholic Beverage Control Division within the
262 State Tax Commission who learns that a retail permittee within his
263 jurisdiction has violated any of the provisions of such section
264 shall file with the county prosecuting attorney of the county in
265 which the licensed premises are located, or, then with the
266 district attorney of the district in which such county is located,
267 an affidavit specifying in detail the facts alleged to constitute
268 such violation, and requesting that a complaint be filed against
269 the permittee for the revocation or suspension of his permit. A
270 like affidavit may be filed with the county prosecuting attorney,
271 or district attorney, as the case may be, by any person who
272 resides, and has for at least one (1) year prior thereto resided
273 within the county in which the licensed premises are located
274 requesting that a complaint be filed for the revocation or
275 suspension of the permittee's permit. Promptly upon receiving any
276 such affidavit the county prosecuting attorney, or district
277 attorney, shall prepare a proper complaint, which shall be signed
278 and sworn to by the person or persons filing the affidavit with
279 him, and the county prosecuting attorney or district attorney
280 shall file the complaint with the clerk of the circuit or county
281 court.

282 **[From and after July 1, 2005, this section will read as**
283 **follows:]**

284 67-3-31. Proceedings for the revocation or suspension of any
285 permit authorizing the sale of beer or wine at retail for a
286 violation of any of the provisions of Section 67-3-53 may be
287 brought in the circuit or county court of the county in which the
288 licensed premises are located. Such proceedings shall be entitled
289 in the name of the state and against the permittee and shall be
290 instituted by filing a complaint with the clerk of the court. The



291 complaint may be filed by the county prosecuting attorney of the
292 county upon his own initiative or, then by the district attorney
293 of the district in which the county is located, and it shall be
294 mandatory upon the county prosecuting attorney, or district
295 attorney, as the case may be, to file a complaint when requested
296 to do so by a peace officer or any person as hereinafter provided.
297 Any peace officer who learns that a retail permittee within his
298 jurisdiction has violated any of the provisions of such section
299 shall file with the county prosecuting attorney of the county in
300 which the licensed premises are located, or, then with the
301 district attorney of the district in which such county is located,
302 an affidavit specifying in detail the facts alleged to constitute
303 such violation, and requesting that a complaint be filed against
304 the permittee for the revocation or suspension of his permit. A
305 like affidavit may be filed with the county prosecuting attorney,
306 or district attorney, as the case may be, by any person who
307 resides, and has for at least one (1) year prior thereto resided
308 within the county in which the licensed premises are located
309 requesting that a complaint be filed for the revocation or
310 suspension of the permittee's permit. Promptly upon receiving any
311 such affidavit the county prosecuting attorney, or district
312 attorney, shall prepare a proper complaint, which shall be signed
313 and sworn to by the person or persons filing the affidavit with
314 him, and the county prosecuting attorney or district attorney
315 shall file the complaint with the clerk of the circuit or county
316 court.

317 **SECTION 3.** Section 67-3-37, Mississippi Code of 1972, is
318 amended as follows:

319 **[Until July 1, 2005, this section will read as follows:]**

320 67-3-37. It shall be the duty of the county prosecuting
321 attorney or the district attorney, as the case may be, to file
322 complaints as provided in Section 67-3-31 and to prosecute
323 diligently and without delay all complaints filed by him.



324 It shall be the duty of all peace officers, within their
325 jurisdiction, and all enforcement officers of the Alcoholic
326 Beverage Control Division of the State Tax Commission to enforce
327 the provisions of Section 67-3-53 and they shall frequently visit
328 all licensed premises within their jurisdiction to determine
329 whether such permittees are complying with the laws. They shall
330 promptly investigate all complaints made to them by any citizen
331 relative to any alleged violations of such section within their
332 jurisdiction. When any peace officer or enforcement officer of
333 the Alcoholic Beverage Control Division has knowledge of a
334 violation of such section committed by a permittee within his
335 jurisdiction, it shall be his duty forthwith to file an affidavit
336 with the county prosecuting attorney or district attorney
337 requesting that a complaint be filed for the revocation or
338 suspension of the permit of the permittee.

339 **[From and after July 1, 2005, this section will read as**
340 **follows:]**

341 67-3-37. It shall be the duty of the county prosecuting
342 attorney or the district attorney, as the case may be, to file
343 complaints as provided in Section 67-3-31 and to prosecute
344 diligently and without delay all complaints filed by him.

345 It shall be the duty of all peace officers to enforce, within
346 their jurisdiction, the provisions of Section 67-3-53 and they
347 shall frequently visit all licensed premises within their
348 jurisdiction to determine whether such permittees are complying
349 with the laws. They shall promptly investigate all complaints
350 made to them by any citizen relative to any alleged violations of
351 such section within their jurisdiction. When any peace officer
352 has knowledge of a violation of such section committed by a
353 permittee within his jurisdiction, it shall be his duty forthwith
354 to file an affidavit with the county prosecuting attorney or
355 district attorney requesting that a complaint be filed for the
356 revocation or suspension of the permit of the permittee.



357 **SECTION 4.** Section 67-3-74, Mississippi Code of 1972, is
358 amended as follows:

359 67-3-74. (1) In addition to peace officers within their
360 jurisdiction, all enforcement officers of the Alcoholic Beverage
361 Control Division of the State Tax Commission are authorized to
362 enforce the provisions made unlawful by Sections 67-3-13, 67-3-15,
363 67-3-53 and 67-3-70; provided, however, that the provisions
364 prohibiting the sale of light wine or beer to persons under the
365 age of twenty-one (21) years shall be enforced by the division as
366 provided for in this section.

367 (2) (a) The Alcoholic Beverage Control Division shall
368 investigate violations of the laws prohibiting the sale of light
369 wine or beer to persons under the age of twenty-one (21) years
370 upon receipt of a complaint or information from a person stating
371 that they have knowledge of such violation.

372 (b) Upon receipt of such complaint or information, the
373 Alcoholic Beverage Control Division shall notify the permit holder
374 of the complaint by certified mail to the primary business office
375 of such permit holder or by hand delivery of the complaint or
376 information to the primary business office of such holder, except
377 in cases where the complaint or information is received from any
378 law enforcement officer.

379 (c) If an enforcement officer of the Alcoholic Beverage
380 Control Division enters the business of the holder of the permit
381 to investigate a complaint and discovers a violation, the agent
382 shall notify the person that committed the violation and the
383 holder of the permit:

384 (i) Within ten (10) days after such violation,
385 Sundays and holidays excluded, if the business sells light wine or
386 beer for on-premises consumption; and

387 (ii) Within seventy-two (72) hours after such
388 violation, Sundays and holidays excluded, if the business does not
389 sell light wine or beer for on-premises consumption.



390 (3) The provisions of this section shall be repealed on July
391 1, 2005.

392 **SECTION 5.** This act shall take effect and be in force from
393 and after its passage.

