To: Finance

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Senator(s) Minor

SENATE BILL NO. 2064

1 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A RESPONSIBLE 2 ALCOHOL VENDOR PROGRAM DESIGNED TO TRAIN SERVERS EMPLOYED BY 3 PERSONS HOLDING A PERMIT TO SELL ALCOHOLIC BEVERAGES, BEER OR 4 LIGHT WINE FOR ON-PREMISES CONSUMPTION TO ASSIST IN THE 5 ELIMINATION OF THE SALE OF ALCOHOLIC BEVERAGES, BEER AND LIGHT 6 WINE TO UNDERAGE PERSONS AND TO ENCOURAGE THE RESPONSIBLE SALE OF 7 ALCOHOLIC BEVERAGES, BEER AND LIGHT WINE; TO PROVIDE THAT THE 8 STATE TAX COMMISSION SHALL OVERSEE THE PROGRAM; TO PROVIDE THAT 9 THE COMMISSION AND THE ATTORNEY GENERAL SHALL APPROVE ALL SERVER 10 TRAINING COURSES; TO PROVIDE THAT THE COMMISSION SHALL ISSUE 11 PERMITS TO APPROVED PROVIDERS; TO PROVIDE THAT APPROVED PROVIDERS 12 SHALL ISSUE SERVER CERTIFICATES TO SERVERS UPON SUCCESSFUL 13 COMPLETION OF A SERVER TRAINING COURSE; TO PROVIDE THAT IF A 14 VENDOR'S EMPLOYEE SELLS ALCOHOLIC BEVERAGES, BEER OR LIGHT WINE TO 15 UNDERAGE OR VISIBLY INTOXICATED PERSONS, THE VENDORS PERMIT SHALL 16 NOT BE SUSPENDED OR REVOKED BY THE COMMISSION FOR THE FIRST 17 OFFENSE COMMITTED ON THE PERMITTED PREMISES WITHIN A TWELVE-MONTH 18 PERIOD IF ALL SERVERS OF THE VENDOR POSSESS A VALID SERVER'S 19 CERTIFICATION AT THE TIME OF THE VIOLATION OR ALL SERVERS HAVE 20 APPLIED FOR SERVER'S CERTIFICATION WITHIN 30 DAYS AFTER COMMENCEMENT 21 OF EMPLOYMENT, AND THE VENDOR WAS WITHOUT KNOWLEDGE OF THE VIOLATION 22 OR DID NOT PARTICIPATE IN OR COMMIT THE VIOLATION; TO PROVIDE THAT 23 IF THERE ARE SUBSEQUENT VIOLATIONS WITHIN THE TWELVE-MONTH PERIOD, 24 SERVER TRAINING SHALL NOT BE CONSIDERED AS A MITIGATING FACTOR; TO 25 PROVIDE FOR FEES FOR APPROVED PROVIDER PERMITS; TO AMEND SECTIONS 26 67-1-37, 67-1-71 AND 67-3-29, MISSISSIPPI CODE OF 1972, IN 27 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the 1 "Responsible Alcohol Vendor Law" of the State of Mississippi.

SECTION 2. The purpose of this section is to eliminate the 5 sale of alcoholic beverages, beer and light wine to, and the 7 consumption of alcoholic beverages, beer and light wine by, 9 underage persons; to reduce intoxication and to reduce accidents, 11 injuries and death in the state which are related to intoxication; 13 and to encourage the responsible sale of alcoholic beverages, beer 15 and light wine by vendors throughout the state and provide for the 17 mitigation of administrative penalties against vendors who comply 19 with responsible practices in accordance with this act.
SECTION 3. As used in this act:

(a) "Commission" means the State Tax Commission.

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

(c) "Vendor" means any person holding a permit to sell alcoholic beverages, beer or light wine for on-premises consumption.

(d) "Server" means any employee of a vendor who is authorized to sell, serve or mix alcoholic beverages, beer or light wine in the normal course of his or her employment.

(e) "Server certification" means the certificate issued to a server upon completion of an approved server training course.

(f) "Approved provider" means a person approved by the commission to provide server training courses.

(g) "Trainer" means an individual employed or authorized by an approved training provider to conduct an alcohol server education course wherein the successful completion of the course by the student will result in the issuance of a server certification.

SECTION 4. (1) The commission shall oversee the Responsible Alcohol Vendor Program. Such program shall be designed to educate vendors and their employees and customers about selling, serving and consuming alcoholic beverages, beer and light wine in a responsible manner. The commission shall:

(a) Approve server training courses for vendors and servers; and

(b) Issue and renew approved provider permits.

Approved provider permits shall be considered a privilege license and if not expired, suspended or revoked, remain valid within the State of Mississippi.

(2) The commission and the Attorney General shall approve all server training courses prior to implementation. The commission shall issue permits to approved providers. The permits
for approved providers shall be valid for two (2) years. The commission may promulgate rules and regulations setting forth additional requirements for providers and/or individual trainers.

(3) Approved providers shall retain records of all persons trained for a period of three (3) years after the date of such training and shall make this information available to the commission upon request or as required by regulation.

SECTION 5. Approved providers shall issue server certificates to servers upon successful completion of a server training course offered by an approved provider. Server certificates shall be valid for a period of two (2) years from the date of completion of the training course and shall be issued and renewed by approved providers in accordance with the rules and regulations promulgated by the commission.

SECTION 6. The commission may suspend or revoke an approved provider's permit or impose a fine for noncompliance with this act or for any violation of federal, state or local laws or regulations. The procedure for the suspension, revocation or denial of a permit, or for the imposition of fines, shall be the same as are otherwise set forth in Chapter 1, Title 67, Mississippi Code of 1972, for suspension or revocation of alcoholic beverage permits.

SECTION 7. (1) If vendor's employee sells alcoholic beverages, beer or light wine to an underage or visibly intoxicated person, the vendor's permit shall not be suspended or revoked by the commission for the first offense committed on the permitted premises within a twelve-month period if:

(a) All servers of the vendor possessed a valid server's certification at the time of the violation or all servers had applied for server's certification within thirty (30) days after commencing employment; and

(b) The vendor was without knowledge of the violation or did not participate in or commit such violation.
(2) If there are subsequent violations at the permitted premises within a twelve-month period, the commission shall not consider server training in mitigation of a vendor's administrative penalties or fines for the unlawful sale or service of an alcoholic beverage, beer, or light wine.

(3) The vendor shall have the burden of proof in showing that his or her employees were trained or had applied for training within thirty (30) days of commencing employment.

SECTION 8. The commission may promulgate rules and regulations to effectuate the program in accordance with the Mississippi Administrative Procedures Law, including, but not limited to, rules and regulations related to the development, establishment and maintenance of the program. The commission shall effect the formation of an industry advisory council to provide comment on the proposed initial rules and regulations.

SECTION 9. The commission may promulgate rules and regulations regarding fees for approved provider permits to be issued under this act. The commission may assess a permit fee not to exceed Five Hundred Dollars ($500.00) upon any person, organization or entity seeking classification as an approved provider. This permit shall remain valid for a period of two (2) years, unless suspended or revoked by the commission. The commission may renew an approved provider permit upon request and assess a permit renewal fee not to exceed One Hundred Dollars ($100.00).

SECTION 10. Section 67-1-37, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2003, this section will read as follows:]

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

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

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

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

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

(e) To issue rules regulating the advertising of alcoholic beverages in the state in any class of media and permitting advertising of the retail price of alcoholic beverages.
(f) To issue reasonable rules and regulations, not inconsistent with the federal laws or regulations, requiring informative labeling of all alcoholic beverages offered for sale within this state and providing for the standards of fill and shapes of retail containers of alcoholic beverages; however, such containers shall not contain less than fifty (50) milliliters by liquid measure.

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

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

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

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

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

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

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

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

(o) To assign employees to posts of duty at locations
where they will be most beneficial for the control of alcoholic
beverages, to remove, to dismiss, to suspend without pay, to act
as a trial board in hearings based upon charges against employees.

After twelve (12) months' service, no employee shall be removed,
dismissed, demoted or suspended without just cause and only after being furnished with reasons for such removal, dismissal, demotion or suspension, and upon request given a hearing in his own defense.

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

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

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

(s) To adopt and promulgate rules and regulations for Responsible Alcohol Vendor Law.

[From and after July 1, 2003, this section will read as follows:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) To adopt and promulgate rules and regulations for suspension or revocation of identification cards of employees of permittees for violations of the alcoholic beverage control laws, rules or regulations.
(r) To adopt and promulgate rules and regulations for Responsible Alcohol Vendor Law.

SECTION 11. Section 67-1-71, Mississippi Code of 1972, is amended as follows:

67-1-71. The commission may revoke or suspend any permit issued by it for a violation by the permittee of any of the provisions of this chapter or of the regulations promulgated under it by the commission.

Permits must be revoked or suspended for the following causes:

(a) Conviction of the permittee for the violation of any of the provisions of this chapter;

(b) Willful failure or refusal by any permittee to comply with any of the provisions of this chapter or of any rule or regulation adopted pursuant thereto;

(c) The making of any materially false statement in any application for a permit;

(d) Conviction of one (1) or more of the clerks, agents or employees of the permittee, of any violation of this chapter upon the premises covered by such permit within a period of time as designated by the rules or regulations of the commission;

(e) The possession on the premises of any retail permittee of any alcoholic beverages upon which the tax has not been paid;

(f) The willful failure of any permittee to keep the records or make the reports required by this chapter, or to allow an inspection of such records by any duly authorized person;

(g) The suspension or revocation of a permit issued to the permittee by the federal government, or conviction of violating any federal law relating to alcoholic beverages;

(h) The failure to furnish any bond required by this chapter within fifteen (15) days after notice from the commission; and
(i) The conducting of any form of illegal gambling on
the premises of any permittee or on any premises connected
therewith or the presence on any such premises of any gambling
device with the knowledge of the permittee.

The provisions of paragraph (i) of this section shall not
apply to gambling or the presence of any gambling devices, with
knowledge of the permittee, on board a cruise vessel in the waters
within the State of Mississippi, which lie adjacent to the State
of Mississippi south of the three (3) most southern counties in
the State of Mississippi, or on any vessel as defined in Section
27-109-1 whenever such vessel is on the Mississippi River or
navigable waters within any county bordering on the Mississippi
River. The commission may, in its discretion, issue on-premises
retailer's permits to a common carrier of the nature described in
this paragraph.

In exercising its authority under this section, the
commission shall recognize the defense created for permittees
certified under the Responsible Alcohol Vendor Law.

No permit shall be revoked except after a hearing by the
commission with reasonable notice to the permittee and an
opportunity for him to appear and defend.

In addition to the causes specified in this section and other
provisions of this chapter, the commission shall be authorized to
suspend the permit of any permit holder for being out of
compliance with an order for support, as defined in Section
93-11-153. The procedure for suspension of a permit for being out
of compliance with an order for support, and the procedure for the
reissuance or reinstatement of a permit suspended for that
purpose, and the payment of any fees for the reissuance or
reinstatement of a permit suspended for that purpose, shall be
governed by Section 93-11-157 or 93-11-163, as the case may be.

If there is any conflict between any provision of Section
93-11-157 or 93-11-163 and any provision of this chapter, the
provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 12. Section 67-3-29, Mississippi Code of 1972, is amended as follows:

67-3-29. (1) The commissioner shall revoke any permit granted by authority of this chapter to any person who shall violate any of the provisions of this chapter or the revenue laws of this state relating to engaging in transporting, storing, selling, distributing, possessing, receiving or manufacturing of wines or beers, or any person who shall hereafter be convicted of the unlawful sale of intoxicating liquor, or any person who shall allow or permit any form of illegal gambling or immorality on the premises described in such permit. The commissioner shall not revoke or suspend a permit of a retailer for the sale of light wine or beer to a person under the age of twenty-one (21) years until there has been a conviction of the permit holder or an employee of the permit holder for such violation.

(2) If any person exercising any privilege taxable under the provisions of Chapter 71 of Title 27, Mississippi Code of 1972, shall willfully neglect or refuse to comply with the provisions of such chapter, or any rules or regulations promulgated by the commissioner under authority of such chapter, or the provisions of this chapter, the commissioner shall be authorized to revoke the permit theretofore issued to such person, after giving to such person ten (10) days notice of the intention of the commissioner to revoke such permit. The commissioner may, however, suspend such permit instead of revoking same if, in his opinion, sufficient cause is shown for a suspension rather than revocation. Any person whose permit shall have been revoked by the commissioner shall be thereafter prohibited from exercising any privilege under the provisions of Chapter 71 of Title 27, Mississippi Code of 1972, for a period of two (2) years from the date of such revocation. The commissioner may, however, for good
cause shown, grant a new permit upon such conditions as the commissioner may prescribe. Any person whose permit shall have been suspended by the commissioner shall be prohibited from exercising any privilege under the provisions of Chapter 71 of Title 27, Mississippi Code of 1972, during the period of such suspension. Failure of such person to comply with the terms of the suspension shall be cause for revocation of his permit, in addition to the other penalties provided by law.

(3) In addition to the reasons specified in this section and other provisions of this chapter, the commissioner shall be authorized to suspend the permit of any permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a permit suspended for that purpose, shall be governed by Section 93-11-157 or Section 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or Section 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(4) In exercising its authority under this section, the commission shall recognize the defense created for permittees certified under the Responsible Alcohol Vendor Law.

SECTION 13. This act shall take effect and be in force from and after July 1, 2003.