

By: Representative Moak

To: Ways and Means

## HOUSE BILL NO. 224

1 AN ACT TO AMEND SECTION 67-3-73, MISSISSIPPI CODE OF 1972, TO  
2 REQUIRE THAT PERSONS WHO ARE ISSUED ON-PREMISES RETAILER'S PERMITS  
3 FOR THE SALE OF ALCOHOLIC BEVERAGES, BEER OR LIGHT WINE FOR  
4 CONSUMPTION ON THE LICENSED PREMISES SHALL PURCHASE AND MAINTAIN  
5 CERTAIN LIABILITY INSURANCE; TO AMEND SECTIONS 67-1-57 AND  
6 67-3-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR  
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 67-3-73, Mississippi Code of 1972, is  
10 amended as follows:

11 67-3-73. (1) The Mississippi Legislature finds and declares  
12 that the consumption of intoxicating beverages, rather than the  
13 sale or serving or furnishing of such beverages, is the proximate  
14 cause of any injury, including death and property damage,  
15 inflicted by an intoxicated person upon himself or upon another  
16 person.

17 (2) Notwithstanding any other law to the contrary, except as  
18 otherwise provided herein, no holder of an alcoholic beverage,  
19 beer or light wine permit, or any agent or employee of such  
20 holder, who lawfully sells or serves intoxicating beverages to a  
21 person who may lawfully purchase such intoxicating beverages,  
22 shall be liable to such person or to any other person or to the  
23 estate, or survivors of either, for any injury suffered off the  
24 licensed premises, including wrongful death and property damage,  
25 because of the intoxication of the person to whom the intoxicating  
26 beverages were sold or served. Those persons who are issued  
27 on-premises retailer's permits for the sale of alcoholic  
28 beverages, beer or light wine for consumption on the licensed  
29 premises under Section 67-1-1, et seq., or Section 67-3-1, et

30 seq., shall purchase and maintain liability insurance in a minimum  
31 amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for  
32 each permit to cover claims made by any person or the estate or  
33 survivors of any person for any injury suffered off the licensed  
34 premises, including wrongful death and property damage, because of  
35 the intoxication of the person to whom the intoxicating beverages  
36 were sold or served. Those persons who have in effect liability  
37 insurance as required herein may be sued by anyone affected to the  
38 extent of such insurance carried; however, immunity from suit is  
39 waived only to the extent of such liability insurance carried and  
40 a judgment creditor shall have recourse only to the proceeds or  
41 right to proceeds of such liability insurance.

42 (3) Notwithstanding any other law to the contrary, no social  
43 host who serves or furnishes any intoxicating beverage to a person  
44 who may lawfully consume such intoxicating beverage shall be  
45 liable to such person or to any other person or to the estate, or  
46 survivors of either, for any injury suffered off such social  
47 host's premises, including wrongful death and property damage,  
48 because of the intoxication of the person to whom the intoxicating  
49 beverages were served or furnished. No social host who owns,  
50 leases or otherwise lawfully occupies a premises on which, in his  
51 absence and without his consent, intoxicating beverages are  
52 consumed by a person who may lawfully consume such intoxicating  
53 beverage shall be liable to such person or to any other person or  
54 to the estate, or survivors of either, for any injury suffered off  
55 the premises, including wrongful death and property damage,  
56 because of the intoxication of the person who consumed the  
57 intoxicating beverages.

58 (4) The limitation of liability provided by this section  
59 shall not apply to any person who causes or contributes to the  
60 consumption of alcoholic beverages by force or by falsely  
61 representing that a beverage contains no alcohol, or to any holder  
62 of an alcoholic beverage, beer or light wine permit, or any agent

63 or employee of such holder when it is shown that the person making  
64 a purchase of an alcoholic beverage was at the time of such  
65 purchase visibly intoxicated.

66 **SECTION 2.** Section 67-1-57, Mississippi Code of 1972, is  
67 amended as follows:

68 67-1-57. Before a permit is issued the commission shall  
69 satisfy itself:

70 (a) That the applicant, if an individual, or if a  
71 partnership, each of the members of the partnership, or if a  
72 corporation, each of its principal officers and directors, is of  
73 good moral character and, in addition, enjoys a reputation of  
74 being a peaceable, law-abiding citizen of the community in which  
75 he resides, and is generally fit for the trust to be reposed in  
76 him, is not less than twenty-one (21) years of age, and has not  
77 been convicted of a felony in any state or federal court.

78 (b) That, except in the case of an application for a  
79 solicitor's permit, the applicant is the true and actual owner of  
80 the business for which the permit is desired, and that he intends  
81 to carry on the business authorized for himself and not as the  
82 agent of any other person, and that he intends to superintend in  
83 person the management of said business or that he will designate a  
84 manager to manage the business for him; any such manager must be  
85 approved by the commission and must possess all of the  
86 qualifications required of a permittee.

87 (c) That the applicant for a package retailer's permit,  
88 if an individual, is a resident of the State of Mississippi. If  
89 the applicant is a partnership, each member of the partnership  
90 must be a resident of the state. If the applicant is a  
91 corporation, the designated manager of the corporation must be a  
92 resident of the state.

93 (d) That the place for which the permit is to be issued  
94 is an appropriate one considering the character of the premises  
95 and the surrounding neighborhood.

96           (e) That the place for which the permit is to be issued  
97 is within the corporate limits of an incorporated municipality or  
98 qualified resort area or club which comes within the provisions of  
99 this chapter.

100           (f) That the applicant is not indebted to the state for  
101 any taxes, fees or payment of penalties imposed by any law of the  
102 State of Mississippi or by any rule or regulation of the  
103 commission.

104           (g) That the applicant is not in the habit of using  
105 alcoholic beverages to excess and is not physically or mentally  
106 incapacitated, and that the applicant has the ability to read and  
107 write the English language.

108           (h) That the commission does not believe and has no  
109 reason to believe that the applicant will sell or knowingly permit  
110 any agent, servant or employee to unlawfully sell liquor in a dry  
111 area or in any other manner contrary to law.

112           (i) That the applicant is not residentially domiciled  
113 with any person whose permit or license has been cancelled for  
114 cause within the twelve (12) months next preceding the date of the  
115 present application for a permit.

116           (j) That the commission has not, in the exercise of its  
117 discretion which is reserved and preserved to it, refused to grant  
118 such permits under the restrictions of this section, as well as  
119 under any other pertinent provision of this chapter.

120           (k) That there are not sufficient legal reasons to deny  
121 a permit on the ground that the premises for which the permit is  
122 sought has previously been operated, used or frequented for any  
123 purpose or in any manner that is lewd, immoral or offensive to  
124 public decency. In the granting or withholding of any permit to  
125 sell alcoholic beverages at retail, the commission in forming its  
126 conclusions may give consideration to any recommendations made in  
127 writing by the district or county attorney or county, circuit or  
128 chancery judge of the county, or the sheriff of the county, or the

129 mayor or chief of police of an incorporated city or town wherein  
130 the applicant proposes to conduct his business and to any  
131 recommendations made by representatives of the commission.

132 (1) That the applicant and the applicant's key  
133 employees, as determined by the commission, do not have a  
134 disqualifying criminal record. In order to obtain a criminal  
135 record history check, the applicant shall submit to the commission  
136 a set of fingerprints from any local law enforcement agency for  
137 each person for whom the records check is required. The  
138 commission shall forward the fingerprints to the Mississippi  
139 Department of Public Safety. If no disqualifying record is  
140 identified at the state level, the Department of Public Safety  
141 shall forward the fingerprints to the Federal Bureau of  
142 Investigation for a national criminal history record check. Costs  
143 for processing the set or sets of fingerprints shall be borne by  
144 the applicant. The commission shall not deny employment to an  
145 employee of the applicant prior to the identification of a  
146 disqualifying record or other disqualifying information.

147 (m) That the applicant for an on-premises retailer's  
148 permit has purchased and has maintained liability insurance in the  
149 minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00)  
150 as required by Section 67-3-73, as amended by House Bill No. ,  
151 2004 Regular Session.

152 **SECTION 3.** Section 67-3-19, Mississippi Code of 1972, is  
153 amended as follows:

154 67-3-19. Where application is made for a permit to engage in  
155 the business of a retailer of light wine or beer, the applicant  
156 shall show in his application that he possesses the following  
157 qualifications:

158 (a) Applicant must be a person at least twenty-one (21)  
159 years of age, of good moral character and a resident of the State  
160 of Mississippi.

161           (b) Applicant shall not have been convicted of a  
162 felony, or of pandering or of keeping or maintaining a house of  
163 prostitution, or have been convicted within two (2) years of the  
164 date of his application of any violation of the laws of this state  
165 or the laws of the United States relating to alcoholic liquor.

166           (c) Applicant shall not have had revoked, except for a  
167 violation of Section 67-3-52, within two (2) years next preceding  
168 his application, any license or permit issued to him pursuant to  
169 the laws of this state, or any other state, to sell alcoholic  
170 liquor of any kind.

171           (d) Applicant shall be the owner of the premises for  
172 which the permit is sought or the holder of an existing lease  
173 thereon.

174           (e) Applicant shall not be residentially domiciled with  
175 any person whose permit has been revoked for cause, except for a  
176 violation of Section 67-3-52, within two (2) years next preceding  
177 the date of the present application for a permit.

178           (f) The applicant has not had any license or permit to  
179 sell beer or light wine at retail revoked, within five (5) years  
180 next preceding his application, due to a violation of Section  
181 67-3-52.

182           (g) Applicant shall not employ any person whose permit  
183 has been revoked when such person owned or operated the business  
184 on the premises for which a permit is sought or allow such person  
185 to have any financial interest in the business of the applicant,  
186 until such person is qualified to obtain a permit in his own name.

187           (h) The applicant is not indebted to the State of  
188 Mississippi for any taxes.

189           (i) If applicant is a partnership, all members of the  
190 partnership must be qualified to obtain a permit. Each member of  
191 the partnership must be a resident of the State of Mississippi.

192           (j) If applicant is a corporation, all officers and  
193 directors thereof, and any stockholder owning more than five

194 percent (5%) of the stock of such corporation, and the person or  
195 persons who shall conduct and manage the licensed premises for the  
196 corporation shall possess all the qualifications required herein  
197 for any individual permittee. However, the requirements as to  
198 residence shall not apply to officers, directors, and stockholders  
199 of such corporation, although such requirements shall apply to any  
200 officer, director, or stockholder who is also the manager of the  
201 licensed premises or who is engaged or employed at the licensed  
202 premises. The designated manager of the licensed premises must be  
203 a resident of the State of Mississippi.

204 (k) If the applicant is applying for an on-premises  
205 retailer's permit, he must show proof that he has purchased and  
206 maintained liability insurance in the minimum amount of Two  
207 Hundred Fifty Thousand Dollars (\$250,000.00) as required by  
208 Section 67-3-73, as amended by House Bill \_\_\_\_\_, 2004 Regular  
209 Session.

210 Any misstatement or concealment of fact in an application  
211 shall be ground for denial of the application or for revocation of  
212 the permit issued thereon.

213 The commissioner may refuse to issue a permit to an applicant  
214 for a place that is frequented by known criminals, prostitutes, or  
215 other law violators or troublemakers who disturb the peace and  
216 quietude of the community and frequently require the assistance of  
217 peace officers to apprehend such law violators or to restore  
218 order. The burden of proof of establishing the foregoing shall  
219 rest upon the commissioner.

220 **SECTION 4.** This act shall take effect and be in force from  
221 and after July 1, 2004.