

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 537

1 AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "RESTAURANT" FOR PURPOSES OF THE
3 STATE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW, TO DELETE THE
4 REQUIREMENT THAT IN ORDER FOR A PLACE TO QUALIFY AS A RESTAURANT
5 UNDER SUCH LAW, 25% OR MORE OF THE REVENUE DERIVED FROM SUCH PLACE
6 MUST BE FROM THE PREPARATION, COOKING AND SERVING OF MEALS AND NOT
7 FROM THE SALE OF BEVERAGES, OR THAT THE VALUE OF FOOD GIVEN TO AND
8 CONSUMED BY CUSTOMERS MUST EQUAL 25% OR MORE OF THE TOTAL REVENUE
9 OF SUCH PLACE; AND FOR RELATED PURPOSES.

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

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

13 67-1-5. For the purposes of this chapter and unless
14 otherwise required by the context:

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

24 (b) The word "alcohol" means the product of
25 distillation of any fermented liquid, whatever the origin thereof,
26 and includes synthetic ethyl alcohol, but does not include
27 denatured alcohol or wood alcohol.

28 (c) The words "distilled spirits" mean any beverage
29 containing more than four percent (4%) of alcohol by weight

30 produced by distillation of fermented grain, starch, molasses or
31 sugar, including dilutions and mixtures of these beverages.

32 (d) The words "wine" or "vinous liquor" mean any
33 product obtained from the alcoholic fermentation of the juice of
34 sound, ripe grapes, fruits or berries and made in accordance with
35 the revenue laws of the United States.

36 (e) The word "person" means and includes any
37 individual, partnership, corporation, association or other legal
38 entity whatsoever.

39 (f) The word "manufacturer" means any person engaged in
40 manufacturing, distilling, rectifying, blending or bottling any
41 alcoholic beverage.

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

46 (h) The word "retailer" means any person who sells,
47 distributes, or offers for sale or distribution, any alcoholic
48 beverage for use or consumption by the purchaser and not for
49 resale.

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

56 (j) The word "division" means the Alcoholic Beverage
57 Control Division of the State Tax Commission.

58 (k) The word "municipality" means any incorporated city
59 or town of this state.

60 (l) The word "hotel" means an establishment within a
61 municipality, or within a qualified resort area approved as such
62 by the commission, where, in consideration of payment, food and

63 lodging are habitually furnished to travelers and wherein are
64 located at least twenty (20) adequately furnished and completely
65 separate sleeping rooms with adequate facilities that persons
66 usually apply for and receive as overnight accommodations. Hotels
67 in towns or cities of more than twenty-five thousand (25,000)
68 population are similarly defined except that they must have fifty
69 (50) or more sleeping rooms. Any such establishment described in
70 this paragraph with less than fifty (50) beds shall operate one or
71 more regular dining rooms designed to be constantly frequented by
72 customers each day. When used in this chapter, the word "hotel"
73 shall also be construed to include any establishment that meets
74 the definition of "bed and breakfast inn" as provided in this
75 section.

76 (m) The word "restaurant" means a place which is
77 regularly and in a bona fide manner used and kept open for the
78 serving of meals to guests for compensation, which has suitable
79 seating facilities for guests, and which has suitable kitchen
80 facilities connected therewith for cooking an assortment of foods
81 and meals commonly ordered at various hours of the day; the
82 service of such food as sandwiches and salads only shall not be
83 deemed in compliance with this requirement. * * *

84 (n) The word "club" means an association or a
85 corporation:

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

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

91 (iii) Maintained by its members through the
92 payment of annual dues;

93 (iv) Owning, hiring or leasing a building or space
94 in a building of such extent and character as may be suitable and

95 adequate for the reasonable and comfortable use and accommodation
96 of its members and their guests;

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

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

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

119 (o) The term "qualified resort area" means any area or
120 locality outside of the limits of incorporated municipalities in
121 this state commonly known and accepted as a place which regularly
122 and customarily attracts tourists, vacationists and other
123 transients because of its historical, scenic or recreational
124 facilities or attractions, or because of other attributes which
125 regularly and customarily appeal to and attract tourists,
126 vacationists and other transients in substantial numbers; however,

127 no area or locality shall so qualify as a resort area until it has
128 been duly and properly approved as such by the commission.

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

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

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

150 (p) The words "native wine" shall mean any product,
151 produced in Mississippi for sale, having an alcohol content not to
152 exceed twenty-one percent (21%) by weight and made in accordance
153 with revenue laws of the United States, which shall be obtained
154 primarily from the alcoholic fermentation of the juice of ripe
155 grapes, fruits, berries or vegetables grown and produced in
156 Mississippi; provided that bulk, concentrated or fortified wines
157 used for blending may be produced without this state and used in
158 producing native wines. The commission shall adopt and promulgate
159 rules and regulations to permit a producer to import such bulk

160 and/or fortified wines into this state for use in blending with
161 native wines without payment of any excise tax that would
162 otherwise accrue thereon.

163 (q) The words "native winery" shall mean any place or
164 establishment within the State of Mississippi where native wine is
165 produced in whole or in part for sale.

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

180 **SECTION 2.** This act shall take effect and be in force from
181 and after July 1, 2004.