

By: Senator(s) Albritton

To: Finance

SENATE BILL NO. 2855

1 AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO
 2 INCLUDE CLUBHOUSES ASSOCIATED WITH CERTAIN SUBDIVISIONS IN THE
 3 DEFINITION OF THE TERM "QUALIFIED RESORT AREA" UNDER THE LOCAL
 4 OPTION ALCOHOLIC BEVERAGE CONTROL LAW; TO AMEND SECTIONS 67-1-7,
 5 67-1-11 AND 67-1-13, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
 6 SALE OF ALCOHOLIC BEVERAGES AT SUCH CLUBHOUSES REGARDLESS OF
 7 WHETHER THE COUNTY IN WHICH THE CLUBHOUSE IS LOCATED HAS VOTED IN
 8 FAVOR OF COMING OUT FROM UNDER THE DRY LAW; TO AMEND SECTIONS
 9 67-3-7 AND 67-3-13, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
 10 SALE OF LIGHT WINE OR BEER AT QUALIFIED RESORT AREAS IN COUNTIES
 11 IN WHICH THE SALE OF LIGHT WINE OR BEER IS OTHERWISE PROHIBITED;
 12 AND FOR RELATED PURPOSES.

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

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

16 67-1-5. For the purposes of this chapter and unless
 17 otherwise required by the context:

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

27 (b) * * * "Alcohol" means the product of distillation
 28 of any fermented liquid, whatever the origin thereof, and includes
 29 synthetic ethyl alcohol, but does not include denatured alcohol or
 30 wood alcohol.

31 (c) * * * "Distilled spirits" means any beverage
 32 containing more than four percent (4%) of alcohol by weight

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

35 (d) * * * "Wine" or "vinous liquor" means any product
36 obtained from the alcoholic fermentation of the juice of sound,
37 ripe grapes, fruits or berries and made in accordance with the
38 revenue laws of the United States.

39 (e) * * * "Person" means and includes any individual,
40 partnership, corporation, association or other legal entity
41 whatsoever.

42 (f) * * * "Manufacturer" means any person engaged in
43 manufacturing, distilling, rectifying, blending or bottling any
44 alcoholic beverage.

45 (g) * * * "Wholesaler" means any person, other than a
46 manufacturer, engaged in distributing or selling any alcoholic
47 beverage at wholesale for delivery within or without this state
48 when such sale is for the purpose of resale by the purchaser.

49 (h) * * * "Retailer" means any person who sells,
50 distributes, or offers for sale or distribution, any alcoholic
51 beverage for use or consumption by the purchaser and not for
52 resale.

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

59 (j) * * * "Division" means the Alcoholic Beverage
60 Control Division of the State Tax Commission.

61 (k) * * * "Municipality" means any incorporated city or
62 town of this state.

63 (l) * * * "Hotel" means an establishment within a
64 municipality, or within a qualified resort area approved as such
65 by the commission, where, in consideration of payment, food and

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

79 (m) * * * "Restaurant" means a place which is regularly
80 and in a bona fide manner used and kept open for the serving of
81 meals to guests for compensation, which has suitable seating
82 facilities for guests, and which has suitable kitchen facilities
83 connected therewith for cooking an assortment of foods and meals
84 commonly ordered at various hours of the day; the service of such
85 food as sandwiches and salads only shall not be deemed in
86 compliance with this requirement. No place shall qualify as a
87 restaurant under this chapter unless twenty-five percent (25%) or
88 more of the revenue derived from such place shall be from the
89 preparation, cooking and serving of meals and not from the sale of
90 beverages, or unless the value of food given to and consumed by
91 customers is equal to twenty-five percent (25%) or more of total
92 revenue.

93 (n) * * * "Club" means an association or a corporation:
94 (i) Organized or created under the laws of this
95 state for a period of five (5) years prior to July 1, 1966;
96 (ii) Organized not primarily for pecuniary profit
97 but for the promotion of some common object other than the sale or
98 consumption of alcoholic beverages;

99 (iii) Maintained by its members through the
100 payment of annual dues;

101 (iv) Owning, hiring or leasing a building or space
102 in a building of such extent and character as may be suitable and
103 adequate for the reasonable and comfortable use and accommodation
104 of its members and their guests;

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

109 (vi) No member, officer, agent or employee of
110 which is paid, or directly or indirectly receives, in the form of
111 a salary or other compensation any profit from the distribution or
112 sale of alcoholic beverages to the club or to members or guests of
113 the club beyond such salary or compensation as may be fixed and
114 voted at a proper meeting by the board of directors or other
115 governing body out of the general revenues of the club.

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

127 (o) * * * "Qualified resort area" means any area or
128 locality outside of the limits of incorporated municipalities in
129 this state commonly known and accepted as a place which regularly
130 and customarily attracts tourists, vacationists and other
131 transients because of its historical, scenic or recreational

132 facilities or attractions, or because of other attributes which
133 regularly and customarily appeal to and attract tourists,
134 vacationists and other transients in substantial numbers; however,
135 no area or locality shall so qualify as a resort area until it has
136 been duly and properly approved as such by the commission.

137 (i) The commission may approve an area or locality
138 outside of the limits of an incorporated municipality that is in
139 the process of being developed as a qualified resort area if such
140 area or locality, when developed, can reasonably be expected to
141 meet the requisites of the definition of the term "qualified
142 resort area." In such a case, the status of qualified resort area
143 shall not take effect until completion of the development.

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

152 (iii) The term includes:

153 1. The clubhouses associated with the state
154 park golf courses at the Lefleur's Bluff State Park, the John Kyle
155 State Park, the Percy Quin State Park and the Hugh White State
156 Park; and

157 2. The clubhouse of any gated community that
158 has at least five hundred (500) residential units.

159 The status of these clubhouses as qualified resort areas does
160 not require any declaration of same by the commission.

161 (p) * * * "Native wine" means any product, produced in
162 Mississippi for sale, having an alcohol content not to exceed
163 twenty-one percent (21%) by weight and made in accordance with
164 revenue laws of the United States, which shall be obtained

165 primarily from the alcoholic fermentation of the juice of ripe
166 grapes, fruits, berries or vegetables grown and produced in
167 Mississippi; provided that bulk, concentrated or fortified wines
168 used for blending may be produced without this state and used in
169 producing native wines. The commission shall adopt and promulgate
170 rules and regulations to permit a producer to import such bulk
171 and/or fortified wines into this state for use in blending with
172 native wines without payment of any excise tax that would
173 otherwise accrue thereon.

174 (q) * * * "Native winery" means any place or
175 establishment within the State of Mississippi where native wine is
176 produced in whole or in part for sale.

177 (r) * * * "Bed and breakfast inn" means an
178 establishment within a municipality where in consideration of
179 payment, breakfast and lodging are habitually furnished to
180 travelers and wherein are located not less than eight (8) and not
181 more than nineteen (19) adequately furnished and completely
182 separate sleeping rooms with adequate facilities, that persons
183 usually apply for and receive as overnight accommodations;
184 however, such restriction on the minimum number of sleeping rooms
185 shall not apply to establishments on the National Register of
186 Historic Places. No place shall qualify as a bed and breakfast
187 inn under this chapter unless on the date of the initial
188 application for a license under this chapter more than fifty
189 percent (50%) of the sleeping rooms are located in a structure
190 formerly used as a residence.

191 **SECTION 2.** Section 67-1-7, Mississippi Code of 1972, is
192 amended as follows:

193 67-1-7. (1) Except as otherwise provided in Section 67-9-1
194 for the transportation and possession of limited amounts of
195 alcoholic beverages for the use of an alcohol processing
196 permittee, and subject to all of the provisions and restrictions
197 contained in this chapter, the manufacture, sale, distribution,

198 possession and transportation of alcoholic beverages shall be
199 lawful, subject to the restrictions hereinafter imposed, in those
200 counties and municipalities of this state in which, at a local
201 option election called and held for that purpose under the
202 provisions of this chapter, a majority of the qualified electors
203 voting in such election shall vote in favor thereof. The
204 manufacture, sale and distribution of alcoholic beverages shall
205 not be permissible or lawful in counties except in (a)
206 incorporated municipalities located within such counties, (b)
207 qualified resort areas within such counties approved as such by
208 the State Tax Commission, or (c) clubs within such counties,
209 whether within a municipality or not. The manufacture, sale,
210 distribution and possession of native wines shall be lawful in any
211 location within any such county except those locations where the
212 manufacture, sale or distribution is prohibited by law other than
213 this section or by regulations of the commission.

214 (2) Notwithstanding the foregoing, within any state park or
215 any state park facility which has been declared a qualified resort
216 area by the commission and any clubhouse that is a qualified
217 resort area under Section 67-1-5(o)(iii), an on-premises
218 retailer's permit may be issued for the clubhouse and the
219 permittee may lawfully sell alcoholic beverages for consumption on
220 his licensed premises regardless of whether or not the county or
221 municipality in which the park or clubhouse is located has voted
222 in favor of coming out from under the dry law, and it shall be
223 lawful to receive, store, sell, possess and consume alcoholic
224 beverages on the licensed premises, and to sell, distribute and
225 transport alcoholic beverages to the licensed premises.

226 **SECTION 3.** Section 67-1-11, Mississippi Code of 1972, is
227 amended as follows:

228 67-1-11. (1) Notwithstanding any provision of this chapter,
229 the legalizing provisions of this chapter, except as authorized
230 under Section 67-9-1 and Section 67-1-7(2), shall not be

231 effective, applicable or operative in any county unless and until
232 a local option election shall be called and held in such county in
233 the manner and with the results hereinafter provided.

234 (2) Upon presentation and filing of a proper petition
235 requesting same signed by at least twenty percent (20%) or fifteen
236 hundred (1,500), whichever number is the lesser, of the qualified
237 electors of the county, it shall be the duty of the board of
238 supervisors to call an election at which there shall be submitted
239 to the qualified electors of the county the question of whether or
240 not the sale, distribution and possession of alcoholic liquors
241 shall be permitted in such county as provided in this chapter.
242 Such election shall be held and conducted by the county election
243 commissioners on a date fixed by the order of the board of
244 supervisors, which date shall not be more than sixty (60) days
245 from the date of the filing of said petition. Notice thereof
246 shall be given by publishing such notice once each week for at
247 least three (3) consecutive weeks in some newspaper published in
248 said county or, if no newspaper be published therein, by such
249 publication in a newspaper in an adjoining county and having a
250 general circulation in the county involved. The election shall be
251 held not earlier than fifteen (15) days from the first publication
252 of such notice.

253 (3) Said election shall be held and conducted as far as may
254 be possible in the same manner as is provided by law for the
255 holding of general elections. The ballots used thereat shall
256 contain a brief statement of the proposition submitted and, on
257 separate lines, the words "I vote FOR coming out from under the
258 dry law in _____ County ()" "I vote AGAINST coming out from
259 under the dry law in _____ County ()" with appropriate boxes
260 in which the voters may express their choice. All qualified
261 electors may vote by marking the ballot with a cross (x) or check
262 (√) mark opposite the words of their choice.

263 (4) The election commissioners shall canvass and determine
264 the results of said election, and shall certify same to the board
265 of supervisors which shall adopt and spread upon its minutes an
266 order declaring such results. If, in such election, a majority of
267 the qualified electors participating therein shall vote in favor
268 of the proposition, this chapter shall become applicable and
269 operative in such county and the manufacture, sale, distribution
270 and possession of alcoholic beverages therein shall be lawful to
271 the extent and in the manner permitted hereby. If, on the other
272 hand, a majority of the qualified electors participating in the
273 election shall vote against the proposition, this chapter, except
274 for Sections 67-9-1 and 67-1-7(2), shall not become effective and
275 operative in such county and, except as otherwise provided under
276 Sections 67-9-1 and 67-1-7(2), all laws prohibiting and regulating
277 the manufacture, sale, distribution and possession of intoxicating
278 liquor shall remain in full force and effect and be administered
279 and vigorously prosecuted therein. In either case, no further
280 election shall be held in said county under the provisions of this
281 chapter for a period of two (2) years from the date of the prior
282 election and then only upon the filing of a petition requesting
283 same signed by at least twenty percent (20%) or fifteen hundred
284 (1,500), whichever number is the lesser, of the qualified electors
285 of the county as is otherwise provided herein.

286 **SECTION 4.** Section 67-1-13, Mississippi Code of 1972, is
287 amended as follows:

288 67-1-13. (1) When this chapter has been made effective and
289 operative in any county as a result of an election called and held
290 as provided in Section 67-1-11, the same may be made ineffective
291 and inapplicable therein by an election called and held upon a
292 petition filed with the board of supervisors requesting same
293 signed by at least twenty percent (20%) or fifteen hundred (1500),
294 whichever number is the lesser, of the qualified electors of the
295 county as is otherwise provided in Section 67-1-11, all of the

296 provisions of which shall be fully applicable thereto. However,
297 nothing herein shall authorize or permit the calling and holding
298 of any election under this chapter in any county more often than
299 once every two (2) years. If in such election, a majority of the
300 qualified electors participating therein shall vote against the
301 legalized sale of intoxicating liquor, then the prohibition laws
302 of the State of Mississippi, except as otherwise provided under
303 Sections 67-9-1 and 67-1-7(2), shall become applicable in said
304 county.

305 (2) Notwithstanding an election reinstating the prohibition
306 laws in a political subdivision, the holder of a native wine
307 producer's permit or a native wine retailer's permit is allowed to
308 continue to operate under such permits and to renew such permits.
309 Possession of native wines and personal property related to the
310 activities of the native wine permit holder which would otherwise
311 be unlawful under prohibition shall be allowed subject to
312 regulations of the Alcoholic Beverage Control Division.

313 **SECTION 5.** Section 67-3-7, Mississippi Code of 1972, is
314 amended as follows:

315 67-3-7. (1) If any county, at an election held for the
316 purpose under the election laws of the state, shall by a majority
317 vote of the duly qualified electors voting in the election
318 determine that the transportation, storage, sale, distribution,
319 receipt and/or manufacture of wine and beer of an alcoholic
320 content of not more than five percent (5%) by weight shall not be
321 permitted in such county, then the same shall not be permitted
322 therein except as authorized under Section 67-9-1 and as may be
323 otherwise authorized in this section. An election to determine
324 whether such transportation, storage, sale, distribution, receipt
325 and/or manufacture of such beverages shall be excluded from any
326 county in the state, shall on a petition of twenty percent (20%)
327 of the duly qualified electors of such county, be ordered by the
328 board of supervisors thereof, for such county only. No election

329 on the question shall be held in any one (1) county more often
330 than once in five (5) years.

331 In counties which have elected, or may elect by a majority
332 vote of the duly qualified electors voting in the election, that
333 the transportation, storage, sale, distribution, receipt and/or
334 manufacture of wine or beer of an alcoholic content of not more
335 than five percent (5%) by weight shall not be permitted in said
336 county, an election may be held in the same manner as the election
337 hereinabove provided on the question of whether or not said
338 transportation, storage, sale, distribution, receipt and/or
339 manufacture of said beverages shall be permitted in such county.
340 Such election shall be ordered by the board of supervisors of such
341 county on a petition of twenty percent (20%) of the duly qualified
342 electors of such county. No election on this question can be
343 ordered more often than once in five (5) years.

344 (2) Nothing in this section shall make it unlawful to
345 possess beer or wine, as defined herein, in any municipality which
346 has heretofore or which may hereafter vote in an election,
347 pursuant to Section 67-3-9, in which a majority of the qualified
348 electors vote in favor of permitting the sale and the receipt,
349 storage and transportation for the purpose of sale of beer or wine
350 as defined herein.

351 (3) Nothing in this section shall make it unlawful to:

352 (a) Possess or consume light wine or beer at a
353 qualified resort area as defined in Section 67-1-5;

354 (b) Sell, distribute and transport light wine or beer
355 to a qualified resort area as defined in Section 67-1-5;

356 (c) Sell light wine or beer at a qualified resort area
357 as defined in Section 67-1-5 if such light wine or beer is sold by
358 a person with a permit to engage in the business as a retailer of
359 light wine or beer.

360 **SECTION 6.** Section 67-3-13, Mississippi Code of 1972, is
361 amended as follows:

362 67-3-13. (1) Except as otherwise provided herein and as
363 authorized under * * * this section and Section 67-9-1, in any
364 county which has at any time since February 26, 1934, elected, or
365 which may hereafter elect, to prohibit the transportation,
366 storage, sale, distribution, receipt and/or manufacture of wine
367 and beer of an alcoholic content of not more than four percent
368 (4%) by weight in such county, it is hereby declared to be
369 unlawful to possess such beverages therein. In any county which,
370 after July 1, 1998, elects to prohibit the transportation,
371 storage, sale, distribution, receipt and/or manufacture of wine
372 and beer of an alcoholic content of not more than five percent
373 (5%) by weight in such county, it is hereby declared to be
374 unlawful to possess such beer therein. Any person found
375 possessing any beer or wine of any quantity whatsoever in such
376 county shall, on conviction, be imprisoned not more than ninety
377 (90) days or fined not more than Five Hundred Dollars (\$500.00),
378 or be both so fined and imprisoned.

379 (2) Notwithstanding the provisions of subsection (1) of this
380 section, in any county or municipality in which the
381 transportation, storage, sale, distribution, receipt and/or
382 manufacture of light wine and beer is prohibited, it shall not be
383 unlawful for a permitted wholesaler or distributor to possess
384 light wine and beer when such light wine and beer is held therein
385 solely for the purpose of storage and for distribution to other
386 counties and municipalities in which possession of such beverages
387 is lawful.

388 (3) Notwithstanding the provisions of subsections (1) and
389 (2) of this section, in any county in which transportation,
390 storage, sale, distribution, receipt and/or manufacture of light
391 wine and beer is prohibited, it shall not be unlawful:

392 (a) To receive, store, possess or consume light wine or
393 beer at a resort area as defined in Section 67-1-5;

394 (b) To distribute and transport light wine or beer to a
395 resort area as defined in Section 67-1-5.

396 **SECTION 7.** This act shall take effect and be in force from
397 and after July 1, 2004.