

By: Senator(s) Thames

To: Finance

SENATE BILL NO. 3102

1 AN ACT TO CREATE A SPECIAL FUND IN THE STATE TREASURY TO THE
2 CREDIT OF THE DEPARTMENT OF MENTAL HEALTH FOR THE OPERATION AND
3 MAINTENANCE OF MENTAL HEALTH HOLDING CENTERS AND SPECIALIZED
4 TREATMENT FACILITIES FOR THE SEVERELY EMOTIONALLY DISTURBED
5 ESTABLISHED BY THE DEPARTMENT; TO AMEND SECTIONS 27-7-901,
6 27-69-13, 27-69-75, 27-71-307 AND 27-71-337, MISSISSIPPI CODE OF
7 1972, TO INCREASE THE AMOUNT OF THE TAX UPON AMOUNT PAID OR
8 CREDITED BY GAMING ESTABLISHMENTS TO THEIR PATRONS; TO INCREASE
9 THE EXCISE TAX ON TOBACCO PRODUCTS; TO INCREASE THE EXCISE TAX ON
10 LIGHT WINE AND BEER; TO REQUIRE THE TAX INCREASE PROVIDED FOR IN
11 THIS ACT TO BE DEPOSITED INTO THE SPECIAL FUND CREATED BY THIS
12 ACT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** There is created in the State Treasury a special
15 fund to the credit of the Department of Mental Health, which shall
16 be comprised of the monies required to be deposited into the fund
17 under Sections 27-7-901(1)(b), 27-69-75(2) and 27-71-337(2), and
18 any other funds that may be made available for the fund by the
19 Legislature. Monies in the fund shall be expended by the
20 Department of Mental Health, upon appropriation by the
21 Legislature, for the operation and maintenance of mental health
22 holding centers established by the department under Section
23 41-4-7(m) and specialized treatment facilities for the severely
24 emotionally disturbed. Unexpended amounts remaining in the
25 special fund at the end of a fiscal year shall not lapse into the
26 State General Fund, and any interest earned or investment earnings
27 on amounts in the special fund shall be deposited to the credit of
28 the special fund.

29 **SECTION 2.** Section 27-7-901, Mississippi Code of 1972, is
30 amended as follows:

31 27-7-901. (1) (a) There is hereby levied, assessed and
32 shall be collected a tax of three percent (3%) upon amounts that

are paid or credited by gaming establishments licensed under the provisions of the Mississippi Gaming Control Act to their patrons.

(b) In addition to the tax levied in paragraph (a) of this subsection, there is hereby levied, assessed and shall be collected an additional tax of one percent (1%) upon amounts that are paid or credited by gaming establishments licensed under the provisions of the Mississippi Gaming Control Act to their patrons. Revenue collected pursuant to the provisions of this paragraph (b) shall be deposited into the special fund created in Section 1 of Senate Bill No. _____, 2004 Regular Session.

(c) The tax shall be collected by licensed gaming establishments and remitted to the State Tax Commission in the manner provided for by regulations promulgated by the Chairman of the State Tax Commission.

(2) As used in this section, "amounts that are paid or credited" means amounts or credits that are subject to the withholding or reporting requirements of the Internal Revenue Code.

(3) No credit shall be allowed under the Income Tax Law of 1952 for the tax collected by licensed gaming establishments pursuant to this section.

SECTION 3. Section 27-69-13, Mississippi Code of 1972, is amended as follows:

27-69-13. (1) There is * * * imposed, levied and assessed, to be collected and paid as hereinafter provided in this chapter, an excise tax on each person or dealer in cigarettes, cigars, stogies, snuff, chewing tobacco, and smoking tobacco, or substitutes therefor, upon the sale, use, consumption, handling or distribution in the State of Mississippi, as follows:

(a) (i) On cigarettes, the rate of tax shall be Eighteen-twentieths of One Cent (18/20 of 1¢) on each cigarette sold with a maximum length of one hundred twenty (120) millimeters; any cigarette in excess of this length shall be taxed

66 as if it were two (2) or more cigarettes. * * * If the federal
67 tax rate on cigarettes in effect July 1, 1985, is reduced, then
68 the rate as provided in this paragraph (a)(i) shall be increased
69 by the amount of the federal tax reduction. Such tax increase
70 shall take effect on the first day of the month following the
71 effective date of such reduction in the federal tax rate.

72 (ii) In addition to the excise tax levied by
73 paragraph (a)(i) of this subsection, there is levied, imposed and
74 assessed an excise tax of One-tenth of One Cent (1/10 of 1¢) on
75 each cigarette sold with a maximum length of one hundred twenty
76 (120) millimeters; any cigarette in excess of this length shall be
77 taxed as if it were two (2) or more cigarettes.

78 (b) (i) On cigars, cheroots, stogies, snuff, chewing
79 and smoking tobacco and all other tobacco products except
80 cigarettes, the rate of tax shall be fifteen percent (15%) of the
81 manufacturer's list price.

82 (ii) In addition to the excise tax imposed in
83 paragraph (b)(i) of this subsection there is levied, imposed and
84 assessed an excise tax on cigars, cheroots, stogies, snuff,
85 chewing and smoking tobacco and all other tobacco products except
86 cigarettes, at the rate of two percent (2%) of the manufacturer's
87 list price.

88 (2) No stamp evidencing the tax * * * levied on cigarettes
89 by this section shall be of a denomination of less than One Cent
90 (1¢), and whenever the tax computed at the rates * * * prescribed
91 on cigarettes by this section shall be a specified amount, plus a
92 fractional part of One Cent (1¢), the package shall be stamped for
93 the next full cent; however, the additional face value of stamps
94 purchased to comply with taxes imposed by this section after June
95 1, 1985, shall be subject to a four percent (4%) discount or
96 compensation to dealers for their services rather than the eight
97 percent (8%) discount or compensation allowed by Section 27-69-31.

(3) Every wholesaler shall purchase stamps as provided in this chapter, and affix the same to all packages of cigarettes handled by him as * * * provided in this section.

(4) The * * * tax levied by this chapter is levied upon the sale, use, gift, possession, or consumption of tobacco within the State of Mississippi, and the impact of the tax levied by this chapter is * * * declared to be on the vendee, user, consumer, or possessor of tobacco in this state. When the tax is paid by any other person, the payment shall be considered as an advance payment and shall thereafter be added to the price of the tobacco and recovered from the ultimate consumer or user.

SECTION 4. Section 27-69-75, Mississippi Code of 1972, is amended as follows:

27-69-75. (1) All taxes levied by this chapter shall be payable to the commissioner in cash, or by personal check, cashier's check, bank exchange, post office money order or express money order, and shall be deposited by the commissioner in the State Treasury on the same day collected. No remittance other than cash shall be a final discharge of liability for the tax * * * assessed and levied under this chapter, unless and until it has been paid in cash to the commissioner.

(2) The revenue derived from the taxes levied in Section 27-69-13(1)(a)(ii) and (b)(ii) shall be deposited into the State Treasury in the special fund to the credit of the Department of Mental Health that is created by Section 1 of Senate Bill No.____, 2004 Regular Session.

(3) All tobacco taxes collected, including tobacco license taxes, except for those revenues required to be deposited into the special fund as provided in subsection (2) of this section, shall be deposited into the State Treasury to the credit of the General Fund.

(4) Wholesalers who are entitled to purchase stamps at a discount, as provided by Section 27-69-31, may have consigned to

131 them, without advance payment, those stamps, if and when the
132 wholesaler gives to the commissioner a good and sufficient bond
133 executed by some surety company authorized to do business in this
134 state, conditioned to secure the payment for the stamps so
135 consigned. The commissioner shall require payment for those
136 stamps not later than thirty (30) days from the date the stamps
137 were consigned.

138 **SECTION 5.** Section 27-71-307, Mississippi Code of 1972, is
139 amended as follows:

140 27-71-307. (1) (a) (i) In addition to the specific tax
141 imposed in Section 27-71-303, there is hereby imposed, levied,
142 assessed and shall be collected, as hereinafter provided, an
143 excise or privilege tax upon each person engaged or continuing in
144 the business of wholesaler or distributor of light wines or beer
145 equivalent to Forty-two and Sixty-eight One-hundredths Cents
146 (42.68¢) per gallon upon all light wines and beer acquired for
147 sale or distribution in this state.

148 (ii) In addition to the specific tax imposed in
149 Section 27-71-303 and the tax imposed in paragraph (a)(i) of this
150 section, there is hereby imposed, levied, assessed and shall be
151 collected, as hereinafter provided, an excise or privilege tax
152 upon each person engaged or continuing in the business of
153 wholesaler or distributor of light wines or beer equivalent to One
154 and Three-tenths Cents (1.30¢) per gallon upon all light wines and
155 beer acquired for sale or distribution in this state.

156 (iii) Such excise or privilege tax is also imposed
157 at the same rate upon each gallon of light wine or beer
158 manufactured by brewpubs, each of which shall accurately and
159 reliably measure the quantity of light wine and beer produced by
160 using a measuring device such as a meter or gauge glass or any
161 other suitable method approved by the commissioner. Such tax is
162 hereby imposed as an additional tax for the privilege of engaging
163 or continuing in business.

(b) The excise tax imposed in this section shall be paid to the State Tax Commission monthly on or before the fifteenth day of the month following the month in which the beer or light wine was manufactured or received in this state. Monthly report forms shall be furnished by the commissioner to the wholesalers, distributors and brewpubs.

(c) Provided that persons operating a railroad dining car, club car or other car in interstate commerce upon which light wines or beer may be sold and who are licensed under the provisions of Section 67-3-27 and any other law relating to the sale of such beverages shall keep such records of the sales of such light wines and beer in this state as the commissioner shall prescribe and shall submit monthly reports of such sales to the commissioner within fifteen (15) days after the end of each month on a form prescribed therefor by the commissioner, and shall pay the tax due under the provisions of this section at the time such reports are filed.

No official crowns, lids, labels or stamps with the word "MISSISSIPPI" or "MS" imprinted thereon or any other evidence of tax payment is required by this section, or may be required under rule or regulation promulgated by the commissioner, to be affixed on or to any part of a beer, light wine or malt cooler bottle, can or other light wine or malt cooler container. For purposes of this section, malt cooler products shall be defined as a flavored malt beverage made from a base of malt beverage and flavored with fruit juices, aromatics and essences of other flavoring in quantities and proportions such that the resulting product possesses a character and flavor distinctive from the base malt beverage and distinguishable from other malt beverages.

(2) A licensed wholesaler or distributor of beer or light wine may not import beer or light wine from any source other than a brewer or importer authorized by the commissioner to sell such beer or light wine in Mississippi. Any person who violates the

provisions of this subsection, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court and shall be subject to license forfeiture following an appropriate hearing before the State Tax Commission.

(3) The wholesaler or distributor shall be allowed credit for tax paid on beer or light wine which is no longer marketable and which is destroyed by same when such destruction is witnessed by an agent of the commissioner and when the amount of the excise tax exceeds One Hundred Dollars (\$100.00). No other loss will be allowed.

A brewpub shall be allowed credit for light wine or beer which has passed through the meter, gauge glass or other approved measuring device and which has been soured or damaged. The brewpub shall record the removal of sour or damaged light wine or beer and may take credit after the destruction is witnessed by an agent of the commissioner and when the amount of excise tax exceeds Twenty-five Dollars (\$25.00). No other loss shall be allowed.

(4) All manufacturers, brewers and importers of beer or light wine shall file monthly reports as prescribed by the commissioner listing sales to each wholesaler or distributor by date, invoice number, quantity and container size, and any other information deemed necessary.

(5) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in

230 the sales tax law except where there is conflict, then the
231 provisions of this chapter shall control.

232 **SECTION 6.** Section 27-71-337, Mississippi Code of 1972, is
233 amended as follows:

234 27-71-337. (1) All taxes levied by this article and
235 required to be paid to the commissioner shall be payable to the
236 commissioner in cash or by personal check, cashier's check, bank
237 exchange, post-office money order or express money order and,
238 except as otherwise provided in subsection (2) of this section,
239 shall be deposited by the commissioner into the State Treasury on
240 the same day collected, provided that no remittances other than
241 cash shall be a final discharge of liability for the tax herein
242 imposed and levied unless and until it has been paid in cash to
243 the commissioner.

244 (2) The revenue derived from the taxes levied in Section
245 27-71-307(1)(a)(ii) shall be deposited into the State Treasury in
246 the special fund to the credit of the Department of Mental Health
247 that is created by Section 1 of Senate Bill No.____, 2004 Regular
248 Session.

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