

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 149

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

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

28 (c) "Distilled spirits" means any beverage containing  
 29 more than four percent (4%) of alcohol by weight produced by

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

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

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

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

42 (g) "Wholesaler" means any person, other than a  
43 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) "Retailer" means any person who sells, distributes,  
47 or offers for sale or distribution, any alcoholic beverage for use  
48 or consumption by the purchaser and not for resale.

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

55 (j) "Division" means the Alcoholic Beverage Control  
56 Division of the State Tax Commission.

57 (k) "Municipality" means any incorporated city or town  
58 of this state.

59 (l) "Hotel" means an establishment within a  
60 municipality, or within a qualified resort area approved as such  
61 by the commission, where, in consideration of payment, food and  
62 lodging are habitually furnished to travelers and wherein are

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

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

83 (n) "Club" means an association or a corporation:

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

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

89 (iii) Maintained by its members through the  
90 payment of annual dues;

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

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

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

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

117           (o) "Qualified resort area" means any area or locality  
118 outside of the limits of incorporated municipalities in this state  
119 commonly known and accepted as a place which regularly and  
120 customarily attracts tourists, vacationists and other transients  
121 because of its historical, scenic or recreational facilities or  
122 attractions, or because of other attributes which regularly and  
123 customarily appeal to and attract tourists, vacationists and other  
124 transients in substantial numbers; however, no area or locality  
125 shall so qualify as a resort area until it has been duly and  
126 properly approved as such by the commission.

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

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

142 (iii) The term includes:

143 1. The clubhouses associated with the state  
144 park golf courses at the Lefleur's Bluff State Park, the John Kyle  
145 State Park, the Percy Quin State Park and the Hugh White State  
146 Park; and

147 2. The clubhouse and associated golf course  
148 where the golf course is adjacent to one or more planned  
149 residential developments and the golf course and all such  
150 developments collectively include at least seven hundred fifty  
151 (750) acres and at least four hundred (400) residential units.

152 The status of these clubhouses and golf courses as qualified  
153 resort areas does not require any declaration of same by the  
154 commission.

155 (p) "Native wine" means any product, produced in  
156 Mississippi for sale, having an alcohol content not to exceed  
157 twenty-one percent (21%) by weight and made in accordance with  
158 revenue laws of the United States, which shall be obtained  
159 primarily from the alcoholic fermentation of the juice of ripe

160 grapes, fruits, berries or vegetables grown and produced in  
161 Mississippi; provided that bulk, concentrated or fortified wines  
162 used for blending may be produced without this state and used in  
163 producing native wines. The commission shall adopt and promulgate  
164 rules and regulations to permit a producer to import such bulk  
165 and/or fortified wines into this state for use in blending with  
166 native wines without payment of any excise tax that would  
167 otherwise accrue thereon.

168 (q) "Native winery" means any place or establishment  
169 within the State of Mississippi where native wine is produced in  
170 whole or in part for sale.

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

184 **SECTION 2.** This act shall take effect and be in force from  
185 and after July 1, 2006.