

By: Representative Hamilton (109th)

To: Judiciary A

HOUSE BILL NO. 341

1 AN ACT TO AMEND SECTIONS 67-1-81, 97-32-5 AND 97-32-7,  
2 MISSISSIPPI CODE OF 1972, TO PROHIBIT REDUCTION OF PENALTIES FOR  
3 SALE OF ALCOHOL OR TOBACCO TO MINORS; TO AMEND SECTION 67-3-69,  
4 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN FINES FOR SALE  
5 OF BEER TO MINORS SHALL BE MANDATORY; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 67-1-81, Mississippi Code of 1972, is  
8 amended as follows:

9 67-1-81. (1) Any permittee or other person who shall sell,  
10 furnish, dispose of, give, or cause to be sold, furnished,  
11 disposed of, or given, any alcoholic beverage to any person under  
12 the age of twenty-one (21) years shall be guilty of a misdemeanor  
13 and shall be punished by a fine of not less than Five Hundred  
14 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00)  
15 for a first offense. For a second or subsequent offense, such  
16 permittee or other person shall be punished by a fine of not less  
17 than One Thousand Dollars (\$1,000.00) nor more than Two Thousand  
18 Dollars (\$2,000.00), or by imprisonment for not more than one (1)  
19 year, or by both such fine and imprisonment in the discretion of  
20 the court. Upon conviction of a second offense under the  
21 provisions of this section the permit of any permittee so  
22 convicted shall be automatically and permanently revoked.

23 (2) Any person under the age of twenty-one (21) years who  
24 purchases, receives, or has in his or her possession in any public  
25 place, any alcoholic beverages, shall be guilty of a misdemeanor  
26 and shall be punished by a fine of not less than Two Hundred  
27 Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00).  
28 Provided, that clearing or busing tables that have glasses or

29 other containers that contain or did contain alcoholic beverages,  
30 or stocking, bagging or otherwise handling purchases of alcoholic  
31 beverages shall not be deemed possession of alcoholic beverages  
32 for the purposes of this section. Provided further, that a person  
33 who is at least eighteen (18) years of age but under the age of  
34 twenty-one (21) years who waits on tables by taking orders for or  
35 delivering orders of alcoholic beverages shall not be deemed to  
36 unlawfully possess or furnish alcoholic beverages if in the scope  
37 of his employment by the holder of an on-premises retailer's  
38 permit. This exception shall not authorize a person under the age  
39 of twenty-one (21) to tend bar or act in the capacity of  
40 bartender. Any person under the age of twenty-one (21) who  
41 knowingly makes a false statement to the effect that he or she is  
42 twenty-one (21) years old or older to any person engaged in the  
43 sale of alcoholic beverages for the purpose of obtaining the same  
44 shall be guilty of a misdemeanor and shall be punished by a fine  
45 of not less than Two Hundred Dollars (\$200.00) nor more than Five  
46 Hundred Dollars (\$500.00), and a sentence to not more than thirty  
47 (30) days' community service.

48 (3) The term "community service" as used in this section  
49 shall mean work, projects or services for the benefit of the  
50 community assigned, supervised and recorded by appropriate public  
51 officials.

52 (4) If a person under the age of twenty-one (21) years is  
53 convicted or enters a plea of guilty of purchasing, receiving or  
54 having in his or her possession in any public place any alcoholic  
55 beverages in violation of subsection (2) of this section, the  
56 trial judge, in lieu of the penalties otherwise provided under  
57 subsection (2) of this section, shall suspend the minor's driver's  
58 license by taking and keeping it in the custody of the court for a  
59 period of time not to exceed ninety (90) days. The judge so  
60 ordering the suspension shall enter upon his docket "DEFENDANT'S  
61 DRIVER'S LICENSE SUSPENDED FOR \_\_\_\_ DAYS IN LIEU OF CONVICTION"

62 and such action by the trial judge shall not constitute a  
63 conviction. During the period that the minor's driver's license  
64 is suspended, the trial judge shall suspend the imposition of any  
65 fines or penalties that may be imposed under subsection (2) of  
66 this section and may place the minor on probation subject to such  
67 conditions as the judge deems appropriate. If the minor violates  
68 any of the conditions of probation, then the trial judge shall  
69 return the driver's license to the minor and impose the fines,  
70 penalties or both, that he would have otherwise imposed, and such  
71 action shall constitute a conviction.

72 (5) No fine or sentence provided in this section shall be  
73 reduced or suspended and no plea bargain shall be allowed for  
74 violators of this section.

75 **SECTION 2.** Section 97-32-5, Mississippi Code of 1972, is  
76 amended as follows:

77 97-32-5. It shall be unlawful for any person, or retailer,  
78 to sell, barter, deliver or give tobacco products to any  
79 individual under eighteen (18) years of age unless the individual  
80 under eighteen (18) years of age holds a retailer's license to  
81 sell tobacco under Section 27-69-1 et seq., Mississippi Code of  
82 1972.

83 It shall be an absolute affirmative defense that the person  
84 selling, bartering, delivering or giving tobacco products over the  
85 counter in a retail establishment to an individual under eighteen  
86 (18) years of age in violation of this acticle had requested and  
87 examined a government-issued photographic identification from such  
88 person establishing his age as at least eighteen (18) years prior  
89 to selling such person a tobacco product. The failure of a  
90 seller, barterer, deliverer or giver of tobacco products over the  
91 counter in a retail establishment to request and examine  
92 photographic identification from a person under eighteen (18)  
93 years of age prior to the sale of a tobacco product to such person  
94 if the individual is not known to the seller, barterer, deliverer

95 or giver of the tobacco product to be over the age of eighteen  
96 (18) years, shall be construed against the seller, barterer,  
97 deliverer or giver and form a conclusive basis for the seller's  
98 violation of this section.

99 It shall be an absolute affirmative defense that the person  
100 or entity giving tobacco products through the mail to an  
101 individual under eighteen (18) years of age in violation of this  
102 acticle had requested and received documentary or written evidence  
103 from such person purportedly establishing his age to be at least  
104 eighteen (18) years of age.

105 Any person who violates this section shall be liable as  
106 follows: For a first conviction, a fine of Fifty Dollars  
107 (\$50.00); for a second conviction, a fine of Seventy-five Dollars  
108 (\$75.00); and for all subsequent convictions, a fine of One  
109 Hundred Fifty Dollars (\$150.00) shall be imposed.

110 Any person found in violation of this section shall be issued  
111 a citation and the holder of the retailer permit shall be sent  
112 notification of this citation by registered mail by the law  
113 enforcement agency issuing the citation. Notification shall  
114 include the opportunity for hearing before the appropriate court.  
115 For a first conviction, the retailer shall be sent a warning  
116 letter informing him of the retailer's responsibility in the  
117 selling of tobacco products. For a second conviction, the  
118 retailer, or retailer's designee, shall be required to enroll in  
119 and complete a "Retailer Tobacco Education Program."

120 For a third or subsequent violation of this section by any  
121 retailer, within one (1) year of the two (2) prior violations, any  
122 retailer's permit issued pursuant to Section 27-69-1 et seq.,  
123 Mississippi Code of 1972, may be revoked or suspended for a period  
124 of at least one (1) year after notice and opportunity for hearing.  
125 If said permit is revoked by the Tax Commission, the retailer may  
126 not reapply for a permit to sell tobacco for a period of six (6)

127 months. For the purposes of this section, "subsequent violations"  
128 are those committed at the same place of business.

129 It is the responsibility of all law enforcement officers and  
130 law enforcement agencies of this state to ensure that the  
131 provisions of this article are enforced.

132 It shall not be considered a violation of this section on the  
133 part of any law enforcement officer or person under eighteen (18)  
134 years of age for any law enforcement officer of this state to use  
135 persons under eighteen (18) years of age to purchase or attempt to  
136 purchase tobacco products for the purpose of monitoring compliance  
137 with this section, as long as those persons are supervised by duly  
138 authorized law enforcement agency officials.

139 Any law enforcement agency conducting enforcement efforts  
140 undertaken pursuant to this article shall prepare a report as  
141 prescribed by the Attorney General which includes the number of  
142 unannounced inspections conducted by the agency, a summary of  
143 enforcement actions taken pursuant to this article, the name and  
144 permit number of the retailer pursuant to Section 27-69-1 et seq.,  
145 Mississippi Code of 1972, and final judicial disposition on all  
146 enforcement actions. Reports shall be forwarded to the Office of  
147 the Attorney General within twenty (20) working days of the final  
148 judicial disposition.

149 On notification from local law enforcement that a retailer  
150 has violated this article so as to warrant a revocation of the  
151 retailer's permit, the Attorney General shall notify in writing  
152 the State Tax Commission within twenty (20) working days.

153 In accordance with the procedures of Section 27-69-9,  
154 Mississippi Code of 1972, the State Tax Commission shall initiate  
155 revocation procedures of the retailer's permit. The Office of the  
156 Attorney General shall provide legal assistance in revocation  
157 procedures when requested by the Tax Commission.

158       No fine or sentence provided in this section shall be reduced  
159 or suspended and no plea bargain shall be allowed for violators of  
160 this section.

161       **SECTION 3.** Section 97-32-7, Mississippi Code of 1972, is  
162 amended as follows:

163       97-32-7. (1) Every person engaged in the business of  
164 selling tobacco products at retail shall notify each individual  
165 employed by that person as a retail sales clerk that state law:

166           (a) Prohibits the sale or distribution of tobacco  
167 products, including samples, to any person under eighteen (18)  
168 years of age and the purchase or receipt of tobacco products by  
169 any person under eighteen (18) years of age; and

170           (b) Requires that proof of age be demanded from a  
171 prospective purchaser or recipient if the prospective purchaser or  
172 recipient is under the age of eighteen (18) years. Every person  
173 employed by a person engaged in the business of selling tobacco  
174 products at retail shall sign an agreement with his employer in  
175 substantially the following or similar form:

176       "I understand that state and federal law prohibit the sale or  
177 distribution of tobacco products to persons under the age of  
178 eighteen (18) years and out-of-package sales, and requires that  
179 proof of age be demanded from a prospective purchaser or recipient  
180 under eighteen (18) years of age if the individual is not known to  
181 the seller, barterer, deliverer or giver of the tobacco product to  
182 be over the age of eighteen (18) years. I promise, as a condition  
183 of my employment, to observe this law."

184       (2) Any person violating the provisions of this section  
185 shall be penalized not less than Fifty Dollars (\$50.00) nor more  
186 than One Hundred Dollars (\$100.00).

187       (3) No retailer who instructs his employee as provided in  
188 this section shall be liable for any violations committed by such  
189 employees.

190       (4) No fine or sentence provided in this section shall be  
191 reduced or suspended and no plea bargain shall be allowed for  
192 violators of this section.

193       **SECTION 4.** Section 67-3-69, Mississippi Code of 1972, is  
194 amended as follows:

195       67-3-69. (1) Except as to Sections 67-3-17, 67-3-23,  
196 67-3-27, 67-3-55 and 67-3-57, any violation of any provision of  
197 this chapter or of any rule or regulation of the commissioner,  
198 shall be a misdemeanor and, where the punishment therefor is not  
199 elsewhere prescribed in this section, shall be punished by a fine  
200 of not more than Five Hundred Dollars (\$500.00) or imprisonment  
201 for not more than six (6) months, or both, in the discretion of  
202 the court. If any person so convicted shall be the holder of any  
203 permit or license issued by the commissioner under authority of  
204 this chapter, the permit or license shall from and after the date  
205 of such conviction be void and the holder thereof shall not  
206 thereafter, for a period of one (1) year from the date of such  
207 conviction, be entitled to any permit or license for any purpose  
208 authorized by this chapter. Upon conviction of the holder of any  
209 permit or license, the appropriate law enforcement officer shall  
210 seize the permit or license and transmit it to the commissioner.

211       (2) (a) Any person who shall violate any provision of  
212 Section 67-3-17, 67-3-23, 67-3-27 or 67-3-55 shall be guilty of a  
213 misdemeanor, and upon conviction thereof shall be punished by a  
214 fine of not more than Five Hundred Dollars (\$500.00) or by  
215 imprisonment in the county jail for not more than six (6) months,  
216 or by both such fine and imprisonment, in the discretion of the  
217 court.

218       (b) Any person who shall violate any provision of  
219 Section 67-3-57 shall be guilty of a misdemeanor, and upon  
220 conviction thereof, shall be punished by a fine of not more than  
221 One Thousand Dollars (\$1,000.00) or by imprisonment in the county  
222 jail for not more than one (1) year, or by both, in the discretion

223 of the court. Any person convicted of violating any provision of  
224 the sections referred to in this subsection shall forfeit his  
225 permit, and shall not thereafter be permitted to engage in any  
226 business taxable under the provisions of Sections 27-71-301  
227 through 27-71-347.

228 (3) If the holder of a permit, or the employee of the holder  
229 of a permit, shall be convicted of selling any beer or wine to  
230 anyone who is visibly intoxicated from the licensed premises or to  
231 any person under the age of twenty-one (21) years from the  
232 licensed premises in violation of Section 67-3-53(b), then, in  
233 addition to any other penalty provided for by law, the  
234 commissioner shall impose the following penalties against the  
235 holder of a permit:

236 (a) For the first offense on the licensed premises, by  
237 a fine of not less than Five Hundred Dollars (\$500.00) nor more  
238 than One Thousand Dollars (\$1,000.00) and/or suspension of the  
239 permit for not more than three (3) months.

240 (b) For a second offense occurring on the licensed  
241 premises within twelve (12) months of the first offense, by a fine  
242 of not less than Five Hundred Dollars (\$500.00) nor more than Two  
243 Thousand Dollars (\$2,000.00) and/or suspension of the permit for  
244 not more than six (6) months.

245 (c) For a third offense occurring on the licensed  
246 premises within twelve (12) months of the first, by a fine of not  
247 less than Two Thousand Dollars (\$2,000.00) nor more than Five  
248 Thousand Dollars (\$5,000.00) and/or suspension or revocation of  
249 the permit to sell beer or light wine.

250 (d) For a fourth or subsequent offense occurring on the  
251 licensed premises within twelve (12) months of the first, by a  
252 fine of not less than Two Thousand Dollars (\$2,000.00) nor more  
253 than Five Thousand Dollars (\$5,000.00) and/or suspension or  
254 revocation of the permit to sell beer or light wine.



255           (4) A person who sells any beer or wine to a person under  
256 the age of twenty-one (21) years shall not be guilty of a  
257 violation of Section 67-3-53(b) if the person under the age of  
258 twenty-one (21) years represents himself to be twenty-one (21)  
259 years of age or older by displaying an apparently valid  
260 Mississippi driver's license containing a physical description  
261 consistent with his appearance or by displaying some other  
262 apparently valid identification document containing a picture and  
263 physical description consistent with his appearance for the  
264 purpose of inducing the person to sell beer or wine to him.

265           (5) If the holder of a permit to operate a brewpub is  
266 convicted of violating the provisions of Section 67-3-22(3), then,  
267 in addition to any other provision provided for by law, the holder  
268 of the permit shall be punished as follows:

269                 (a) For the first offense, the holder of a permit to  
270 operate a brewpub may be fined in an amount not to exceed Five  
271 Hundred Dollars (\$500.00).

272                 (b) For a second offense occurring within twelve (12)  
273 months of the first offense, the holder of a permit to operate a  
274 brewpub may be fined an amount not to exceed One Thousand Dollars  
275 (\$1,000.00).

276                 (c) For a third or subsequent offense occurring within  
277 twelve (12) months of the first offense, the holder of a permit to  
278 operate a brewpub may be fined an amount not to exceed Five  
279 Thousand Dollars (\$5,000.00) and the permit to operate a brewpub  
280 shall be suspended for thirty (30) days.

281           **SECTION 5.** This act shall take effect and be in force from  
282 and after July 1, 2006.