

By: Representative Moak

To: Ways and Means

HOUSE BILL NO. 1747
(As Passed the House)

1 AN ACT TO AMEND SECTION 27-71-5, MISSISSIPPI CODE OF 1972, TO
2 CREATE A NEW ANNUAL PRIVILEGE LICENSE TAX, TO BE IMPOSED FOR A
3 PACKAGE RETAILER'S SPECIAL PERMIT TO CONDUCT WINE TASTING OR
4 SAMPLING EVENTS; TO ALLOW THE HOLDER OF SUCH A SPECIAL PERMIT TO
5 OFFER AND SERVE LIMITED AMOUNTS OF WINE AT NO COST TO THE
6 CONSUMERS THEREOF; TO AMEND SECTION 67-1-51, MISSISSIPPI CODE OF
7 1972, TO SET FORTH THE REQUIREMENTS AND LIMITATIONS ASSOCIATED
8 WITH THE SPECIAL PERMIT FOR WHICH THE TAX IS IMPOSED; AND FOR
9 RELATED PURPOSES.

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

11 **SECTION 1.** Section 27-71-5, Mississippi Code of 1972, is
12 amended as follows:

13 27-71-5. (1) Upon each person approved for a permit under
14 the provisions of the Alcoholic Beverage Control Law and
15 amendments thereto, there is levied and imposed for each location
16 for the privilege of engaging and continuing in this state in the
17 business authorized by such permit, an annual privilege license
18 tax in the amount provided in the following schedule:

- 19 (a) Except as otherwise provided in this subsection
- 20 (1), manufacturer's permit, Class 1, distiller's and/or
- 21 rectifier's..... \$4,500.00
- 22 (b) Manufacturer's permit, Class 2, wine manufacturer
- 23 \$1,800.00
- 24 (c) Manufacturer's permit, Class 3, native wine
- 25 manufacturer per ten thousand (10,000) gallons or part thereof
- 26 produced..... \$ 10.00
- 27 (d) Native wine retailer's permit..... \$ 50.00
- 28 (e) Package retailer's permit, each..... \$ 900.00
- 29 (f) On-premises retailer's permit, except for clubs and
- 30 common carriers, each..... \$ 450.00

31 On purchases exceeding Five Thousand Dollars (\$5,000.00) and
32 for each additional Five Thousand Dollars (\$5,000.00), or fraction
33 thereof..... \$ 225.00

34 (g) On-premises retailer's permit for wine of more than
35 five percent (5%) alcohol by weight, but not more than twenty-one
36 percent (21%) alcohol by weight, each..... \$ 225.00

37 On purchases exceeding Five Thousand Dollars (\$5,000.00) and
38 for each additional Five Thousand Dollars (\$5,000.00), or fraction
39 thereof..... \$ 225.00

40 (h) On-premises retailer's permit for clubs.. \$ 225.00

41 On purchases exceeding Five Thousand Dollars (\$5,000.00) and
42 for each additional Five Thousand Dollars (\$5,000.00), or fraction
43 thereof..... \$ 225.00

44 (i) On-premises retailer's permit for common carriers,
45 per car, plane, or other vehicle..... \$ 120.00

46 (j) Solicitor's permit, regardless of any other
47 provision of law, solicitor's permits shall be issued only in the
48 discretion of the commission..... \$ 100.00

49 (k) Filing fee for each application except for an
50 employee identification card..... \$ 25.00

51 (l) Temporary permit, Class 1, each..... \$ 10.00

52 (m) Temporary permit, Class 2, each..... \$ 50.00

53 On-premises purchases exceeding Five Thousand Dollars
54 (\$5,000.00) and for each additional Five Thousand Dollars
55 (\$5,000.00), or fraction thereof..... \$ 225.00

56 (n) (i) Caterer's permit..... \$ 600.00

57 On purchases exceeding Five Thousand Dollars (\$5,000.00) and
58 for each additional Five Thousand Dollars (\$5,000.00), or fraction
59 thereof..... \$ 250.00

60 (ii) Caterer's permit for holders of on-premises
61 retailer's permit..... \$ 150.00

62 On purchases exceeding Five Thousand Dollars (\$5,000.00), and
63 for each additional Five Thousand Dollars (\$5,000.00), or fraction
64 thereof..... \$ 250.00
65 (o) Research permit..... \$ 100.00
66 (p) Package retailer's special permit for conducting
67 wine tasting or sampling events, each..... \$ 50.00

68 If a person approved for a manufacturer's permit, Class 1,
69 distiller's permit produces a product with at least fifty-one
70 percent (51%) of the finished product by volume being obtained
71 from alcoholic fermentation of grapes, fruits, berries, honey
72 and/or vegetables grown and produced in Mississippi, and produces
73 all of the product by using not more than one (1) still having a
74 maximum capacity of one hundred fifty (150) liters, the annual
75 privilege license tax for such a permit shall be Ten Dollars
76 (\$10.00) per ten thousand (10,000) gallons or part thereof
77 produced. Bulk, concentrated or fortified ingredients used for
78 blending may be produced outside this state and used in producing
79 such a product.

80 In addition to the filing fee imposed by item (k) of this
81 subsection, a fee to be determined by the State Tax Commission may
82 be charged to defray costs incurred to process applications. The
83 additional fees shall be paid into the State Treasury to the
84 credit of a special fund account, which is hereby created, and
85 expenditures therefrom shall be made only to defray the costs
86 incurred by the State Tax Commission in processing alcoholic
87 beverage applications. Any unencumbered balance remaining in the
88 special fund account on June 30 of any fiscal year shall lapse
89 into the State General Fund.

90 All privilege taxes imposed by this section shall be paid in
91 advance of doing business. The additional privilege tax imposed
92 for an on-premises retailer's permit based upon purchases shall be
93 due and payable on demand.

94 Any person who has paid the additional privilege license tax
95 imposed by item (f), (g), (h), (m) or (n) of this subsection, and
96 whose permit is renewed, may add any unused fraction of Five
97 Thousand Dollars (\$5,000.00) purchases to the first Five Thousand
98 Dollars (\$5,000.00) purchases authorized by the renewal permit,
99 and no additional license tax will be required until purchases
100 exceed the sum of the two (2) figures.

101 (2) There is imposed and shall be collected from each
102 permittee, except a common carrier, solicitor or a temporary
103 permittee, by the commission, an additional license tax equal to
104 the amounts imposed under subsection (1) of this section for the
105 privilege of doing business within any municipality or county in
106 which the licensee is located. If the licensee is located within
107 a municipality, the commission shall pay the amount of additional
108 license tax to the municipality, and if outside a municipality the
109 commission shall pay the additional license tax to the county in
110 which the licensee is located. Payments by the commission to the
111 respective local government subdivisions shall be made once each
112 month for any collections during the preceding month.

113 (3) When an application for any permit, other than for
114 renewal of a permit, has been rejected by the commission, such
115 decision shall be final. Appeal may be made in the manner
116 provided by Section 67-1-39. Another application from an
117 applicant who has been denied a permit shall not be reconsidered
118 within a twelve-month period.

119 (4) The number of permits issued by the commission shall not
120 be restricted or limited on a population basis; however, the
121 foregoing limitation shall not be construed to preclude the right
122 of the commission to refuse to issue a permit because of the
123 undesirability of the proposed location.

124 (5) If any person shall engage or continue in any business
125 which is taxable under this section without having paid the tax as
126 provided in this section, the person shall be liable for the full

127 amount of the tax plus a penalty thereon equal to the amount
128 thereof, and, in addition, shall be punished by a fine of not more
129 than One Thousand Dollars (\$1,000.00), or by imprisonment in the
130 county jail for a term of not more than six (6) months, or by both
131 such fine and imprisonment, in the discretion of the court.

132 (6) It shall be unlawful for any person to consume alcoholic
133 beverages on the premises of any hotel restaurant, restaurant,
134 club or the interior of any public place defined in Chapter 1,
135 Title 67, Mississippi Code of 1972, when the owner or manager
136 thereof displays in several conspicuous places inside the
137 establishment and at the entrances of establishment a sign
138 containing the following language: NO ALCOHOLIC BEVERAGES
139 ALLOWED.

140 **SECTION 2.** Section 67-1-51, Mississippi Code of 1972, is
141 amended as follows:

142 67-1-51. (1) Permits which may be issued by the commission
143 shall be as follows:

144 (a) **Manufacturer's permit.** A manufacturer's permit
145 shall permit the manufacture, importation in bulk, bottling and
146 storage of alcoholic liquor and its distribution and sale to
147 manufacturers holding permits under this chapter in this state and
148 to persons outside the state who are authorized by law to purchase
149 the same, and to sell exclusively to the commission.

150 Manufacturer's permits shall be of the following classes:

151 Class 1. Distiller's and/or rectifier's permit, which shall
152 authorize the holder thereof to operate a distillery for the
153 production of distilled spirits by distillation or redistillation
154 and/or to operate a rectifying plant for the purifying, refining,
155 mixing, blending, flavoring or reducing in proof of distilled
156 spirits and alcohol.

157 Class 2. Wine manufacturer's permit, which shall authorize
158 the holder thereof to manufacture, import in bulk, bottle and
159 store wine or vinous liquor.

160 Class 3. Native wine producer's permit, which shall
161 authorize the holder thereof to produce, bottle, store and sell
162 native wines.

163 (b) **Package retailer's permit.** Except as otherwise
164 provided in this paragraph and as otherwise provided in paragraph
165 (j) of this subsection (1) when the holder of a package retailer's
166 permit also holds a package retailer's special permit for
167 conducting wine tasting or sampling events, a package retailer's
168 permit shall authorize the holder thereof to operate a store
169 exclusively for the sale at retail in original sealed and unopened
170 packages of alcoholic beverages, including native wines, not to be
171 consumed on the premises where sold. Alcoholic beverages shall
172 not be sold by any retailer in any package or container containing
173 less than fifty (50) milliliters by liquid measure. In addition
174 to the sale at retail of packages of alcoholic beverages, the
175 holder of a package retailer's permit is authorized to sell at
176 retail corkscrews, wine glasses, soft drinks, ice, juices, mixers
177 and other beverages commonly used to mix with alcoholic beverages.
178 Nonalcoholic beverages sold by the holder of a package retailer's
179 permit shall not be consumed on the premises where sold. The
180 holder of a package retailer's permit may also hold a package
181 retailer's special permit for conducting wine tasting or sampling
182 events as provided for in paragraph (j) of this subsection (1).

183 (c) **On-premises retailer's permit.** An on-premises
184 retailer's permit shall authorize the sale of alcoholic beverages,
185 including native wines, for consumption on the licensed premises
186 only. Such a permit shall issue only to qualified hotels,
187 restaurants and clubs, and to common carriers with adequate
188 facilities for serving passengers. In resort areas, whether
189 inside or outside of a municipality, the commission may, in its
190 discretion, issue on-premises retailer's permits to such
191 establishments as it deems proper. An on-premises retailer's
192 permit when issued to a common carrier shall authorize the sale

193 and serving of alcoholic beverages aboard any licensed vehicle
194 while moving through any county of the state; however, the sale of
195 such alcoholic beverages shall not be permitted while such vehicle
196 is stopped in a county that has not legalized such sales.

197 (d) **Solicitor's permit.** A solicitor's permit shall
198 authorize the holder thereof to act as salesman for a manufacturer
199 or wholesaler holding a proper permit, to solicit on behalf of his
200 employer orders for alcoholic beverages, and to otherwise promote
201 his employer's products in a legitimate manner. Such a permit
202 shall authorize the representation of and employment by one (1)
203 principal only. However, the permittee may also, in the
204 discretion of the commission, be issued additional permits to
205 represent other principals. No such permittee shall buy or sell
206 alcoholic beverages for his own account, and no such beverage
207 shall be brought into this state in pursuance of the exercise of
208 such permit otherwise than through a permit issued to a wholesaler
209 or manufacturer in the state.

210 (e) **Native wine retailer's permit.** A native wine
211 retailer's permit shall be issued only to a holder of a Class 3
212 manufacturer's permit, and shall authorize the holder thereof to
213 make retail sales of native wines to consumers for on-premises
214 consumption or to consumers in originally sealed and unopened
215 containers at an establishment located on the premises of or in
216 the immediate vicinity of a native winery.

217 (f) **Temporary retailer's permit.** A temporary
218 retailer's permit shall permit the purchase and resale of
219 alcoholic beverages, including native wines, during legal hours on
220 the premises described in the temporary permit only.

221 Temporary retailer's permits shall be of the following
222 classes:

223 Class 1. A temporary one-day permit may be issued to bona
224 fide nonprofit civic or charitable organizations authorizing the
225 sale of alcoholic beverages, including native wine, for

226 consumption on the premises described in the temporary permit
227 only. Class 1 permits may be issued only to applicants
228 demonstrating to the commission, by affidavit submitted ten (10)
229 days prior to the proposed date or such other time as the
230 commission may determine, that they meet the qualifications of
231 Sections 67-1-11, 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57
232 (excluding paragraph (e)) and 67-1-59. Class 1 permittees shall
233 obtain all alcoholic beverages from package retailers located in
234 the county in which the temporary permit is issued. Alcoholic
235 beverages remaining in stock upon expiration of the temporary
236 permit may be returned by the permittee to the package retailer
237 for a refund of the purchase price upon consent of the package
238 retailer or may be kept by the permittee exclusively for personal
239 use and consumption, subject to all laws pertaining to the illegal
240 sale and possession of alcoholic beverages. The commission,
241 following review of the affidavit and the requirements of the
242 applicable statutes and regulations, may issue the permit.

243 Class 2. A temporary permit, not to exceed seventy (70)
244 days, may be issued to prospective permittees seeking to transfer
245 a permit authorized in either paragraph (b) or (c) of this
246 section. A Class 2 permit may be issued only to applicants
247 demonstrating to the commission, by affidavit, that they meet the
248 qualifications of Sections 67-1-5(1), (m), (n), (o), (p) or (q),
249 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57 and 67-1-59. The
250 commission, following a preliminary review of the affidavit and
251 the requirements of the applicable statutes and regulations, may
252 issue the permit.

253 Class 2 temporary permittees must purchase their alcoholic
254 beverages directly from the commission or, with approval of the
255 commission, purchase the remaining stock of the previous
256 permittee. If the proposed applicant of a Class 1 or Class 2
257 temporary permit falsifies information contained in the
258 application or affidavit, the applicant shall never again be

259 eligible for a retail alcohol beverage permit and shall be subject
260 to prosecution for perjury.

261 (g) **Caterer's permit.** A caterer's permit shall permit
262 the purchase of alcoholic beverages by a person engaging in
263 business as a caterer and the resale of alcoholic beverages by
264 such person in conjunction with such catering business. No person
265 shall qualify as a caterer unless forty percent (40%) or more of
266 the revenue derived from such catering business shall be from the
267 serving of prepared food and not from the sale of alcoholic
268 beverages and unless such person has obtained a permit for such
269 business from the Department of Health. A caterer's permit shall
270 not authorize the sale of alcoholic beverages on the premises of
271 the person engaging in business as a caterer; however, the holder
272 of an on-premises retailer's permit may hold a caterer's permit.
273 When the holder of an on-premises retailer's permit or an
274 affiliated entity of the holder also holds a caterer's permit, the
275 caterer's permit shall not authorize the service of alcoholic
276 beverages on a consistent, recurring basis at a separate, fixed
277 location owned or operated by the caterer, on-premises retailer or
278 affiliated entity and an on-premises retailer's permit shall be
279 required for the separate location. All sales of alcoholic
280 beverages by holders of a caterer's permit shall be made at the
281 location being catered by the caterer, and such sales may be made
282 only for consumption at the catered location. The location being
283 catered may be anywhere within a county or judicial district that
284 has voted to come out from under the dry laws or in which the
285 sale, distribution and possession of alcoholic beverages is
286 otherwise authorized by law. Such sales shall be made pursuant to
287 any other conditions and restrictions which apply to sales made by
288 on-premises retail permittees. The holder of a caterer's permit
289 or his employees shall remain at the catered location as long as
290 alcoholic beverages are being sold pursuant to the permit issued
291 under this paragraph (g), and the permittee shall have at the

292 location the identification card issued by the Alcoholic Beverage
293 Control Division of the commission. No unsold alcoholic beverages
294 may be left at the catered location by the permittee upon the
295 conclusion of his business at that location. Appropriate law
296 enforcement officers and Alcoholic Beverage Control Division
297 personnel may enter a catered location on private property in
298 order to enforce laws governing the sale or serving of alcoholic
299 beverages.

300 (h) **Research permit.** A research permit shall authorize
301 the holder thereof to operate a research facility for the
302 professional research of alcoholic beverages. Such permit shall
303 authorize the holder of the permit to import and purchase limited
304 amounts of alcoholic beverages from the commission or from
305 importers, wineries and distillers of alcoholic beverages for
306 professional research.

307 (i) **Alcohol processing permit.** An alcohol processing
308 permit shall authorize the holder thereof to purchase, transport
309 and possess alcoholic beverages for the exclusive use in cooking,
310 processing or manufacturing products which contain alcoholic
311 beverages as an integral ingredient. An alcohol processing permit
312 shall not authorize the sale of alcoholic beverages on the
313 premises of the person engaging in the business of cooking,
314 processing or manufacturing products which contain alcoholic
315 beverages. The amounts of alcoholic beverages allowed under an
316 alcohol processing permit shall be set by the commission.

317 (j) **Package retailer's special permit for conducting**
318 **wine tasting or sampling events.** A package retailer's special
319 permit for conducting wine tasting or sampling events shall
320 authorize the holder of the special permit to conduct an event
321 solely for the purpose of offering and serving tastes or samples
322 of wine at no cost to the consumers thereof, during which limited
323 amounts of wine may be consumed on the premises where the holder
324 of such package retailer's special permit also holds a package

325 retailer's permit and sells wine at retail. The special permit
326 shall not authorize the sale of wine or alcoholic beverages for
327 consumption on the premises of the holder of a package retailer's
328 permit, but shall only authorize the limited consumption of wine
329 on such premises for the sole purpose of tasting or sampling
330 various wines. No more than one (1) wine tasting or sampling
331 event may be held per month pursuant to this special permit. A
332 wine tasting or sampling event shall be conducted totally within
333 an area that is cordoned off by barriers that clearly separate the
334 event from the point of sale of any wine or other alcoholic
335 beverage. A sign stating that no one under twenty-one (21) years
336 of age may participate in the event shall be placed in a visible
337 location at the entrance to the wine tasting or sampling area. No
338 such event may continue for no more than four (4) hours in
339 duration, with no more than a total of eight (8) ounces of various
340 wines to be dispensed to any individual. The holder of a special
341 permit issued under this paragraph (j) shall keep an accurate
342 accounting of the various wines and amounts consumed at a tasting
343 or sampling event. Written notice of each event to be conducted
344 shall be provided to the Alcoholic Beverage Control Division of
345 the State Tax Commission at least fifteen (15) days before the
346 event.

347 (2) Except as otherwise provided in subsection (4) of this
348 section, retail permittees may hold more than one (1) retail
349 permit, at the discretion of the commission.

350 (3) Except as otherwise provided in this subsection, no
351 authority shall be granted to any person to manufacture, sell or
352 store for sale any intoxicating liquor as specified in this
353 chapter within four hundred (400) feet of any church, school,
354 kindergarten or funeral home. However, within an area zoned
355 commercial or business, such minimum distance shall be not less
356 than one hundred (100) feet.

357 A church or funeral home may waive the distance restrictions
358 imposed in this subsection in favor of allowing issuance by the
359 commission of a permit, pursuant to subsection (1) of this
360 section, to authorize activity relating to the manufacturing, sale
361 or storage of alcoholic beverages which would otherwise be
362 prohibited under the minimum distance criterion. Such waiver
363 shall be in written form from the owner, the governing body, or
364 the appropriate officer of the church or funeral home having the
365 authority to execute such a waiver, and the waiver shall be filed
366 with and verified by the commission before becoming effective.

367 The distance restrictions imposed in this subsection shall
368 not apply to the sale or storage of alcoholic beverages at a bed
369 and breakfast inn listed in the National Register of Historic
370 Places.

371 (4) No person, either individually or as a member of a firm,
372 partnership, limited liability company or association, or as a
373 stockholder, officer or director in a corporation, shall own or
374 control any interest in more than one (1) package retailer's
375 permit, nor shall such person's spouse, if living in the same
376 household of such person, any relative of such person, if living
377 in the same household of such person, or any other person living
378 in the same household with such person own any interest in any
379 other package retailer's permit.

380 **SECTION 3.** This act shall take effect and be in force from
381 and after July 1, 2007.