

By: Representatives Snowden, Bennett,
Willis, Miles, Reynolds

To: Judiciary B

HOUSE BILL NO. 1108

1 AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE DEFINITION OF THE TERM "ALCOHOLIC BEVERAGE" UNDER THE
 3 LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW TO PROVIDE THAT THE
 4 TERM DOES NOT INCLUDE POWDERED ALCOHOL; TO DEFINE THE TERM
 5 "POWDERED ALCOHOL" UNDER THE LOCAL OPTION ALCOHOLIC BEVERAGE
 6 CONTROL LAW; TO AMEND SECTIONS 67-1-9 AND 67-1-17, TO PROVIDE THAT
 7 POWDERED ALCOHOL IS PROHIBITED IN THIS STATE AND MAY NOT LAWFULLY
 8 BE MANUFACTURED, MIXED, PROCESSED, SOLD, POSSESSED, IMPORTED INTO
 9 THE STATE, EXPORTED FROM THE STATE, TRANSPORTED, DISTRIBUTED,
 10 WAREHOUSED OR STORED IN THIS STATE, AND THAT POWDERED ALCOHOL IS
 11 SUBJECT TO SEIZURE BY THE DEPARTMENT OF REVENUE AND FORFEITURE; TO
 12 AMEND SECTIONS 67-1-18, 67-1-93, 67-1-95, 67-1-97 AND 67-1-99, IN
 13 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

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

19 (a) "Alcoholic beverage" means any alcoholic liquid,
 20 including wines of more than five percent (5%) of alcohol by
 21 weight, capable of being consumed as a beverage by a human being,
 22 but shall not include light wine and beer, as defined in Section
 23 67-3-3, Mississippi Code of 1972, but shall include native wines.



24 The words "alcoholic beverage" shall not include ethyl alcohol
25 manufactured or distilled solely for fuel purposes or beer of an
26 alcoholic content of more than eight percent (8%) by weight if the
27 beer is legally manufactured in this state for sale in another
28 state. "Alcoholic beverage" shall not include powdered alcohol.

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

33 (c) "Distilled spirits" means any beverage containing
34 more than four percent (4%) of alcohol by weight produced by
35 distillation of fermented grain, starch, molasses or sugar,
36 including dilutions and mixtures of these beverages.

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

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

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

47 (g) "Wholesaler" means any person, other than a
48 manufacturer, engaged in distributing or selling any alcoholic



49 beverage at wholesale for delivery within or without this state
50 when such sale is for the purpose of resale by the purchaser.

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

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

61 (j) "Division" means the Alcoholic Beverage Control
62 Division of the Department of Revenue.

63 (k) "Municipality" means any incorporated city or town
64 of this state.

65 (l) "Hotel" means an establishment within a
66 municipality, or within a qualified resort area approved as such
67 by the department, where, in consideration of payment, food and
68 lodging are habitually furnished to travelers and wherein are
69 located at least twenty (20) adequately furnished and completely
70 separate sleeping rooms with adequate facilities that persons
71 usually apply for and receive as overnight accommodations. Hotels
72 in towns or cities of more than twenty-five thousand (25,000)
73 population are similarly defined except that they must have fifty



74 (50) or more sleeping rooms. Any such establishment described in
75 this paragraph with less than fifty (50) beds shall operate one or
76 more regular dining rooms designed to be constantly frequented by
77 customers each day. When used in this chapter, the word "hotel"
78 shall also be construed to include any establishment that meets
79 the definition of "bed and breakfast inn" as provided in this
80 section.

81 (m) "Restaurant" means:

82 (i) A place which is regularly and in a bona fide
83 manner used and kept open for the serving of meals to guests for
84 compensation, which has suitable seating facilities for guests,
85 and which has suitable kitchen facilities connected therewith for
86 cooking an assortment of foods and meals commonly ordered at
87 various hours of the day; the service of such food as sandwiches
88 and salads only shall not be deemed in compliance with this
89 requirement. Except as otherwise provided in this paragraph, no
90 place shall qualify as a restaurant under this chapter unless
91 twenty-five percent (25%) or more of the revenue derived from such
92 place shall be from the preparation, cooking and serving of meals
93 and not from the sale of beverages, or unless the value of food
94 given to and consumed by customers is equal to twenty-five percent
95 (25%) or more of total revenue; or

96 (ii) Any privately owned business located in a
97 building in a historic district where the district is listed in
98 the National Register of Historic Places, where the building has a



99 total occupancy rating of not less than one thousand (1,000) and
100 where the business regularly utilizes ten thousand (10,000) square
101 feet or more in the building for live entertainment, including not
102 only the stage, lobby or area where the audience sits and/or
103 stands, but also any other portion of the building necessary for
104 the operation of the business, including any kitchen area, bar
105 area, storage area and office space, but excluding any area for
106 parking. In addition to the other requirements of this
107 subparagraph, the business must also serve food to guests for
108 compensation within the building and derive the majority of its
109 revenue from event-related fees, including, but not limited to,
110 admission fees or ticket sales to live entertainment in the
111 building, and from the rental of all or part of the facilities of
112 the business in the building to another party for a specific event
113 or function.

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

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

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

120 (iii) Maintained by its members through the
121 payment of annual dues;

122 (iv) Owning, hiring or leasing a building or space
123 in a building of such extent and character as may be suitable and



124 adequate for the reasonable and comfortable use and accommodation
125 of its members and their guests;

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

130 (vi) No member, officer, agent or employee of
131 which is paid, or directly or indirectly receives, in the form of
132 a salary or other compensation any profit from the distribution or
133 sale of alcoholic beverages to the club or to members or guests of
134 the club beyond such salary or compensation as may be fixed and
135 voted at a proper meeting by the board of directors or other
136 governing body out of the general revenues of the club.

137 The department may, in its discretion, waive the five-year
138 provision of this paragraph. In order to qualify under this
139 paragraph, a club must file with the department, at the time of
140 its application for a license under this chapter, two (2) copies
141 of a list of the names and residences of its members and similarly
142 file, within ten (10) days after the election of any additional
143 member, his name and address. Each club applying for a license
144 shall also file with the department at the time of the application
145 a copy of its articles of association, charter of incorporation,
146 bylaws or other instruments governing the business and affairs
147 thereof.



148 (o) "Qualified resort area" means any area or locality
149 outside of the limits of incorporated municipalities in this state
150 commonly known and accepted as a place which regularly and
151 customarily attracts tourists, vacationists and other transients
152 because of its historical, scenic or recreational facilities or
153 attractions, or because of other attributes which regularly and
154 customarily appeal to and attract tourists, vacationists and other
155 transients in substantial numbers; however, no area or locality
156 shall so qualify as a resort area until it has been duly and
157 properly approved as such by the department.

158 (i) The department may approve an area or locality
159 outside of the limits of an incorporated municipality that is in
160 the process of being developed as a qualified resort area if such
161 area or locality, when developed, can reasonably be expected to
162 meet the requisites of the definition of the term "qualified
163 resort area." In such a case, the status of qualified resort area
164 shall not take effect until completion of the development.

165 (ii) The term includes any state park which is
166 declared a resort area by the department; however, such
167 declaration may only be initiated in a written request for resort
168 area status made to the department by the Executive Director of
169 the Department of Wildlife, Fisheries and Parks, and no permit for
170 the sale of any alcoholic beverage, as defined in this chapter,
171 except an on-premises retailer's permit, shall be issued for a
172 hotel, restaurant or bed and breakfast inn in such park.



173 (iii) The term includes:

174 1. The clubhouses associated with the state
175 park golf courses at the Lefleur's Bluff State Park, the John Kyle
176 State Park, the Percy Quin State Park and the Hugh White State
177 Park;

178 2. The clubhouse and associated golf course
179 where the golf course is adjacent to one or more planned
180 residential developments and the golf course and all such
181 developments collectively include at least seven hundred fifty
182 (750) acres and at least four hundred (400) residential units;

183 3. Any facility located on property that is a
184 game reserve with restricted access that consists of at least
185 three thousand (3,000) contiguous acres with no public roads and
186 that offers as a service hunts for a fee to overnight guests of
187 the facility;

188 4. Any facility located on federal property
189 surrounding a lake and designated as a recreational area by the
190 United States Army Corps of Engineers that consists of at least
191 one thousand five hundred (1,500) acres;

192 5. Any facility that is located in a
193 municipality that is bordered by the Pearl River, traversed by
194 Mississippi Highway 25, adjacent to the boundaries of the Jackson
195 International Airport and is located in a county which has voted
196 against coming out from under the dry law; however, any such



197 facility may only be located in areas designated by the governing
198 authorities of such municipality;

199 6. Any municipality with a population in
200 excess of ten thousand (10,000) according to the latest federal
201 decennial census that is located in a county that is bordered by
202 the Pearl River and is not traversed by Interstate Highway 20,
203 with a population in excess of forty-five thousand (45,000)
204 according to the latest federal decennial census;

205 7. The West Pearl Restaurant Tax District as
206 defined in Chapter 912, Local and Private Laws of 2007;

207 8. Land that is owned by the Pearl River
208 Valley Water Supply District and located in any county in which
209 Mississippi Highway 43 and Mississippi Highway 25 intersect;

210 9. Any facility located on property that is a
211 game reserve with restricted access that consists of at least
212 eight hundred (800) contiguous acres with no public roads, that
213 offers as a service hunts for a fee to overnight guests of the
214 facility, and has accommodations for at least fifty (50) overnight
215 guests.

216 The status of these municipalities, districts, clubhouses,
217 facilities, golf courses and areas described in subparagraph (iii)
218 of this paragraph (o) as qualified resort areas does not require
219 any declaration of same by the department.

220 (p) "Native wine" means any product, produced in
221 Mississippi for sale, having an alcohol content not to exceed



222 twenty-one percent (21%) by weight and made in accordance with
223 revenue laws of the United States, which shall be obtained
224 primarily from the alcoholic fermentation of the juice of ripe
225 grapes, fruits, berries or vegetables grown and produced in
226 Mississippi; provided that bulk, concentrated or fortified wines
227 used for blending may be produced without this state and used in
228 producing native wines. The department shall adopt and promulgate
229 rules and regulations to permit a producer to import such bulk
230 and/or fortified wines into this state for use in blending with
231 native wines without payment of any excise tax that would
232 otherwise accrue thereon.

233 (q) "Native winery" means any place or establishment
234 within the State of Mississippi where native wine is produced, in
235 whole or in part, for sale.

236 (r) "Bed and breakfast inn" means an establishment
237 within a municipality where in consideration of payment, breakfast
238 and lodging are habitually furnished to travelers and wherein are
239 located not less than eight (8) and not more than nineteen (19)
240 adequately furnished and completely separate sleeping rooms with
241 adequate facilities, that persons usually apply for and receive as
242 overnight accommodations; however, such restriction on the minimum
243 number of sleeping rooms shall not apply to establishments on the
244 National Register of Historic Places. No place shall qualify as a
245 bed and breakfast inn under this chapter unless on the date of the
246 initial application for a license under this chapter more than



247 fifty percent (50%) of the sleeping rooms are located in a
248 structure formerly used as a residence.

249 (s) "Board" shall refer to the Board of Tax Appeals of
250 the State of Mississippi.

251 (t) "Spa facility" means an establishment within a
252 municipality or qualified resort area and owned by a hotel where,
253 in consideration of payment, patrons receive from licensed
254 professionals a variety of private personal care treatments such
255 as massages, facials, waxes, exfoliation and hairstyling.

256 (u) "Art studio or gallery" means an establishment
257 within a municipality or qualified resort area that is in the sole
258 business of allowing patrons to view and/or purchase paintings and
259 other creative artwork.

260 (v) "Cooking school" means an establishment within a
261 municipality or qualified resort area and owned by a nationally
262 recognized company that offers an established culinary education
263 curriculum and program where, in consideration of payment, patrons
264 are given scheduled professional group instruction on culinary
265 techniques. For purposes of this paragraph, the definition of
266 cooking school shall not include schools or classes offered by
267 grocery stores, convenience stores or drugstores.

268 (w) "Powdered alcohol" means alcohol processed to a
269 powder form that, when mixed with liquid or used in conjunction
270 with a nebulizer, may be ingested or inhaled.



271 **SECTION 2.** Section 67-1-9, Mississippi Code of 1972, is
272 amended as follows:

273 67-1-9. (1) It shall be unlawful for any person to
274 manufacture, distill, brew, sell, possess, import into this state,
275 export from the state, transport, distribute, warehouse, store,
276 solicit, take order for, bottle, rectify, blend, treat, mix or
277 process any alcoholic beverage except as authorized in this
278 chapter. However, nothing contained herein shall prevent
279 importers, wineries and distillers of alcoholic beverages from
280 storing such alcoholic beverages in private bonded warehouses
281 located within the State of Mississippi for the ultimate use and
282 benefit of the * * * Department of Revenue as provided in Section
283 67-1-41. The * * * department is hereby authorized to promulgate
284 rules and regulations for the establishment of such private bonded
285 warehouses and for the control of alcoholic beverages stored in
286 such warehouses. Additionally, nothing herein contained shall
287 prevent any duly licensed practicing physician or dentist from
288 possessing or using alcoholic liquor in the strict practice of his
289 profession, or prevent any hospital or other institution caring
290 for sick and diseased persons, from possessing and using alcoholic
291 liquor for the treatment of bona fide patients of such hospital or
292 other institution. Any drugstore employing a licensed pharmacist
293 may possess and use alcoholic liquors in the combination of
294 prescriptions of duly licensed physicians. The possession and
295 dispensation of wine by an authorized representative of any church



296 for the purpose of conducting any bona fide rite or religious
297 ceremony conducted by such church shall not be prohibited by this
298 chapter. Powdered alcohol is prohibited in the State of
299 Mississippi and may not lawfully be manufactured, mixed,
300 processed, sold, possessed, imported into the state, exported from
301 the state, transported, distributed, warehoused or stored in this
302 state.

303 (2) Any person, upon conviction of any provision of this
304 section, shall be punished as follows:

305 (a) By a fine of not less than One Hundred Dollars
306 (\$100.00), nor more than Five Hundred Dollars (\$500.00), or by
307 imprisonment in the county jail not less than one (1) week nor
308 more than three (3) months, or both, for the first conviction
309 under this section.

310 (b) By a fine of not less than One Hundred Dollars
311 (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or by
312 imprisonment in the county jail not less than sixty (60) days, nor
313 more than six (6) months, or both fine and imprisonment, for the
314 second conviction for violating this section.

315 (c) By a fine of not less than One Hundred Dollars
316 (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or by
317 imprisonment in the State Penitentiary not less than one (1) year,
318 nor more than five (5) years, or both fine and imprisonment, for
319 conviction the third time under this section for the violation
320 thereof after having been twice convicted of its violation.



321 **SECTION 3.** Section 67-1-17, Mississippi Code of 1972, is
322 amended as follows:

323 67-1-17. (1) It shall be unlawful for any person to have or
324 possess * * * alcoholic beverages, powdered alcohol or personal
325 property intended for use in violating the provisions of this
326 chapter, or regulations prescribed under this chapter, or Chapter
327 31 of Title 97, Mississippi Code of 1972. No property rights
328 shall exist in any such personal property, powdered alcohol or
329 alcoholic beverages. All such personal property, powdered alcohol
330 and alcoholic beverages shall be considered contraband and shall
331 be seized and forfeited to the State of Mississippi.

332 (2) The following are subject to forfeiture:

333 (a) All alcoholic beverages or powdered alcohol which
334 have been manufactured, distilled, distributed, dispensed,
335 processed or acquired in violation of this chapter or Chapter 31
336 of Title 97, Mississippi Code of 1972;

337 (b) All raw materials, products and equipment of any
338 kind which are used, or intended for use, in manufacturing,
339 compounding, processing, delivering, importing or exporting any
340 alcoholic beverage or powdered alcohol in violation of this
341 chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

342 (c) All property which is used, or intended for use, as
343 a container for property described in items (a) or (b) of this
344 subsection;



345 (d) All conveyances, including aircraft, vehicles or
346 vessels, which are used, or intended for use, to transport, or in
347 any manner to facilitate the transportation, for the purpose of
348 sale or receipt, possession or concealment, of property described
349 in item (a) of this subsection which is in excess of six (6)
350 gallons or of property described in item (b) of this subsection;
351 however,

352 (i) No conveyance used by any person as a common
353 carrier in the transaction of business as a common carrier is
354 subject to forfeiture under this section unless it appears that
355 the owner or other person in charge of the conveyance is a
356 consenting party or privy to a violation of this chapter or
357 Chapter 31 of Title 97, Mississippi Code of 1972;

358 (ii) No conveyance is subject to forfeiture under
359 this section by reason of any act or omission proved by the owner
360 thereof to have been committed or omitted without his knowledge or
361 consent; if the confiscating authority has reason to believe that
362 the conveyance is a leased or rented conveyance, then the
363 confiscating authority shall notify the owner of the conveyance
364 within five (5) days of the confiscation; and

365 (iii) A forfeiture of a conveyance encumbered by a
366 bona fide security interest is subject to the interest of the
367 secured party if he neither had knowledge of nor consented to the
368 act or omission;



369 (e) All money, deadly weapons, books, records and
370 research products and materials, including formulas, microfilm,
371 tapes and data which are used, or intended for use, in violation
372 of this chapter or Chapter 31 of Title 97, Mississippi Code of
373 1972.

374 (3) Property subject to forfeiture may be seized by the
375 Alcoholic Beverage Control Division and its agents, local law
376 enforcement officers, Mississippi Highway Patrol officers and
377 other law enforcement personnel charged by Section 67-1-91, with
378 enforcing the provisions of this chapter upon process issued by
379 any appropriate court having jurisdiction over the property.
380 Seizure without process may be made if:

381 (a) The seizure is incident to an arrest or a search
382 under a search warrant or an administrative inspection under
383 Section 67-1-37(k);

384 (b) The property subject to seizure has been the
385 subject of a prior judgment in favor of the state in a criminal
386 injunction or forfeiture proceeding based upon this chapter or
387 Chapter 31 of Article 97, Mississippi Code of 1972; or

388 (c) The Alcoholic Beverage Control Division of the
389 * * * Department of Revenue and other law enforcement personnel
390 described in this subsection have probable cause to believe that
391 the property was used or is intended to be used in violation of
392 this chapter or Chapter 31 of Article 97, Mississippi Code of
393 1972.



394 (4) Alcoholic beverages, powdered alcohol and raw materials
395 seized or detained under the authority of this chapter or Chapter
396 31 of Title 97, Mississippi Code of 1972, is deemed to be in the
397 custody of the agent or agency so seizing the property and subject
398 only to the orders and decrees of the court having jurisdiction
399 over the property. When such property is seized it may be
400 retained as evidence until final disposition of the cause in which
401 such property is involved, and then the agent or agency so seizing
402 the property shall physically transfer such alcoholic beverage,
403 powdered alcohol or raw material to the Director of the Alcoholic
404 Beverage Control Division of the * * * Department of Revenue
405 together with an appropriate inventory of the items seized.
406 Alcoholic beverages, powdered alcohol and raw materials seized or
407 detained under the authority of this section shall be disposed of
408 in accordance with the provisions of Section 67-1-18.

409 (5) Any property other than alcoholic beverages, powdered
410 alcohol and raw materials seized or detained pursuant to this
411 chapter or Chapter 31 of Title 97, Mississippi Code of 1972, shall
412 be deemed to be in the custody of the agent or agency so seizing
413 the property and subject only to the orders and decrees of the
414 court having jurisdiction over the property. When such property
415 is seized it may be retained as evidence until the final
416 disposition of the cause in which such property is involved.
417 Property seized or detained other than alcoholic beverages,
418 powdered alcohol or raw materials shall be disposed of in



419 accordance with the provisions of Sections 67-1-93, 67-1-95 and
420 67-1-97.

421 **SECTION 4.** Section 67-1-18, Mississippi Code of 1972, is
422 amended as follows:

423 67-1-18. Any alcoholic beverage, powdered alcohol or raw
424 material seized under the authority of this chapter or Chapter 31
425 of Title 97, Mississippi Code of 1972, shall be submitted to the
426 custody of the * * * Department of Revenue for disposition.

427 The * * * department shall not dispose of any alcoholic
428 beverage, powdered alcohol or raw material without first having a
429 hearing with reasonable notice to all individuals having an
430 interest in said property and an opportunity for them to appear
431 and establish their right or claim to the property. Upon hearing
432 the evidence, the * * * department shall issue its order requiring
433 the alcoholic beverages, powdered alcohol or raw materials to be
434 released to an interested party, sold for the benefit of the state
435 or destroyed.

436 If the * * * department orders the property, other than
437 alcoholic beverages or powdered alcohol, sold, then the same shall
438 be sold to the highest bidder, such bidder being any person, firm
439 or government agency. The offer for sale shall be made to not less
440 than three (3) qualified prospective buyers, by mailing them an
441 invitation to bid, which shall describe the property, terms of
442 sale, method of delivery, manner of bidding and fixing a time of



443 not more than fifteen (15) days from the date of invitation for
444 opening of bids received by the * * * department.

445 All bids and payment shall be made in the manner as
446 prescribed by the * * * department. Bids, after opening, shall be
447 subject to public inspection.

448 If the * * * department orders the sale of seized alcoholic
449 beverages, it may place such alcoholic beverages in the state
450 inventory to be sold to authorized retailers in the same manner as
451 other alcoholic beverages in the state inventory are sold.

452 **SECTION 5.** Section 67-1-93, Mississippi Code of 1972, is
453 amended as follows:

454 67-1-93. (1) Except as otherwise provided in Section
455 67-1-99, when any property, other than an alcoholic beverage,
456 powdered alcohol or raw material, is seized under this chapter or
457 Chapter 31 of Title 97, Mississippi Code of 1972, proceedings
458 under this section shall be instituted promptly.

459 (2) A petition for forfeiture shall be filed promptly in the
460 name of the State of Mississippi with the clerk of the circuit or
461 county court of the county in which the seizure is made. A copy
462 of such petition shall be served upon the following persons by
463 service of process in the same manner as in civil cases:

464 (a) The owner of the property, if address is known;

465 (b) Any secured party who has registered his lien or
466 filed a financing statement as provided by law, if the identity of
467 such secured party can be ascertained by the agent or agency which



468 seized the property making a good faith effort to ascertain the
469 identity of such secured party as described in subsections (3),
470 (4), (5), (6) and (7) of this section;

471 (c) Any other bona fide lienholder or secured party or
472 other person holding an interest in the property in the nature of
473 a security interest of whom the agent or agency has actual
474 knowledge; and

475 (d) Any person in possession of property subject to
476 forfeiture at the time that it was seized.

477 (3) If the property is a motor vehicle susceptible of
478 titling under the Mississippi Motor Vehicle Title Law and if there
479 is any reasonable cause to believe that the vehicle has been
480 titled, the agent or agency shall make inquiry of the * * *
481 Department of Revenue as to what the records of the * * *
482 Department of Revenue show as to who is the record owner of the
483 vehicle and who, if anyone, holds any lien or security interest
484 which affects the vehicle.

485 (4) If the property is a motor vehicle and is not titled in
486 the State of Mississippi then the agent or agency shall attempt to
487 ascertain the name and address of the person in whose name the
488 vehicle is licensed, and if the vehicle is licensed in a state
489 which has in effect a certificate of title law, the agent or
490 agency shall make inquiry of the appropriate agency of that state
491 to determine through such agency's records the name of the record
492 owner of the vehicle and who, if anyone, holds any lien, security



493 interest or other instrument in the nature of a security device
494 which affects the vehicle.

495 (5) If the property is of a nature that a financing
496 statement is required by the laws of this state to be filed to
497 perfect a security interest affecting the property and if there is
498 any reasonable cause to believe that a financing statement
499 covering the security interest has been filed under the laws of
500 this state, the agent or agency shall make inquiry of the
501 appropriate office designated in Section 75-9-501 to determine
502 through the records of such office the name of the record owner of
503 the property and who, if anyone, has filed a financing statement
504 affecting the property.

505 (6) If the property is an aircraft or part thereof and if
506 there is any reasonable cause to believe that an instrument in the
507 nature of a security device affects the property, then the agent
508 or agency shall make inquiry of the Administrator of the Federal
509 Aviation Administration to determine through records of the
510 administrator the name of the record owner of the property and
511 who, if anyone, holds an instrument in the name of a security
512 device which affects the property.

513 (7) In the case of all other property other than an
514 alcoholic beverage, powdered alcohol or raw material subject to
515 forfeiture, if there is any reasonable cause to believe that an
516 instrument in the nature of a security device affects the



517 property, then the agent or agency shall make a good faith inquiry
518 to identify the holder of any such instrument.

519 (8) In the event the answer to an inquiry states that the
520 record owner of the property is any person other than the person
521 who was in possession of it when it was seized, or states that any
522 person holds any lien, security interest or other interest in the
523 nature of a security interest which affects the property, the
524 agent or agency shall cause any record owner and also any
525 lienholder, secured party or other person who holds an interest in
526 the property in the nature of a security interest which affects
527 the property to be named in the petition of forfeiture and to be
528 served with process in the same manner as in civil cases.

529 (9) If the owner of the property cannot be found and served
530 with a copy of the petition of forfeiture, or if no person was in
531 possession of the property subject to forfeiture at the time that
532 it was seized and the owner of the property is unknown, the agent
533 or agency shall file with the clerk of the court in which the
534 proceeding is pending an affidavit to such effect, whereupon the
535 clerk of the court shall publish notice of the hearing addressed
536 to "the Unknown Owner of _____," filling in the blank
537 space with a reasonably detailed description of the property
538 subject to forfeiture. Service by publication shall be made in
539 accordance with the Mississippi Rules of Civil Procedure.

540 (10) No proceedings instituted pursuant to the provisions of
541 this chapter shall proceed to hearing unless the judge conducting



542 the hearing is satisfied that this section has been complied with.
543 Any answer received from an inquiry required by subsections (3)
544 through (7) of this section shall be introduced into evidence at
545 the hearing.

546 **SECTION 6.** Section 67-1-95, Mississippi Code of 1972, is
547 amended as follows:

548 67-1-95. (1) An owner of property seized, other than an
549 owner of alcoholic beverages, powdered alcohol or raw materials,
550 shall file a verified answer within twenty (20) days after the
551 completion of service of process. If no answer is filed, the
552 court shall hear evidence that the property is subject to
553 forfeiture and forfeit the property to the agency which seized the
554 property. If an answer is filed, a time for hearing on forfeiture
555 shall be set within thirty (30) days of filing the answer or at
556 the succeeding term of court if court would not be in progress
557 within thirty (30) days after filing the answer. Provided,
558 however, that upon request by the agent or agency, or the owner of
559 the property, the court may postpone the forfeiture hearing to a
560 date past the time any criminal action is pending against such
561 owner.

562 (2) If the owner of the property has filed a verified answer
563 denying that the property is subject to forfeiture, then the
564 burden is on the state to prove that the property is subject to
565 forfeiture; however, if no answer has been filed by the owner of
566 the property, the petition for forfeiture may be introduced into



567 evidence and shall be prima facie evidence that the property is
568 subject to forfeiture.

569 (3) At the hearing any claimant of any right, title or
570 interest in the property may prove his lien, security interest or
571 other interest in the nature of a security interest, to be bona
572 fide and created without knowledge or consent that the property
573 was to be used so as to cause the property to be subject to
574 forfeiture.

575 (4) If it is found that the property is subject to
576 forfeiture, then the judge shall forfeit the property to the
577 agency which seized the property. If proof at the hearing
578 discloses that the interest of any bona fide lienholder, secured
579 party or other person holding an interest in the property in the
580 nature of a security interest is greater than or equal to the
581 present value of the property, the court shall order the property
582 released to him. If such interest is less than the present value
583 of the property and if the proof shows that the property is
584 subject to forfeiture the court shall order the property forfeited
585 to the agency.

586 (5) Upon a petition filed in the name of the State of
587 Mississippi with the clerk of the circuit or county court of the
588 county in which the seizure is made, the court having jurisdiction
589 may order the property summarily forfeited except when lawful
590 possession and title can be ascertained. If a person is found to
591 have had lawful possession and title prior to seizure, the court



592 shall order the property returned to the owner, if the owner so
593 desires.

594 **SECTION 7.** Section 67-1-97, Mississippi Code of 1972, is
595 amended as follows:

596 67-1-97. (1) All property other than alcoholic beverages,
597 powdered alcohol or raw materials that have been forfeited shall
598 be sold at a public auction for cash by the agency which seized
599 such property to the highest and best bidder after advertising the
600 sale for at least once each week for three (3) consecutive weeks,
601 the last notice to appear not more than ten (10) days nor less
602 than five (5) days prior to such sale, in a newspaper having a
603 general circulation throughout the State of Mississippi. Such
604 notices shall contain a description of the property to be sold and
605 a statement of the time and place of the sale. It shall not be
606 necessary to the validity of such sale either to have the property
607 present at the place of the sale or to have the name of the owner
608 thereof stated in such notice. The proceeds of the sale shall be
609 delivered to the court clerk and shall be disposed of as follows:

610 (a) To any bona fide lienholder, secured party or other
611 party holding an interest in the property in the nature of a
612 security interest, to the extent of his interest; and

613 (b) The balance, if any, after deduction of all storage
614 and court costs, shall be forwarded to the State Treasurer and
615 deposited with and used as general funds of the state.



616 (2) (a) Any county or municipal law enforcement agency
617 which seizes property, other than alcoholic beverages, powdered
618 alcohol or raw materials, may maintain, repair, use and operate
619 for official purposes all such property that has been forfeited if
620 it is free from any interest of a bona fide lienholder, secured
621 party or other party who holds an interest in the property in the
622 nature of a security interest. Such county or municipal law
623 enforcement agency may purchase the interest of a bona fide
624 lienholder, secured party or other party who holds an interest so
625 that the property can be released for its use. If the property is
626 a motor vehicle susceptible of titling under the Mississippi Motor
627 Vehicle Title Law, the law enforcement agency shall be deemed to
628 be the purchaser, and the certificate of title shall be issued to
629 it as required by subsection (4) of this section.

630 (b) All other property that a county or municipal law
631 enforcement agency seizes, other than alcoholic beverages, powdered alcohol
632 and raw materials, and other than property which
633 such law enforcement agency retains for use and operation for
634 official purposes, shall, upon its forfeiture, be sold by such law
635 enforcement agency in the same manner and subject to the same
636 procedure for the sale of such property as provided for in
637 subsection (1) of this section; however, the proceeds of such sale
638 shall be delivered to the clerk of the county or municipality for
639 disposal in the following manner:



640 (i) To any bona fide lienholder, secured party or
641 other party holding an interest in the property in the nature of a
642 security interest, to the extent of his interest; and

643 (ii) The balance, if any, after deduction of all
644 storage and court costs, shall be forwarded to the clerk of the
645 county or municipality, as the case may be, and deposited with and
646 used as general funds of the county or municipality.

647 (3) All other agencies which have seized all such property
648 other than alcoholic beverages, powdered alcohol and raw materials
649 may maintain, repair, use and operate for official purposes all
650 property that has been forfeited to them if such property is free
651 from any interest of a bona fide lienholder, secured party or
652 other party who holds an interest in the property in the nature of
653 a security interest. In such case, the agency may purchase the
654 interest of a bona fide lienholder, secured party or other party
655 who holds an interest so that the property can be released for use
656 by such agency.

657 Such agency may maintain, repair, use and operate the
658 property with money appropriated for current operations. If the
659 property is a motor vehicle susceptible of titling under the
660 Mississippi Motor Vehicle Title Law, such agency is deemed to be
661 the purchaser and the certificate of title shall be issued to it
662 as required by subsection (4) of this section.

663 (4) The * * * Department of Revenue shall issue a
664 certificate of title to any person who purchases property under



665 the provisions of this section when a certificate of title is
666 required under the laws of this state.

667 **SECTION 8.** Section 67-1-99, Mississippi Code of 1972, is
668 amended as follows:

669 67-1-99. (1) Property subject to forfeiture, other than
670 alcoholic beverages, powdered alcohol or raw materials, as
671 described by Section 67-1-17 and having a value of Two Thousand
672 Five Hundred Dollars (\$2,500.00) or less may be forfeited by the
673 administrative forfeiture procedures provided for in this section.

674 (2) The seizing law enforcement agency shall provide notice
675 of intention to forfeit the seized property administratively, by
676 certified mail, return receipt required, to all persons who are
677 required to be notified pursuant to Section 67-1-93.

678 (3) In the event that notice of administrative forfeiture
679 cannot be given as provided in subsection (2) of this section
680 because of refusal, failure to claim, insufficient address or any
681 other reason the seizing law enforcement agency shall provide
682 notice by publication in a newspaper of general circulation in the
683 county in which the seizure took place once a week for three (3)
684 consecutive weeks.

685 (4) Notice pursuant to subsections (2) and (3) of this
686 section shall include the following information:

- 687 (a) A description of the property;
688 (b) The approximate value of the property;
689 (c) The date and place of the seizure;



690 (d) The connection between the property and the
691 violation of the Local Option ABC Laws or Chapter 31, Title 97,
692 Mississippi Code of 1972;

693 (e) The instructions for filing a request for judicial
694 review; and

695 (f) A statement that the property will be forfeited to
696 the seizing law enforcement agency if a request for judicial
697 review is not timely filed.

698 (5) Persons claiming an interest in the seized property may
699 initiate judicial review of the seizure and proposed forfeiture by
700 filing a written request for judicial review with the chief law
701 enforcement officer of the seizing law enforcement agency within
702 thirty (30) days after receipt of the certified letter or within
703 thirty (30) days after the first publication of notice, whichever
704 is applicable.

705 (6) If no request for judicial review is timely filed, the
706 seizing law enforcement agency shall prepare a written declaration
707 of forfeiture of the subject property and the forfeited property
708 shall be used, disposed of, or distributed in accordance with the
709 provision of Section 67-1-97.

710 (7) Upon receipt of a timely request for judicial review,
711 the attorney for the seizing law enforcement agency shall promptly
712 file a petition for forfeiture and proceed as provided in Section
713 67-1-93.



714 **SECTION 9.** This act shall take effect and be in force from
715 and after its passage.

