MISSISSIPPI LEGISLATURE
REGULAR SESSION 2016

By: Representative Snowden
To: Drug Policy

HOUSE BILL NO. 518

AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "ALCOHOLIC BEVERAGE" UNDER THE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW TO PROVIDE THAT THE TERM DOES NOT INCLUDE POWDERED ALCOHOL; TO DEFINE THE TERM "POWDERED ALCOHOL" UNDER THE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW; TO AMEND SECTIONS 67-1-9 AND 67-1-17, TO PROVIDE THAT POWDERED ALCOHOL IS PROHIBITED IN THIS STATE AND MAY NOT LAWFULLY BE MANUFACTURED, MIXED, PROCESSED, SOLD, POSSESSED, IMPORTED INTO THE STATE, EXPORTED FROM THE STATE, TRANSPORTED, DISTRIBUTED, WAREHOUSED OR STORED IN THIS STATE, AND THAT POWDERED ALCOHOL IS SUBJECT TO SEIZURE BY THE DEPARTMENT OF REVENUE AND FORFEITURE; TO AMEND SECTIONS 67-1-18, 67-1-72, 67-1-93, 67-1-95, 67-1-97 AND 67-1-99, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

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

(a) "Alcoholic beverage" means any alcoholic liquid, including wines of more than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include light wine and beer, as defined in Section 67-3-3, Mississippi Code of 1972, but shall include native wines.
The words "alcoholic beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes or beer of an alcoholic content of more than eight percent (8%) by weight if the beer is legally manufactured in this state for sale in another state. "Alcoholic beverage" shall not include powdered alcohol.

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

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

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

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

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

(g) "Wholesaler" means any person, other than a manufacturer, engaged in distributing or selling any alcoholic
beverage at wholesale for delivery within or without this state when such sale is for the purpose of resale by the purchaser.

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

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

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

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

(l) "Hotel" means an establishment within a municipality, or within a qualified resort area approved as such by the department, where, in consideration of payment, food and lodging are habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations. Hotels in towns or cities of more than twenty-five thousand (25,000) population are similarly defined except that they must have fifty
(50) or more sleeping rooms. Any such establishment described in this paragraph with less than fifty (50) beds shall operate one or more regular dining rooms designed to be constantly frequented by customers each day. When used in this chapter, the word "hotel" shall also be construed to include any establishment that meets the definition of "bed and breakfast inn" as provided in this section.

(m) "Restaurant" means:

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

(ii) Any privately owned business located in a building in a historic district where the district is listed in the National Register of Historic Places, where the building has a
total occupancy rating of not less than one thousand (1,000) and
where the business regularly utilizes ten thousand (10,000) square
feet or more in the building for live entertainment, including not
only the stage, lobby or area where the audience sits and/or
stands, but also any other portion of the building necessary for
the operation of the business, including any kitchen area, bar
area, storage area and office space, but excluding any area for
parking. In addition to the other requirements of this
subparagraph, the business must also serve food to guests for
compensation within the building and derive the majority of its
revenue from event-related fees, including, but not limited to,
admission fees or ticket sales to live entertainment in the
building, and from the rental of all or part of the facilities of
the business in the building to another party for a specific event
or function.

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

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

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

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

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

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

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

The department may, in its discretion, waive the five-year
 provision of this paragraph. In order to qualify under this
paragraph, a club must file with the department, at the time of
its application for a license under this chapter, two (2) copies
of a list of the names and residences of its members and similarly
file, within ten (10) days after the election of any additional
member, his name and address. Each club applying for a license
shall also file with the department at the time of the application
a copy of its articles of association, charter of incorporation,
bylaws or other instruments governing the business and affairs
thereof.
(o) "Qualified resort area" means any area or locality outside of the limits of incorporated municipalities in this state commonly known and accepted as a place which regularly and customarily attracts tourists, vacationists and other transients because of its historical, scenic or recreational facilities or attractions, or because of other attributes which regularly and customarily appeal to and attract tourists, vacationists and other transients in substantial numbers; however, no area or locality shall so qualify as a resort area until it has been duly and properly approved as such by the department.

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

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

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

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

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

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

5. Any facility that is located in a municipality that is bordered by the Pearl River, traversed by Mississippi Highway 25, adjacent to the boundaries of the Jackson International Airport and is located in a county which has voted against coming out from under the dry law; however, any such
facility may only be located in areas designated by the governing authorities of such municipality;

6. Any municipality with a population in excess of ten thousand (10,000) according to the latest federal decennial census that is located in a county that is bordered by the Pearl River and is not traversed by Interstate Highway 20, with a population in excess of forty-five thousand (45,000) according to the latest federal decennial census; however, the governing authorities of such a municipality may by ordinance:

a. Specify the hours of operation of facilities that offer alcoholic beverages for sale;

b. Specify the percentage of revenue that facilities that offer alcoholic beverages for sale must derive from the preparation, cooking and serving of meals and not from the sale of beverages;

c. Designate the areas in which facilities that offer alcoholic beverages for sale may be located;

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

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

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

10. Any facility that:
   a. Consists of at least six thousand (6,000) square feet being heated and cooled along with an additional adjacent area that consists of at least two thousand two hundred (2,200) square feet regardless of whether heated and cooled,
   b. For a fee is used to host events such as weddings, reunions and conventions,
   c. Provides lodging accommodations regardless of whether part of the facility and/or located adjacent to or in close proximity to the facility, and
   d. Is located on property that consists of at least thirty (30) contiguous acres;

11. Any facility and related property:
   a. Located on property that consists of at least one hundred twenty-five (125) contiguous acres and consisting of an eighteen (18) hole golf course, and/or located in a facility that consists of at least eight thousand (8,000) square feet being heated and cooled,
   b. Used for the purpose of providing meals and hosting events, and
c. Used for the purpose of teaching culinary arts courses and/or turf management and grounds keeping courses, and/or outdoor recreation and leadership courses;

12. Any facility and related property that:

a. Consist of at least eight thousand (8,000) square feet being heated and cooled,

b. For a fee is used to host events,

c. Is located on property on or near a bayou or other waterway,

d. Is used for the purpose of culinary arts courses, and/or outdoor recreation and leadership courses.

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

(p) "Native wine" means any product, produced in Mississippi for sale, having an alcohol content not to exceed twenty-one percent (21%) by weight and made in accordance with revenue laws of the United States, which shall be obtained primarily from the alcoholic fermentation of the juice of ripe grapes, fruits, berries or vegetables grown and produced in Mississippi; provided that bulk, concentrated or fortified wines used for blending may be produced without this state and used in producing native wines. The department shall adopt and promulgate rules and regulations to permit a producer to import such bulk
and/or fortified wines into this state for use in blending with
native wines without payment of any excise tax that would
otherwise accrue thereon.

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

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

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

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

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

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

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

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

67-1-9. (1) It shall be unlawful for any person to manufacture, distill, brew, sell, possess, import into this state, export from the state, transport, distribute, warehouse, store, solicit, take order for, bottle, rectify, blend, treat, mix or process any alcoholic beverage except as authorized in this chapter. However, nothing contained herein shall prevent
importers, wineries and distillers of alcoholic beverages from storing such alcoholic beverages in private bonded warehouses located within the State of Mississippi for the ultimate use and benefit of the *** Department of Revenue *** as provided in Section 67-1-41. The *** department *** is hereby authorized to promulgate rules and regulations for the establishment of such private bonded warehouses and for the control of alcoholic beverages stored in such warehouses. Additionally, nothing herein contained shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or prevent any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution. Any drugstore employing a licensed pharmacist may possess and use alcoholic liquors in the combination of prescriptions of duly licensed physicians. The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this chapter. Powdered alcohol is prohibited in the State of Mississippi and may not lawfully be manufactured, mixed, processed, sold, possessed, imported into the state, exported from the state, transported, distributed, warehoused or stored in this state.
(2) Any person, upon conviction of any provision of this section, shall be punished as follows:

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

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

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

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

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

(2) The following are subject to forfeiture:

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

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

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

(d) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt, possession or concealment, of property described in item (a) of this subsection which is in excess of six (6) gallons or of property described in item (b) of this subsection; however,
(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

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

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

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

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

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

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

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

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

(5) Any property other than alcoholic beverages, powdered alcohol and raw materials seized or detained pursuant to this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, shall be deemed to be in the custody of the agent or agency so seizing the property and subject only to the orders and decrees of the court having jurisdiction over the property. When such property is seized it may be retained as evidence until the final disposition of the cause in which such property is involved. Property seized or detained other than alcoholic beverages, powdered alcohol or raw materials shall be disposed of in accordance with the provisions of Sections 67-1-93, 67-1-95 and 67-1-97.

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

67-1-18. (1) Any alcoholic beverage, powdered alcohol, light wine, beer or raw material seized under the authority of this chapter, Chapter 3 of Title 67, or Chapter 31 of Title 97,
Mississippi Code of 1972, shall be submitted to the custody of the Mississippi Department of Revenue for disposition.

(2) The department shall not dispose of any alcoholic beverage, powdered alcohol, light wine, beer or raw material without first having a hearing with reasonable notice to all individuals having an interest in the property and an opportunity for them to appear and establish their right or claim to the property. If no appeal is requested by the passage of the appropriate deadline, the department shall require the alcoholic beverages, powdered alcohol, light wine, beer or raw materials to be sold for the benefit of the state or destroyed.

(3) (a) If the department orders the property, other than alcoholic beverages or powdered alcohol, sold, then the property shall be sold to the highest bidder, the bidder being any person, firm or government agency. The offer for sale shall be made to not less than three (3) qualified prospective buyers, by mailing them an invitation to bid, which shall describe the property, terms of sale, method of delivery, manner of bidding and fixing a time of not more than fifteen (15) days from the date of invitation for opening of bids received by the department.

(b) All bids and payment shall be made in the manner as prescribed by the department. Bids, after opening, shall be subject to public inspection.

(4) If the department orders the sale of seized alcoholic beverages, it may place the alcoholic beverages in the state
inventory to be sold to authorized retailers in the same manner as other alcoholic beverages in the state inventory are sold.

(5) Any appeal from a seizure and disposal made under this section shall be made pursuant to Section 67-1-72.

SECTION 5. Section 67-1-72, Mississippi Code of 1972, is amended as follows:

67-1-72. (1) Except as otherwise provided in this chapter, any applicant or holder of a permit issued under this chapter which is aggrieved by an action of the Department of Revenue to deny his application for a permit, to deny the renewal of his permit or to revoke or suspend his permit shall be allowed to appeal to the Board of Tax Appeals from this action. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that person received notice of the action of the department being aggrieved. If the person aggrieved fails to appeal within this fifteen-day period, the action of the Department of Revenue shall take effect as set out in the notice. The Department of Revenue retains the authority to change at any time the action aggrieved to in an appeal under this subsection. The applicant or holder of any permit issued under this chapter may waive his right to notice and opportunity to a hearing as provided by this subsection and agree to the action being taken by the department. The inability of the Department of Revenue to issue or renew a permit due to an
incomplete application or due to the failure of the applicant to pay the annual privilege taxes and fees provided by Section 27-71-5 and/or the failure of the applicant to post or deposit the bond, cash or securities as required by Section 27-71-21 shall not constitute a denial for purposes of this subsection.

(2) Any applicant for approval as a manager of an establishment operating under a permit issued under this chapter or who holds the designation of an approved manager of an establishment operating under a permit issued under this chapter and who is aggrieved by an action of the Department of Revenue to deny his application for approval as a manager or to revoke or suspend his designation as an approved manager shall be allowed to appeal to the Board of Tax Appeals from this action. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that person received notice of the action of the department being aggrieved. If the person aggrieved fails to appeal within this fifteen-day period, the action of the Department of Revenue shall take effect as set out in the notice. The Department of Revenue retains the authority to change at any time the action aggrieved to in an appeal under this subsection. The applicant or holder of an approved manager designation may waive his right to notice and opportunity to a hearing as provided by this subsection and agree to the action being taken by the department. The inability of the
Department of Revenue to consider an application for approval of
an applicant as a manager due to an incomplete application shall
not constitute a denial of the application for purposes of this
subsection.

(3) Any applicant for approval of an area or locality as a
qualified resort area under this chapter who is aggrieved by the
decision of the Department of Revenue to deny the qualified resort
area as requested and any county or municipality wherein the
proposed qualified resort area is located may appeal to the Board
of Tax Appeals from such decision. This appeal is to be filed by
the aggrieved applicant or by the affected county or municipality
with the Executive Director of the Board of Tax Appeals, with a
copy being sent to the Department of Revenue, within fifteen (15)
days from the date that the person or entity filing the appeal
received notice of the decision of the Department of Revenue to
deny the qualified resort area. If an appeal is not filed within
this fifteen-day period, the decision of the Department of Revenue
shall become final. The Department of Revenue retains the
authority to change at any time the decision aggrieved to in an
appeal under this subsection. The inability of the Department of
Revenue to consider an application for the approval of an area or
locality as a qualified resort area due to an incomplete
application shall not constitute a denial of that application for
purposes of this subsection.
(4) Any person, including any county or municipality in which the qualified resort area is located, who is aggrieved by the decision of the Department of Revenue to revoke the approval of an area or locality as a qualified resort area may appeal to the Board of Tax Appeals from such decision. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that the person or entity filing the appeal received notice of the decision of the department to revoke approval of the qualified resort area. At the discretion of the Department of Revenue, in addition to any other notice to be provided under this subsection, the department may provide notice of its decision to revoke approval of the qualified resort area by publication in the same manner as provided by regulation when approval of a qualified resort area is sought. In regard to such publication, the fifteen-day period provided herein will begin on the date that notice is first published. If an appeal is not filed within this fifteen-day period, the decision of the Department of Revenue shall become final. The Department of Revenue retains the authority to change at any time the decision aggrieved to in an appeal under this subsection.

(5) Any person objecting to an application for the issuance or transfer of a permit, other than a temporary retailer's permit, issued under this chapter and who timely requests in writing a
hearing on his objection shall be given a hearing before the Board
of Tax Appeals unless the permit is denied by the Department of
Revenue and an appeal is not taken by the applicant to the Board
of Tax Appeals from that denial or the applicant withdraws his
application. Any written request for a hearing on an objection
must be filed with the Department of Revenue within fifteen (15)
days from the first date of publication of the notice of such
application under Section 67-1-53. If the department determines
that the permit should be denied, notice will be provided to the
applicant as set out in subsection (1) of this section, and if the
applicant timely requests a hearing on the denial as provided by
this subsection (5), the department will advise the Executive
Director of the Board of Tax Appeals and the applicant of the
written request for a hearing on an objection to the permit. The
hearing on the objection to the permit and the hearing on the
appeal by the applicant from the denial of the department of the
application shall be consolidated and heard by the Board of Tax
Appeals at the same time. If the department determines that the
permit should be issued, the department will advise the applicant
and the Executive Director of the Board of Tax Appeals of the
timely written request for a hearing on an objection to the
application and a hearing will be set before the Board of Tax
Appeals on this objection. If prior to the hearing, either the
person requesting the hearing withdraws his request or the
applicant withdraws his application, the hearing will be cancelled
and the objection proceedings before the Board of Tax Appeals on
the application will be dismissed as moot. In the case of such
withdrawals, the Board of Tax Appeals is authorized to assess to
either or both parties any costs incurred by it prior to such
withdrawal. The Department of Revenue retains authority to issue
the permit to the applicant where the person objecting to the
application withdraws his request for a hearing.

(6) Any person objecting to an application for approval by
the Department of Revenue of a area or locality as a qualified
resort area under this chapter and who timely requests in writing
a hearing on his objection shall be given a hearing before the
Board of Tax Appeals unless approval of the application is denied
by the Department of Revenue and an appeal is not taken by the
applicant or the county or municipality in which the proposed
qualified resort area is located to the Board of Tax Appeals from
that denial or the applicant withdraws his application. Any
written request for a hearing on an objection must be filed with
the Department of Revenue within fifteen (15) days from the first
date of publication of the notice of such application as provided
by regulation. If the department determines that the application
for approval of the proposed area or locality as a qualified
resort area should be denied, the department will proceed with
denial of such application as set out in subsection (3) of this
section, and if the applicant or the county or municipality in
which the proposed qualified resort area is located timely
requests a hearing on the denial as provided by subsection (3) of this section, the department will advise the Executive Director of the Board of Tax Appeals and the applicant of the written request for a hearing on an objection to the application. The hearing on the objection to approval of the proposed qualified resort area and the hearing on the appeal from the denial of the department of the application for such approval shall be consolidated and heard by the Board of Tax Appeals at the same time. If the department determines that the proposed qualified resort area should be approved, the department will advise the applicant and the Executive Director of the Board of Tax Appeals of the timely written request for a hearing on an objection to the application and a hearing will be set before the Board of Tax Appeals on this objection. If prior to the hearing, either the person requesting the hearing withdraws his request or the applicant withdraws his application, the hearing will be cancelled and the objection proceedings before the Board of Tax Appeals on the application will be dismissed as moot. In the case of such withdrawals, the Board of Tax Appeals is authorized to assess to either or both parties any costs incurred by it prior to such withdrawal. The Department of Revenue retains authority to approve the proposed area or locality as a qualified resort area where the person objecting to the application withdraws his request for a hearing.

(7) Any person having an interest in any alcoholic beverages, powdered alcohol, light wine, beer or raw materials
which the Department of Revenue intends to dispose of under Section 67-1-18 shall be given reasonable notice of this proposed disposal, and upon such notice, this person may request a hearing before the Board of Tax Appeals to establish his right or claim to this property. This request for a hearing shall be filed with the Board of Tax Appeals, with a copy sent to the Department of Revenue, within fifteen (15) days from the date of receipt of the notice provided above by the person filing the request. If a request is not received by the Board of Tax Appeals within this fifteen-day period, the department may order the property disposed of in accordance with Section 67-1-18.

(8) Upon receipt of a written request for hearing or appeal as set out above, the executive director shall schedule a hearing before the Board of Tax Appeals on this request or appeal. A notice of the hearing shall be mailed to all persons or entities having an interest in the matter being heard which shall always include the person or entity filing the request or appeal for which the hearing is being set, the applicant or holder of any permit, approved manager status or qualified resort area status in issue, any person who filed a written request for a hearing on an objection to any application in issue and the Department of Revenue. This notice shall provide the date, time and location of the hearing. Mailing to the attorney representing a person or entity in the matter being heard shall be the same as mailing to the person or entity the attorney represents. Failure of the
person or entity on whose request or appeal the matter was set for
hearing to appear personally or through his designated
representative at the hearing shall constitute an involuntary
withdrawal of his request or appeal. Upon such withdrawal, the
Board of Tax Appeals shall note on the record the failure of the
person or entity to appear at the hearing and shall dismiss the
request or appeal and remand the matter back to the Department of
Revenue for appropriate action.

(9) At any hearing before the Board of Tax Appeals on an
appeal or hearing request as set out above, two (2) members of the
Board of Tax Appeals shall constitute a quorum. At the hearing,
the Board of Tax Appeals shall try the issues presented according
to law and the facts and pursuant to any guidelines established by
regulation. The rules of evidence shall be relaxed at the hearing
and the hearing shall be recorded by a court reporter. After
reaching a decision on the issues presented, the Board of Tax
Appeals shall enter an order setting forth its findings and
decision in the matter. A copy of the order of the Board of Tax
Appeals shall be mailed to the person or entity filing the request
or appeal which was heard, the applicant or holder of any permit,
approved manager status or qualified resort area status in issue,
any person who filed a written request for a hearing on an
objection to any application in issue and the Department of
Revenue to notify them of the findings and decision of the Board
of Tax Appeals.
SECTION 6. Section 67-1-93, Mississippi Code of 1972, is amended as follows:

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

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

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

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the agent or agency which seized the property making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

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

(d) Any person in possession of property subject to forfeiture at the time that it was seized.
(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the agent or agency shall make inquiry of the Department of Revenue as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi then the agent or agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the agent or agency shall make inquiry of the appropriate agency of that state to determine through such agency's records the name of the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

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

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

(7) In the case of all other property other than an
alcoholic beverage, powdered alcohol or raw material subject to
forfeiture, if there is any reasonable cause to believe that an
instrument in the nature of a security device affects the
property, then the agent or agency shall make a good faith inquiry
to identify the holder of any such instrument.

(8) In the event the answer to an inquiry states that the
record owner of the property is any person other than the person
who was in possession of it when it was seized, or states that any
person holds any lien, security interest or other interest in the
nature of a security interest which affects the property, the
agent or agency shall cause any record owner and also any
lienholder, secured party or other person who holds an interest in
the property in the nature of a security interest which affects

H. B. No. 518
16/HR43/R756
PAGE 32 (BS\EW)
the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

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

(10) No proceedings instituted pursuant to the provisions of this chapter shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (7) of this section shall be introduced into evidence at the hearing.

**SECTION 7.** Section 67-1-95, Mississippi Code of 1972, is amended as follows:

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

(2) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture, then the burden is on the state to prove that the property is subject to forfeiture; however, if no answer has been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and shall be prima facie evidence that the property is subject to forfeiture.

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

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

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

SECTION 8. Section 67-1-97, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

(4) The Department of Revenue shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

SECTION 9. Section 67-1-99, Mississippi Code of 1972, is amended as follows:

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

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

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

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

(a) A description of the property;
(b) The approximate value of the property;
(c) The date and place of the seizure;
(d) The connection between the property and the
violation of the Local Option ABC Laws or Chapter 31, Title 97,
Mississippi Code of 1972;
(e) The instructions for filing a request for judicial
review; and
(f) A statement that the property will be forfeited to
the seizing law enforcement agency if a request for judicial
review is not timely filed.

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

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

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

SECTION 10. This act shall take effect and be in force from and after its passage.