MISSISSIPPI LEGISLATURE
REGULAR SESSION 2017

By: Representatives Willis, DeLano, Wilson, Zuber, Aguirre, Sykes, Barker, Reynolds, Holland, Hines, Karriem

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1322

AN ACT TO CREATE NEW SECTION 67-3-48, MISSISSIPPI CODE OF 1972, TO AUTHORIZE SMALL CRAFT BREWERIES LOCATED IN MISSISSIPPI THAT PRODUCE NOT MORE THAN 60,000 BARRELS OF LIGHT WINE OR BEER ANNually TO SELL ON THE PREMISES OF THE BREWERY LIGHT WINE OR BEER PRODUCED AT SUCH BREWERY FOR CONSUMPTION ON OR OFF THE PREMISES OF THE BREWERY; TO AMEND SECTION 67-3-22, MISSISSIPPI CODE OF 1972, TO REVISE THE BEER PRODUCTION LIMITS THAT APPLY TO BREWPUBS AND TO AUTHORIZE BREWPUBS TO SELL LIGHT WINE OR BEER PRODUCED AT THE BREWPUB FOR CONSUMPTION OFF THE PREMISES OF THE BREWPUB IN CERTAIN CONTAINERS; TO AMEND SECTIONS 67-3-3, 67-3-53, 67-3-55 AND 67-3-69, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTIONS 27-71-301, 27-71-307, 27-71-311 AND 27-71-331, MISSISSIPPI CODE OF 1972, TO IMPOSE AN EXCISE OR PRIVILEGE TAX ON LIGHT WINE OR BEER PROVIDED BY SMALL CRAFT BREWERIES FOR RETAIL SALE BY SUCH BREWERIES AND UPON BEER PROVIDED FOR TASTING OR SAMPLING; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 67-3-48, Mississippi Code of 1972:

67-3-48. (1) A small craft brewery may sell at retail light wine or beer produced at its brewery for consumption on the premises of the brewery and consumption off the premises of the brewery if the sales are made on the premises of the brewery and the light wine or beer products offered for sale are also made available for sale to wholesalers.
(2) (a) A small craft brewery shall not sell at retail more than ten percent (10%) of the light wine or beer produced annually at its brewery or more than one thousand five hundred (1,500) barrels of light wine or beer produced at the brewery annually, whichever is the lesser amount. For purposes of this subsection, contract brewed beer shall not be included in the amount of beer produced annually at the brewery. The light wine or beer must be sold at a price approximating retail prices generally charged for identical beverages in the county where the brewery is located.

(b) A small craft brewery shall not make retail sales of more than five hundred seventy-six (576) ounces, in the aggregate, of light wine or beer to any one (1) individual for consumption off the premises of the brewery within a twenty-four-hour period.

(c) The limits on sales provided for in this subsection shall not apply to beer provided pursuant to Section 67-3-47.

(3) A small craft brewery shall ensure that light wine or beer products sold for consumption off the premises of the brewery are being sold for personal use and not for resale and are not being sold to anyone holding a retail permit for the purpose of resale in their establishment.

(4) A small craft brewery shall take commercially reasonable steps to not make retail sales of contract brewed beer.

(5) A small craft brewery shall not mail or ship light wine or beer to a consumer.
SECTION 2. Section 67-3-22, Mississippi Code of 1972, is amended as follows:

67-3-22. (1) The production limits for a brewpub shall be based upon production as determined by the Department of Revenue pursuant to Section 27-71-307, Mississippi Code of 1972, and a brewpub shall not manufacture more than seventy-five thousand (75,000) gallons of light wine or beer per calendar year.

(2) Light wine or beer produced at a brewpub shall not be sold at a price less than it cost to manufacture such light wine or beer.

(3) Except as otherwise provided in this subsection, light wine or beer manufactured by a brewpub shall not be sold away from the premises of such brewpub (as defined in Section 27-71-301, Mississippi Code of 1972) and shall not be packaged in any form that it may be carried away from the premises; however, the final one hundred (100) gallons of beer within a fermenting tank may be placed in kegs for sale on the premises to facilitate transition from one fermenting tank to another. A brewpub may sell light wine or beer manufactured by it for consumption off the premises of the brewpub if the light wine or beer so sold is contained in a growler.
(4) A brewpub shall be required to offer for sale light wine or beer that is normally carried on the inventory of wholesalers or distributors of light wine or beer.

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

67-3-3. When used in this chapter, unless the context indicates otherwise:

(a) "Commissioner" means the Commissioner of Revenue of the Department of Revenue of the State of Mississippi, and his authorized agents and employees.

(b) "Person" means one or more persons, a company, a corporation, a partnership, a syndicate or an association.

(c) "Brewpub" shall have the meaning ascribed to such term in Section 27-71-301.

(d) "Beer" means a malt beverage as defined in the Federal Alcohol Administration Act and any rules and regulations adopted pursuant to such act of an alcoholic content of not more than eight percent (8%) by weight.

(e) "Light wine" means wine of an alcoholic content of not more than five percent (5%) by weight.

(f) "Small craft brewery" means a person having a permit under this chapter to manufacture or brew light wine or beer in this state and who manufactures or brews not more than sixty thousand (60,000) barrels of light wine or beer at all
breweries that such person or its affiliates, subsidiary or parent company owns or controls or with whom such person contracts with for the manufacture of light wine or beer. For purposes of this paragraph, contract brewed beer manufactured by a person having a permit under this chapter to manufacture or brew light wine or beer shall be included in the sixty thousand (60,000) barrel limitation. However, notwithstanding the preceding sentence, in the event that a small craft brewery is acquired by a person that is not a small craft brewery, the small craft brewery may continue to sell at retail products produced in Mississippi at all locations existing at the time of such acquisition as set forth in Section 67-3-48.

(g) "Growler" means a sealed container that holds not more than one hundred twenty-eight (128) ounces of light wine or beer. A growler must have a label on it stating what it contains.

(h) "Manufacturer" shall have the meaning ascribed to such term in Section 27-71-301.

(i) "Contract brewed beer" means beer brewed by a manufacturer who:

   (i) Makes the beer pursuant to a written contract with another beer manufacturer, and neither entity has a controlling interest in the other entity;

   (ii) Makes the beer in accordance with a recipe that is a trade secret of the beer manufacturer having its beer made under contract; and
(iii) Has no right to sell the beer to any other
beer manufacturer, importer or wholesaler other than the beer
manufacturer who contracted for the beer.

SECTION 4. Section 67-3-53, Mississippi Code of 1972, is
amended as follows:

67-3-53. In addition to any act declared to be unlawful by
this chapter, or by Sections 27-71-301 through 27-71-347, and
Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be
unlawful for the holder of a permit authorizing the sale of beer
or light wine at retail or a small craft brewery selling light
wine or beer at retail pursuant to Section 67-3-48 or for the
employee of the holder of such a permit or the employee of such a
brewery:

(a) To sell or give to be consumed in or upon any
licensed premises or in or upon the premises of a small craft
brewery any beer or light wine between the hours of midnight and
seven o'clock the following morning or during any time the
licensed premises may be required to be closed by municipal
ordinance or order of the board of supervisors; however, in areas
where the sale of alcoholic beverages is legal under the
provisions of the Local Option Alcoholic Beverage Control Law and
the hours for selling those alcoholic beverages have been extended
beyond midnight for on-premises permittees under Section 67-1-37,
the hours for selling beer or light wines are likewise extended in
areas where the sale of beer and light wines is legal in accordance with the provisions of this chapter.

(b) To sell, give or furnish any beer or light wine to any person visibly or noticeably intoxicated, or to any habitual drunkard, or to any person under the age of twenty-one (21) years.

(c) To permit in the premises any lewd, immoral or improper entertainment, conduct or practices.

(d) To permit loud, boisterous or disorderly conduct of any kind upon the premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community in which the business is located.

(e) To permit persons of ill repute, known criminals, prostitutes or minors to frequent the licensed premises or the premises of the small craft brewery, except minors accompanied by parents or guardians, or under proper supervision.

(f) To permit or suffer illegal gambling or the operation of illegal games of chance upon the licensed premises or the premises of the small craft brewery.

(g) To receive, possess or sell on the licensed premises or, except as otherwise authorized by this chapter, on the premises of the small craft brewery any beverage of any kind or character containing more than five percent (5%) of alcohol by weight except any beer containing not more than eight percent (8%) of alcohol by weight, unless the licensee also possesses an
on-premises or manufacturer's permit under the Local Option Alcoholic Beverage Control Law.

(h) To accept as full or partial payment for any product any coupons that are redeemed directly or indirectly from a manufacturer, wholesaler or distributor of light wine or beer.

SECTION 5. Section 67-3-55, Mississippi Code of 1972, is amended as follows:

67-3-55. (1) It shall be unlawful for any retailer to possess for purpose of sale, to sell, or to offer to sell any light wine or beer which was not purchased from a wholesaler in this state who has a permit to sell such light wine or beer, except for beer or light wine that was brewed on the premises of the retailer who holds a permit as a brewpub pursuant to Article 3, Chapter 71, Title 27, Mississippi Code of 1972.

(2) It shall be unlawful for any wholesaler to possess for purpose of sale, to sell, or to offer to sell any light wine or beer which was not purchased from a manufacturer or importer of a foreign manufacturer authorized to sell such light wine or beer in this state.

(3) This section shall not apply to:

(a) Beer offered and provided on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47 * * *; or

(b) Light wine or beer sold on the premises of a small craft brewery as authorized in Section 67-3-48.
SECTION 6. Section 67-3-69, Mississippi Code of 1972, is amended as follows:

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

(2) (a) Any person who shall violate any provision of Section 67-3-17, 67-3-23, 67-3-27 or 67-3-55 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.
(b) Any person who shall violate any provision of Section 67-3-57 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than one (1) year, or by both, in the discretion of the court. Any person convicted of violating any provision of the sections referred to in this subsection shall forfeit his permit, and shall not thereafter be permitted to engage in any business taxable under the provisions of Sections 27-71-301 through 27-71-347.

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

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

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

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

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

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

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

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

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

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

(6) If a small craft brewery is convicted of violating the provisions of Section 67-3-48, then, in addition to any other provision provided for by law, the small craft brewery shall be punished as follows:

(a) For the first offense, the small craft brewery may be fined in an amount not to exceed Five Hundred Dollars ($500.00).

(b) For a second offense occurring within twelve (12) months of the first offense, the small craft brewery may be fined an amount not to exceed One Thousand Dollars ($1,000.00).
(c) For a third or subsequent offense occurring within twelve (12) months of the first offense, the small craft brewery may be fined an amount not to exceed Five Thousand Dollars ($5,000.00) and the permit to operate as a manufacturer shall be suspended for thirty (30) days.

SECTION 7. Section 27-71-301, Mississippi Code of 1972, is amended as follows:

27-71-301. When used in this article the words and terms hereafter mentioned shall have the following definitions:

(a) "State Auditor" means the State Auditor of Public Accounts of the State of Mississippi or any legally appointed deputy, clerk or agent.

(b) "Person" includes all natural persons or corporations, a partnership, an association, a joint venture, an estate, a trust, or any other group or combination acting as a unit and shall include the plural as well as the singular unless an intention to give another meaning thereto is disclosed in the context.

(c) "Consumer" means a person who comes into the possession of beer or light wine, the sale of which is authorized by Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose of consuming it, giving it away or otherwise disposing of it in any manner except by sale, barter or exchange.

(d) "Retailer" means any person who comes into the possession of such light wines or beer for the purpose of selling
it to the consumer, or giving it away, or exposing it where it may
be taken or purchased or acquired in any other manner by the
consumer; however, the term "retailer" shall not include a person
who offers and provides beer on the premises of a brewery for the
purpose of tasting or sampling as authorized in Section 67-3-47.

(e) "Wholesaler" means any person who comes into
possession of such light wine or beer for the purpose of selling,
distributing, or giving it away to retailers or other wholesalers
or dealers inside or outside of this state.

(f) "Commissioner" means the Commissioner of Revenue of
the Department of Revenue or his duly appointed agents or
employees.

(g) "Sale" includes the exchange of such light wines or
beer for money, or giving away or distributing any such light
wines or beer for anything of value; however, the term "sale"
shall not include beer offered and provided on the premises of a
brewery for the purpose of tasting or sampling as authorized in
Section 67-3-47.

(h) "Light wines or beer" means beer and light wines
legalized for sale by the provisions of Chapter 3 of Title 67,

(i) "Distributor" includes every person who receives
either from within or from without this state, from a brewery, a
winery or any other source, light wines or beer as defined in
Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose
of distributing or otherwise disposing of such light wines or beer
to a wholesaler or retailer of such light wines or beer.

(j) "Brewpub" means the premises of any location
in which light wine or beer is manufactured or brewed, for
retail sale if the total amount of light wine or beer produced on
the premises does not exceed the production limitation imposed in
Section 67-3-22, and the light wine or beer is produced for
consumption on the premises or off the premises as
authorized in Section 67-3-22(3).

(k) "Hospitality cart" means a mobile cart from which
alcoholic beverages and light wine and beer are sold on a golf
course and for which a hospitality cart permit has been issued
under Section 67-1-51.

(l) "Small craft brewery" shall have the meaning
ascribed to such term in Section 67-3-3.

(m) "Manufacturer" means a person who brews beer at a
brewery; however, the term does not include "brewpubs".

SECTION 8. Section 27-71-307, Mississippi Code of 1972, is
amended as follows:

27-71-307. (1) (a) In addition to the specific tax imposed
in Section 27-71-303, there is hereby imposed, levied, assessed
and shall be collected, as hereinafter provided, an excise or
privilege tax upon each person engaged or continuing in the
business of wholesaler or distributor of light wines or beer
equivalent to Forty-two and Sixty-eight One-hundredths Cents
(42.68¢) per gallon upon all light wines and beer acquired for
sale or distribution in this state. ** The excise or privilege
tax is also imposed at the same rate upon each gallon of light
wine or beer manufactured by brewpubs, each of which shall
accurately and reliably measure the quantity of light wine and
beer produced by using a measuring device such as a meter or gauge
glass or any other suitable method approved by the commissioner.
The excise or privilege tax is also imposed at the same rate upon
each gallon of light wine or beer provided by a small craft
brewery for sale as authorized under Section 67-3-48 and upon each
gallon of light wine or beer provided for tasting or sampling
under Section 67-3-47. ** The tax is hereby imposed as an
additional tax for the privilege of engaging or continuing in
business.

(b) The excise tax imposed in this section shall be
paid to the ** Department of Revenue monthly on or before the
fifteenth day of the month following the month in which the beer
or light wine was manufactured or received in this state. Monthly
report forms shall be furnished by the commissioner to the
wholesalers, distributors **, brewpubs and small craft
breweries.

(c) Provided that persons operating a railroad dining
car, club car or other car in interstate commerce upon which light
wines or beer may be sold and who are licensed under the
provisions of Section 67-3-27 and any other law relating to the
sale of such beverages shall keep such records of the sales of such light wines and beer in this state as the commissioner shall prescribe and shall submit monthly reports of such sales to the commissioner within fifteen (15) days after the end of each month on a form prescribed therefor by the commissioner, and shall pay the tax due under the provisions of this section at the time such reports are filed.

No official crowns, lids, labels or stamps with the word "MISSISSIPPI" or "MS" imprinted thereon or any other evidence of tax payment is required by this section, or may be required under rule or regulation promulgated by the commissioner, to be affixed on or to any part of a beer, light wine or malt cooler bottle, can or other light wine or malt cooler container. For purposes of this section, malt cooler products shall be defined as a flavored malt beverage made from a base of malt beverage and flavored with fruit juices, aromatics and essences of other flavoring in quantities and proportions such that the resulting product possesses a character and flavor distinctive from the base malt beverage and distinguishable from other malt beverages.

(2) A licensed wholesaler or distributor of beer or light wine may not import beer or light wine from any source other than a brewer or importer authorized by the commissioner to sell such beer or light wine in Mississippi. Any person who violates the provisions of this subsection, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars.
($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court and shall be subject to license forfeiture following an appropriate hearing before the Department of Revenue.

(3) The wholesaler, distributor or small craft brewery shall be allowed credit for tax paid on beer or light wine which is no longer marketable and which is destroyed by same when such destruction is witnessed by an agent of the commissioner and when the amount of the excise tax exceeds One Hundred Dollars ($100.00). No other loss will be allowed.

A brewpub shall be allowed credit for light wine or beer which has passed through the meter, gauge glass or other approved measuring device and which has been soured or damaged. The brewpub shall record the removal of sour or damaged light wine or beer and may take credit after the destruction is witnessed by an agent of the commissioner and when the amount of excise tax exceeds Twenty-five Dollars ($25.00). No other loss shall be allowed.

(4) All manufacturers, brewers and importers of beer or light wine shall file monthly reports as prescribed by the commissioner listing sales to each wholesaler or distributor by date, invoice number, quantity and container size, and any other information deemed necessary.
(5) All small craft breweries shall file monthly reports as prescribed by the commissioner regarding the sale of light wine or beer authorized under Section 67-3-48.

(6) Manufacturers who offer and provide limited amounts of beer for tasting or sampling under Section 67-3-47 shall file monthly reports as prescribed by the commissioner regarding the beer provided for such tasting or sampling.

(* * * *) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the sales tax law except where there is conflict, then the provisions of this chapter shall control.

SECTION 9. Section 27-71-311, Mississippi Code of 1972, is amended as follows:

27-71-311. Before any person shall engage in the business of manufacturing light wines or beer, in the business of wholesaler or distributor of light wines or beer, or in the business of a brewpub, he shall be required to enter into a good and sufficient bond. The bond shall be made payable to the State of Mississippi, in a sum of not less than Five Thousand Dollars ($5,000.00) nor
more than Two Hundred Thousand Dollars ($200,000.00), the amount to be determined by the commission. The bond of a wholesaler, distributor or brewpub shall not exceed the amount of excise tax estimated to be owed by such wholesaler, distributor or brewpub for any sixty-day period. If a manufacturer is operating a small craft brewery and is distributing light wine or beer for sale as authorized under Section 67-3-48, the manufacturer, in addition to any other required bond, shall enter into a bond not to exceed the amount of excise tax estimated to be owed by such manufacturer for any sixty-day period. The bond shall be conditioned that he will conduct his business strictly in accordance with the laws of the State of Mississippi, and that he will comply with the rules and regulations prescribed by the commissioner, and pay the taxes imposed under the provisions of this article for the privilege of engaging or continuing in such business. Such bond shall be made in a surety company authorized to do business in the State of Mississippi, and shall be approved by the commissioner. The commissioner shall be authorized to institute suit in the proper court on said bond for any violation of the conditions of said bond.

SECTION 10. Section 27-71-331, Mississippi Code of 1972, is amended as follows:

27-71-331. If any manufacturer, wholesaler, distributor, brewpub or small craft brewery, subject to the provisions of this article, shall fail to pay any tax due under
the provisions of this article, within the time, and in the manner, herein provided, the commissioner is authorized to assess, and collect, such tax, together with interest thereon from the date such tax became due at the rate of one percent (1%) per month, and in addition to the amount of the tax due and the interest accrued thereon, the commissioner may, in his discretion, assess and collect, from such delinquent taxpayer, a penalty equal to the amount of the tax found to be due.

SECTION 11. This act shall take effect and be in force from and after July 1, 2017.