

By: Representative Hamilton (109th)

To: Judiciary A

HOUSE BILL NO. 842

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

228 (3) If the holder of a permit, or the employee of the holder
229 of a permit, shall be convicted of selling any beer or wine to any
230 person under the age of twenty-one (21) years from the licensed
231 premises in violation of Section 67-3-53(b), then, in addition to
232 any other penalty provided for by law, the holder of the permit,
233 or employee of the holder of a permit, shall be punished as
234 follows:

235 (a) For the first offense on the licensed premises, by
236 a fine of not less than Two Hundred Dollars (\$200.00) nor more
237 than One Thousand Dollars (\$1,000.00) and/or the sale of beer or
238 wine on the premises from which the sale occurred may be
239 prohibited for three (3) months.

240 (b) For a second offense occurring on the licensed
241 premises within twelve (12) months of the first offense, by a fine
242 of not less than Two Hundred Dollars (\$200.00) nor more than One
243 Thousand Five Hundred Dollars (\$1,500.00) and/or the sale of beer
244 or wine on the premises from which the sale occurred may be
245 prohibited for six (6) months.

246 (c) For a third or subsequent offense occurring on the
247 licensed premises within twelve (12) months of the first, by a
248 fine of not less than One Thousand Dollars (\$1,000.00) nor more
249 than Five Thousand Dollars (\$5,000.00) and/or the sale of beer or
250 wine on the premises from which the sale occurred may be
251 prohibited for one (1) year.

252 (4) A person who sells any beer or wine to a person under
253 the age of twenty-one (21) years shall not be guilty of a
254 violation of Section 67-3-53(b) if the person under the age of
255 twenty-one (21) years represents himself to be twenty-one (21)

256 years of age or older by displaying an apparently valid
257 Mississippi driver's license containing a physical description
258 consistent with his appearance or by displaying some other
259 apparently valid identification document containing a picture and
260 physical description consistent with his appearance for the
261 purpose of inducing the person to sell beer or wine to him.

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

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

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

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

278 **SECTION 5.** This act shall take effect and be in force from
279 and after July 1, 2005.