

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1388

1 AN ACT TO AMEND SECTION 67-1-53, MISSISSIPPI CODE OF 1972, TO
2 INCREASE TO 10% THE AMOUNT OF STOCK THAT AN OFFICER OF A
3 CORPORATION APPLYING FOR AN ON-PREMISES RETAILER'S PERMIT MUST OWN
4 IN ORDER FOR THE STATE TAX COMMISSION TO REQUIRE PERSONAL
5 FINANCIAL INFORMATION FROM SUCH OFFICER; TO AMEND SECTIONS
6 67-1-25, 67-1-51, 67-1-55, 67-1-57 AND 67-1-59, MISSISSIPPI CODE
7 OF 1972, TO INCLUDE BUSINESS ENTITIES FORMED AS LIMITED LIABILITY
8 COMPANIES IN THE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW; AND
9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 67-1-53, Mississippi Code of 1972, is
12 amended as follows:

13 67-1-53. (1) Application for permits shall be in such form
14 and shall contain such information as shall be required by the
15 regulations of the commission; however, no regulation of the
16 commission shall require personal financial information from any
17 officer of a corporation applying for an on-premises retailer's
18 permit to sell alcoholic beverages unless such officer owns ten
19 percent (10%) or more of the stock of such corporation.

20 (2) Every applicant for each type of permit authorized by
21 Section 67-1-51 shall give notice of such application by
22 publication for two (2) consecutive issues in a newspaper of
23 general circulation published in the city or town in which
24 applicant's place of business is located. However, in * * *
25 instances where no newspaper is published in the city or town,
26 then the notice same shall be published in a newspaper of general
27 circulation published in the county where the applicant's business
28 is located. If no newspaper is published in the county, the
29 notice shall be published in a qualified newspaper which is
30 published in the closest neighboring county and circulated in the

31 county of applicant's residence. The notice shall be printed in
32 ten-point black face type and shall set forth the type of permit
33 to be applied for, the exact location of the place of business,
34 the name of the owner or owners thereof, and if operating under an
35 assumed name, the trade name together with the names of all
36 owners, and if a corporation, the names and titles of all
37 officers. The cost of such notice shall be borne by the
38 applicant.

39 (3) Each application or filing made under this section shall
40 include the social security number(s) of the applicant in
41 accordance with Section 93-11-64, Mississippi Code of 1972.

42 **SECTION 2.** Section 67-1-25, Mississippi Code of 1972, is
43 amended as follows:

44 67-1-25. No person shall be appointed director, agent or
45 inspector for the commission under this chapter who is not a
46 citizen of the United States and who has not resided within the
47 State of Mississippi successively for five (5) years next
48 preceding the date of his appointment. No director, agent,
49 inspector or other employee shall be appointed under this chapter
50 who has been convicted of any violation of any federal or state
51 law concerning the manufacture, sale or possession of alcoholic
52 liquor prior or subsequent to July 1, 1966, or who has paid a fine
53 or penalty in settlement of any prosecution against him for any
54 violation of such laws or shall have forfeited his bond to appear
55 in court to answer charges for any such violation, nor shall any
56 person be so appointed who has been convicted of a felony in any
57 state or federal court. No person appointed or employed by the
58 commission under this chapter may, directly or indirectly,
59 individually or as a member of a partnership or limited liability
60 company, or as a shareholder of a corporation, have any interest
61 whatsoever in the manufacture, sale or distribution of alcoholic
62 liquor, or receive any compensation or profit therefrom, or have
63 any interest whatsoever in the purchases or sales made by the

64 persons authorized by this chapter to purchase or to sell
65 alcoholic liquor.

66 This section shall not prevent any person appointed or
67 employed by the commission from purchasing and keeping in his
68 possession for the use of himself or members of his family or
69 guests any alcoholic liquor which may be purchased or kept by any
70 other person by virtue of this chapter.

71 **SECTION 3.** Section 67-1-51, Mississippi Code of 1972, is
72 amended as follows:

73 67-1-51. (1) Permits which may be issued by the commission
74 shall be as follows:

75 (a) **Manufacturer's permit.** A manufacturer's permit
76 shall permit the manufacture, importation in bulk, bottling and
77 storage of alcoholic liquor and its distribution and sale to
78 manufacturers holding permits under this chapter in this state and
79 to persons outside the state who are authorized by law to purchase
80 the same, and to sell exclusively to the commission.

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

82 Class 1. Distiller's and/or rectifier's permit, which shall
83 authorize the holder thereof to operate a distillery for the
84 production of distilled spirits by distillation or redistillation
85 and/or to operate a rectifying plant for the purifying, refining,
86 mixing, blending, flavoring or reducing in proof of distilled
87 spirits and alcohol.

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

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

94 (b) **Package retailer's permit.** Except as otherwise
95 provided in this paragraph, a package retailer's permit shall
96 authorize the holder thereof to operate a store exclusively for

the sale at retail in original sealed and unopened packages of alcoholic beverages, including native wines, not to be consumed on the premises where sold. Alcoholic beverages shall not be sold by any retailer in any package or container containing less than fifty (50) milliliters by liquid measure. In addition to the sale at retail of packages of alcoholic beverages, the holder of a package retailer's permit is authorized to sell at retail corkscrews, wine glasses, soft drinks, ice, juices, mixers and other beverages commonly used to mix with alcoholic beverages. Nonalcoholic beverages sold by the holder of a package retailer's permit shall not be consumed on the premises where sold.

(c) **On-premises retailer's permit.** An on-premises retailer's permit shall authorize the sale of alcoholic beverages, including native wines, for consumption on the licensed premises only. Such a permit shall issue only to qualified hotels, restaurants and clubs, and to common carriers with adequate facilities for serving passengers. In resort areas, whether inside or outside of a municipality, the commission may, in its discretion, issue on-premises retailer's permits to such establishments as it deems proper. An on-premises retailer's permit when issued to a common carrier shall authorize the sale and serving of alcoholic beverages aboard any licensed vehicle while moving through any county of the state; however, the sale of such alcoholic beverages shall not be permitted while such vehicle is stopped in a county that has not legalized such sales.

(d) **Solicitor's permit.** A solicitor's permit shall authorize the holder thereof to act as salesman for a manufacturer or wholesaler holding a proper permit, to solicit on behalf of his employer orders for alcoholic beverages, and to otherwise promote his employer's products in a legitimate manner. Such a permit shall authorize the representation of and employment by one (1) principal only. However, the permittee may also, in the discretion of the commission, be issued additional permits to

represent other principals. No such permittee shall buy or sell alcoholic beverages for his own account, and no such beverage shall be brought into this state in pursuance of the exercise of such permit otherwise than through a permit issued to a wholesaler or manufacturer in the state.

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

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

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

Class 1. A temporary one-day permit may be issued to bona fide nonprofit civic or charitable organizations authorizing the sale of alcoholic beverages, including native wine, for consumption on the premises described in the temporary permit only. Class 1 permits may be issued only to applicants demonstrating to the commission, by affidavit submitted ten (10) days prior to the proposed date or such other time as the commission may determine, that they meet the qualifications of Sections 67-1-11, 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57 (excluding paragraph (e)) and 67-1-59. Class 1 permittees shall obtain all alcoholic beverages from package retailers located in the county in which the temporary permit is issued. Alcoholic beverages remaining in stock upon expiration of the temporary permit may be returned by the permittee to the package retailer for a refund of the purchase price upon consent of the package

retailer or may be kept by the permittee exclusively for personal use and consumption, subject to all laws pertaining to the illegal sale and possession of alcoholic beverages. The commission, following review of the affidavit and the requirements of the applicable statutes and regulations, may issue the permit.

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

Class 2 temporary permittees must purchase their alcoholic beverages directly from the commission or, with approval of the commission, purchase the remaining stock of the previous permittee. If the proposed applicant of a Class 1 or Class 2 temporary permit falsifies information contained in the application or affidavit, the applicant shall never again be eligible for a retail alcohol beverage permit and shall be subject to prosecution for perjury.

(g) **Caterer's permit.** A caterer's permit shall permit the purchase of alcoholic beverages by a person engaging in business as a caterer and the resale of alcoholic beverages by such person in conjunction with such catering business. No person shall qualify as a caterer unless forty percent (40%) or more of the revenue derived from such catering business shall be from the serving of prepared food and not from the sale of alcoholic beverages and unless such person has obtained a permit for such business from the Department of Health. A caterer's permit shall not authorize the sale of alcoholic beverages on the premises of

the person engaging in business as a caterer; however, the holder of an on-premises retailer's permit may hold a caterer's permit. All sales of alcoholic beverages by holders of a caterer's permit shall be made at the location being catered by the caterer, and such sales may be made only for consumption at the catered location. Such sales shall be made pursuant to any other conditions and restrictions which apply to sales made by on-premises retail permittees. The holder of a caterer's permit or his employees shall remain at the catered location as long as alcoholic beverages are being sold pursuant to the permit issued under this paragraph (g), and the permittee and employees at such location shall each have personal identification cards issued by the Alcoholic Beverage Control Division of the commission. No unsold alcoholic beverages may be left at the catered location by the permittee upon the conclusion of his business at that location. Appropriate law enforcement officers and Alcoholic Beverage Control Division personnel may enter a catered location on private property in order to enforce laws governing the sale or serving of alcoholic beverages.

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

(i) **Alcohol processing permit.** An alcohol processing permit shall authorize the holder thereof to purchase, transport and possess alcoholic beverages for the exclusive use in cooking, processing or manufacturing products which contain alcoholic beverages as an integral ingredient. An alcohol processing permit shall not authorize the sale of alcoholic beverages on the premises of the person engaging in the business of cooking,

processing or manufacturing products which contain alcoholic beverages. The amounts of alcoholic beverages allowed under an alcohol processing permit shall be set by the commission.

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

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

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

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

(4) No person, either individually or as a member of a firm, partnership, limited liability company or association, or as a stockholder, officer or director in a corporation, shall own or control any interest in more than one (1) package retailer's permit, nor shall such person's spouse, if living in the same household of such person, any relative of such person, if living

in the same household of such person, or any other person living in the same household with such person own any interest in any other package retailer's permit.

SECTION 4. Section 67-1-55, Mississippi Code of 1972, is amended as follows:

67-1-55. No permit of any type shall be issued by the commission until the applicant has first filed with the commission a sworn statement disclosing all persons who are financially involved in the operation of the business for which the permit is sought. If an applicant is an individual, he will swear that he owns one hundred per cent (100%) of the business for which he is seeking a permit. If the applicant is a partnership, all partners and their addresses shall be disclosed and the extent of their interest in the partnership shall be disclosed. If the applicant is a corporation, the total stock in the corporation shall be disclosed and each shareholder and his address and the amount of stock in the corporation owned by him shall be disclosed. If the applicant is a limited liability company, each member and their addresses shall be disclosed and the extent of their interest in the limited liability company shall be disclosed. If the applicant is a trust, the trustee and all beneficiaries and their addresses shall be disclosed. If the applicant is a combination of any of the above, all information required to be disclosed above shall be required.

All the disclosures shall be in writing and kept on file at the commission's office and shall be available to the public.

Every applicant must, when applying for a renewal of his permit, disclose any change in the ownership of the business or any change in the beneficiaries of the income from the business.

Any person who willfully fails to fully disclose the * * * information required by this section, or who gives false information, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum not to exceed Five Hundred Dollars

295 (\$500.00) or imprisoned for not more than one (1) year, or both,
296 and the person or applicant shall never again be eligible for any
297 permit pertaining to alcoholic beverages.

298 **SECTION 5.** Section 67-1-57, Mississippi Code of 1972, is
299 amended as follows:

300 67-1-57. Before a permit is issued the commission shall
301 satisfy itself:

302 (a) That the applicant, if an individual, or if a
303 partnership, each of the members of the partnership, or if a
304 corporation, each of its principal officers and directors, or if a
305 limited liability company, each member of the limited liability
306 company, is of good moral character and, in addition, enjoys a
307 reputation of being a peaceable, law-abiding citizen of the
308 community in which he resides, and is generally fit for the trust
309 to be reposed in him, is not less than twenty-one (21) years of
310 age, and has not been convicted of a felony in any state or
311 federal court.

312 (b) That, except in the case of an application for a
313 solicitor's permit, the applicant is the true and actual owner of
314 the business for which the permit is desired, and that he intends
315 to carry on the business authorized for himself and not as the
316 agent of any other person, and that he intends to superintend in
317 person the management of the business or that he will designate a
318 manager to manage the business for him; any * * * manager must be
319 approved by the commission and must possess all of the
320 qualifications required of a permittee.

321 (c) That the applicant for a package retailer's permit,
322 if an individual, is a resident of the State of Mississippi. If
323 the applicant is a partnership, each member of the partnership
324 must be a resident of the state. If the applicant is a limited
325 liability company, each member of the limited liability company
326 must be a resident of the state. If the applicant is a

corporation, the designated manager of the corporation must be a resident of the state.

(d) That the place for which the permit is to be issued is an appropriate one considering the character of the premises and the surrounding neighborhood.

(e) That the place for which the permit is to be issued is within the corporate limits of an incorporated municipality or qualified resort area or club which comes within the provisions of this chapter.

(f) That the applicant is not indebted to the state for any taxes, fees or payment of penalties imposed by any law of the State of Mississippi or by any rule or regulation of the commission.

(g) That the applicant is not in the habit of using alcoholic beverages to excess and is not physically or mentally incapacitated, and that the applicant has the ability to read and write the English language.

(h) That the commission does not believe and has no reason to believe that the applicant will sell or knowingly permit any agent, servant or employee to unlawfully sell liquor in a dry area or in any other manner contrary to law.

(i) That the applicant is not residentially domiciled with any person whose permit or license has been cancelled for cause within the twelve (12) months next preceding the date of the present application for a permit.

(j) That the commission has not, in the exercise of its discretion which is reserved and preserved to it, refused to grant * * * permits under the restrictions of this section, as well as under any other pertinent provision of this chapter.

(k) That there are not sufficient legal reasons to deny a permit on the ground that the premises for which the permit is sought has previously been operated, used or frequented for any purpose or in any manner that is lewd, immoral or offensive to

public decency. In the granting or withholding of any permit to sell alcoholic beverages at retail, the commission in forming its conclusions may give consideration to any recommendations made in writing by the district or county attorney or county, circuit or chancery judge of the county, or the sheriff of the county, or the mayor or chief of police of an incorporated city or town wherein the applicant proposes to conduct his business and to any recommendations made by representatives of the commission.

(1) That the applicant and the applicant's key employees, as determined by the commission, do not have a disqualifying criminal record. In order to obtain a criminal record history check, the applicant shall submit to the commission a set of fingerprints from any local law enforcement agency for each person for whom the records check is required. The commission shall forward the fingerprints to the Mississippi Department of Public Safety. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Costs for processing the set or sets of fingerprints shall be borne by the applicant. The commission shall not deny employment to an employee of the applicant prior to the identification of a disqualifying record or other disqualifying information.

SECTION 6. Section 67-1-59, Mississippi Code of 1972, is amended as follows:

67-1-59. Where the word "applicant" is used in Section 67-1-57 or in Sections 67-1-51, 67-1-53, 67-1-55 and 67-1-63, it shall also mean and include each member of a partnership, limited liability company or association and all officers and the owner or owners of the majority of the corporate stock of a corporation, as of the date of the application.

SECTION 7. This act shall take effect and be in force from and after its passage.