

By: Representatives Carpenter, DuVall, Baker To: Ways and Means
(74th), McGee, Monsour

HOUSE BILL NO. 1441
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE WITHIN THE DEFINITION OF THE TERM "QUALIFIED RESORT AREA"
3 UNDER THE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW, ANY
4 FACILITY LOCATED ON FEDERAL PROPERTY SURROUNDING A LAKE AND
5 DESIGNATED AS A RECREATIONAL AREA BY THE UNITED STATES ARMY CORPS
6 OF ENGINEERS THAT CONSISTS OF AT LEAST 1,500 ACRES; TO INCLUDE
7 WITHIN THE DEFINITION OF THE TERM "QUALIFIED RESORT AREA" UNDER
8 THE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW, ANY FACILITY
9 LOCATED IN CERTAIN AREAS DESIGNATED BY THE GOVERNING AUTHORITIES
10 OF CERTAIN MUNICIPALITIES, AND CERTAIN MUNICIPALITIES AND
11 DISTRICTS, IF AN ELECTION IS HELD UNDER THE PROVISIONS OF THIS ACT
12 AND A MAJORITY OF THE QUALIFIED ELECTORS VOTING IN THE ELECTION
13 VOTE IN FAVOR OF ESTABLISHING QUALIFIED RESORT AREAS; TO AMEND
14 SECTION 67-1-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
15 AND FOR RELATED PURPOSES.

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

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

19 67-1-5. For the purposes of this chapter and unless
20 otherwise required by the context:

21 (a) "Alcoholic beverage" means any alcoholic liquid,
22 including wines of more than five percent (5%) of alcohol by
23 weight, capable of being consumed as a beverage by a human being,
24 but shall not include wine containing five percent (5%) or less of
25 alcohol by weight and shall not include beer containing not more
26 than five percent (5%) of alcohol by weight, as provided for in
27 Section 67-3-5, Mississippi Code of 1972, but shall include native
28 wines. The words "alcoholic beverage" shall not include ethyl
29 alcohol manufactured or distilled solely for fuel purposes.

30 (b) "Alcohol" means the product of distillation of any
31 fermented liquid, whatever the origin thereof, and includes



32 synthetic ethyl alcohol, but does not include denatured alcohol or
33 wood alcohol.

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

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

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

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

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

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

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

61 (j) "Division" means the Alcoholic Beverage Control
62 Division of the State Tax Commission.

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



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

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

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

95 (i) Organized or created under the laws of this
96 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 commission 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 commission, 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 commission 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 commission.

(i) The commission 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 commission; however, such declaration may only be initiated in a written request for resort area status made to the commission 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;

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

The status of these municipalities, districts, clubhouses, facilities and golf courses as qualified resort areas does not require any declaration of same by the commission.

(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



195 primarily from the alcoholic fermentation of the juice of ripe
196 grapes, fruits, berries or vegetables grown and produced in
197 Mississippi; provided that bulk, concentrated or fortified wines
198 used for blending may be produced without this state and used in
199 producing native wines. The commission shall adopt and promulgate
200 rules and regulations to permit a producer to import such bulk
201 and/or fortified wines into this state for use in blending with
202 native wines without payment of any excise tax that would
203 otherwise accrue thereon.

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

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

220 **SECTION 2.** (1) (a) Before an area may be designated by the
221 governing authorities of a municipality as an area in which
222 facilities which are defined as qualified resort areas in Section
223 67-1-5(o)(iii)5 may be located, an election shall be held, under
224 the election laws applicable to the municipality, on the question
225 of whether qualified resort areas shall be allowed in the
226 municipality. An election to determine whether qualified resort
227 areas shall be allowed in the municipality shall be ordered by the



228 municipal governing authorities, upon presentation to the
229 governing authorities of a petition containing the names of at
230 least twenty percent (20%) of the duly qualified voters of the
231 municipality asking for the election. An election on the question
232 may not be held by the municipality more often than once each
233 year.

234 (b) Thirty (30) days' notice shall be given to the
235 qualified electors of the municipality, in the manner prescribed
236 by law, on the question of allowing qualified resort areas to be
237 established. The notice shall contain a statement of the question
238 to be voted on at the election. The ballots used in the election
239 shall have the following words printed thereon: "FOR THE
240 ESTABLISHMENT OF QUALIFIED RESORT AREAS," and next below, "AGAINST
241 THE ESTABLISHMENT OF QUALIFIED RESORT AREAS." In marking his
242 ballot, the voter shall make a cross (X) opposite the words of his
243 choice.

244 (c) Qualified resort areas may be established if a
245 majority of the qualified electors voting in the election vote for
246 such establishment. A qualified resort area may not be
247 established if a majority of the qualified electors voting in the
248 election vote against such establishment.

249 (2) (a) Before a municipality may be designated as a
250 qualified resort area as defined in Section 67-1-5(o)(iii)6, an
251 election shall be held, under the election laws applicable to the
252 municipality, on the question of whether the municipality shall be
253 a qualified resort area. An election to determine whether the
254 municipality shall be a qualified resort area shall be ordered by
255 the municipal governing authorities, upon presentation to the
256 governing authorities of a petition containing the names of at
257 least twenty percent (20%) of the duly qualified voters of the
258 municipality asking for the election. An election on the question
259 may not be held by the municipality more often than once each
260 year.



261 (b) Thirty (30) days' notice shall be given to the
262 qualified electors of the municipality, in the manner prescribed
263 by law, on the question of allowing qualified resort areas to be
264 established. The notice shall contain a statement of the question
265 to be voted on at the election. The ballots used in the election
266 shall have the following words printed thereon: "FOR THE
267 ESTABLISHMENT OF A QUALIFIED RESORT AREA," and next below,
268 "AGAINST THE ESTABLISHMENT OF A QUALIFIED RESORT AREA." In
269 marking his ballot, the voter shall make a cross (X) opposite the
270 words of his choice.

271 (c) The municipality may be established as a qualified
272 resort area if a majority of the qualified electors voting in the
273 election vote for such establishment. A qualified resort area may
274 not be established if a majority of the qualified electors voting
275 in the election vote against such establishment.

276 (3) (a) Before an area may be designated a qualified resort
277 area as defined in Section 67-1-5(o)(iii)7, an election shall be
278 held in the municipality in which the area is located under the
279 election laws applicable to the municipality, on the question of
280 whether the area shall be a qualified resort area. An election to
281 determine whether the area shall be a qualified resort area shall
282 be ordered by the municipal governing authorities, upon
283 presentation to the governing authorities of a petition containing
284 the names of at least twenty percent (20%) of the duly qualified
285 voters of the municipality asking for the election. An election
286 on the question may not be held by the municipality more often
287 than once each year.

288 (b) Thirty (30) days' notice shall be given to the
289 qualified electors of the municipality, in the manner prescribed
290 by law, on the question of allowing qualified resort areas to be
291 established. The notice shall contain a statement of the question
292 to be voted on at the election. The ballots used in the election
293 shall have the following words printed thereon: "FOR THE



ESTABLISHMENT OF A QUALIFIED RESORT AREA," and next below,
"AGAINST THE ESTABLISHMENT OF A QUALIFIED RESORT AREA." In
marking his ballot, the voter shall make a cross (X) opposite the
words of his choice.

(c) The area may be established as a qualified resort
area if a majority of the qualified electors voting in the
election vote for such establishment. A qualified resort area may
not be established if a majority of the qualified electors voting
in the election vote against such establishment.

SECTION 3. Section 67-1-7, Mississippi Code of 1972, is
amended as follows:

67-1-7. (1) Except as otherwise provided in Section 67-9-1
for the transportation and possession of limited amounts of
alcoholic beverages for the use of an alcohol processing
permittee, and subject to all of the provisions and restrictions
contained in this chapter, the manufacture, sale, distribution,
possession and transportation of alcoholic beverages shall be
lawful, subject to the restrictions hereinafter imposed, in those
counties and municipalities of this state in which, at a local
option election called and held for that purpose under the
provisions of this chapter, a majority of the qualified electors
voting in such election shall vote in favor thereof. Except as
otherwise provided in Section 67-1-51 for holders of a caterer's
permit, the manufacture, sale and distribution of alcoholic
beverages shall not be permissible or lawful in counties except in
(a) incorporated municipalities located within such counties, (b)
qualified resort areas within such counties approved as such by
the State Tax Commission, or (c) clubs within such counties,
whether within a municipality or not. The manufacture, sale,
distribution and possession of native wines shall be lawful in any
location within any such county except those locations where the
manufacture, sale or distribution is prohibited by law other than
this section or by regulations of the commission.



327 (2) Notwithstanding the foregoing, within any state park or
328 any state park facility that has been declared a qualified resort
329 area by the commission, and within any qualified resort area as
330 defined under Section 67-1-5(o)(iii), an on-premises retailer's
331 permit may be issued for the qualified resort area, and the
332 permittee may lawfully sell alcoholic beverages for consumption on
333 his licensed premises regardless of whether or not the county or
334 municipality in which the qualified resort area is located has
335 voted in favor of coming out from under the dry law, and it shall
336 be lawful to receive, store, sell, possess and consume alcoholic
337 beverages on the licensed premises, and to sell, distribute and
338 transport alcoholic beverages to the licensed premises.

339 **SECTION 4.** The Attorney General of the State of Mississippi
340 shall submit this act, immediately upon approval by the Governor,
341 or upon approval by the Legislature subsequent to a veto, to the
342 Attorney General of the United States or to the United States
343 District Court for the District of Columbia in accordance with the
344 provisions of the Voting Rights Act of 1965, as amended and
345 extended.

346 **SECTION 5.** This act shall take effect and be in force from
347 and after the date it is effectuated under Section 5 of the Voting
348 Rights Act of 1965, as amended and extended.

