MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Representative Busby To: Ways and Means

HOUSE BILL NO. 1221

AN ACT TO AUTHORIZE A PERSON WHO IS THE HOLDER OF A WINE MANUFACTURER'S PERMIT IN THIS STATE, OR WHO IS LICENSED OR PERMITTED OUTSIDE OF THE STATE TO ENGAGE IN THE ACTIVITY OF MANUFACTURING, SUPPLYING, IMPORTING, DISTRIBUTING, WHOLESALING OR RETAILING WINE, TO SELL AND SHIP WINE DIRECTLY TO RESIDENTS IN THIS STATE, IF THE PERSON OBTAINS A DIRECT WINE SHIPPER'S PERMIT FROM THE DEPARTMENT OF REVENUE; TO PROVIDE FOR THE ISSUANCE OF DIRECT WINE SHIPPER'S PERMITS; TO REQUIRE THE HOLDER OF A DIRECT WINE SHIPPER'S PERMIT TO KEEP CERTAIN RECORDS; TO PROHIBIT THE HOLDER OF A DIRECT WINE SHIPPER'S PERMIT FROM SELLING OR SHIPPING LIGHT WINE OR BEER OR ANY ALCOHOLIC BEVERAGE OTHER THAN WINE; TO LIMIT THE AMOUNT OF WINE THAT A HOLDER OF A DIRECT WINE SHIPPER'S PERMIT MAY SELL OR SHIP TO AN INDIVIDUAL EACH YEAR; TO PROVIDE FOR THE ANNUAL RENEWAL OF DIRECT WINE SHIPPER'S PERMITS; TO PROVIDE THAT PERSONS PURCHASING OR RECEIVING A DIRECT SHIPMENT OF WINE FROM A DIRECT WINE SHIPPER MUST BE AT LEAST TWENTY-ONE YEARS OF AGE; TO PROVIDE THAT PERSONS RECEIVING A DIRECT SHIPMENT OF WINE FROM A DIRECT WINE SHIPPER SHALL USE THE WINE FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT; TO AUTHORIZE THE COMMISSIONER OF REVENUE TO ADOPT ANY RULES OR REGULATIONS AS NECESSARY TO CARRY OUT THIS ACT; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; TO AMEND SECTIONS 27-71-5, 27-71-7, 27-71-15 AND 27-71-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THE PRIVILEGE TAX REQUIRED FOR THE ISSUANCE OF A DIRECT WINE SHIPPER'S PERMIT; TO LEVY A TAX UPON THE SALES AND SHIPMENTS OF WINE MADE BY A DIRECT WINE SHIPPER; TO REQUIRE A CERTAIN AMOUNT OF THE TAXES LEVIED TO BE DEPOSITED INTO THE MENTAL HEALTH PROGRAMS FUND; TO AMEND SECTIONS 67-1-41, 67-1-45, 67-1-51, 67-1-53, 67-1-55, 67-1-57, 67-1-73, 97-31-47 AND 97-31-49, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE FOREGOING PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. As used in Sections 1 through 9 of this act, the following words shall have the meanings as defined in this section unless the context otherwise requires:

(a) "Department" means the Department of Revenue.

(b) "Direct wine shipper" means the holder of a direct wine shipper's permit issued by the department under Sections 1 through 9 of this act.

(c) "Permit" means a direct wine shipper's permit issued by the department under Sections 1 through 9 of this act.

(d) "Wine" means any product obtained from the alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries, made in accordance with the revenue laws of the United States, and containing more than five percent (5%) of alcohol by weight.

In addition, the definitions in Section 67-1-5 shall be applicable to the terms used in Sections 1 through 9 of this act unless the context otherwise requires.

SECTION 2. A person must hold a permit as a direct wine shipper issued by the department before the person may engage in selling and shipping wine directly to a resident in this state. A direct wine shipper may sell and ship wine directly to residents in this state without being required to transact the sale and shipment through the Alcoholic Beverage Control Division of the department.

SECTION 3. To qualify for a permit, an applicant shall be:

(a) A holder of a Class 2 manufacturer's permit issued in accordance with Section 67-1-51; or

(b) A person licensed or permitted outside of this state to engage in the activity of manufacturing, supplying, importing, distributing, wholesaling or retailing wine.

SECTION 4. (1) An applicant for a permit shall:

(a) Submit to the department a completed application on a form provided by the department, containing all information that is required by the department;

(b) Provide to the department a copy of the applicant's current license or permit to engage in the activity of manufacturing, supplying, importing, distributing, wholesaling or retailing wine issued in this or any other state; and

(c) Pay to the department the fee prescribed in Section 27-71-5.

(2) After a person complies with the provisions of subsection (1) of this section, the department may conduct any investigation as it considers necessary regarding the issuance of a permit, and the department shall issue a permit to the applicant if the requirements of Sections 1 through 9 of this act are met.

SECTION 5. (1) A direct wine shipper shall:

(a) Ensure that all containers of wine sold and shipped directly to a resident in this state are conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AT LEAST AGE 21 YEARS OLD REQUIRED FOR DELIVERY";

(b) Report to the department annually the total of wine, by type, sold and shipped into or within the state the preceding calendar year;

(c) Maintain for at least three (3) years all records that allow the department to ascertain the truthfulness of the information filed under Sections 1 through 9 of this act;

(d) Allow the department to perform an audit of the direct wine shipper's records upon request; and

(e) Be deemed to have consented to the jurisdiction of the department or any other state agency and the state courts concerning enforcement of Sections 1 through 9 of this act and any related laws, rules or regulations.

(2) A direct wine shipper may not:

(a) Sell or ship any light wine or beer that is regulated under Section 67-3-1 et seq. or any alcoholic beverage other than wine;

(b) Sell or ship more than twenty-four (24) nine-liter cases of wine annually to any one (1) individual; or

(c) Ship wine to an address in a county that has not voted in favor of coming out from under the dry law.

SECTION 6. A direct wine shipper may annually renew his or her permit, if the direct wine shipper:

(a) Is otherwise entitled to receive a permit;

(b) Provides to the department a copy of his or her current license or permit to engage in the activity of

manufacturing, supplying, importing, distributing, wholesaling or retailing wine issued in this or any other state; and

(c) Pays to the department a renewal fee as prescribed in Section 27-71-5.

SECTION 7. (1) To purchase and receive a direct shipment of wine from a direct wine shipper, a resident of this state must be at least twenty-one (21) years of age, and a person who is at least twenty-one (21) years of age must sign for any wine shipped from a direct wine shipper.

(2) A shipment of wine may be ordered or purchased from a direct wine shipper through a computer network.

(3) A person who receives a direct shipment of wine from a direct wine shipper shall use the wine for personal consumption only and may not resell it.

SECTION 8. The Commissioner of Revenue of the department may adopt any rules or regulations as necessary to carry out Sections 1 through 9 of this act. All of the enforcement provisions of Section 67-1-1 et seq. that are not in conflict with Sections 1 through 9 of this act may be used by the department to enforce the provisions of Sections 1 through 9 of this act.

SECTION 9. (1) Any person who makes, participates in, transports, imports or receives a sale or shipment of wine in violation of Sections 1 through 9 of this act is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or

imprisonment in the county jail for not more than six (6) months, or both. Each sale or shipment in violation of Sections 1 through 9 of this act shall constitute a separate offense.

(2) If any holder of a direct wine shipper's permit violates any provision of Sections 1 through 9 of this act, the department may suspend, revoke or cancel the permit and impose civil penalties as authorized under Section 67-1-1 et seq.

SECTION 10. Section 27-71-5, Mississippi Code of 1972, is amended as follows:

27-71-5. (1) Upon each person approved for a permit under the provisions of the Alcoholic Beverage Control Law and amendments thereto, there is levied and imposed for each location for the privilege of engaging and continuing in this state in the business authorized by such permit, an annual privilege license tax in the amount provided in the following schedule:

(a) Except as otherwise provided in this subsection (1), manufacturer's permit, Class 1, distiller's and/or rectifier's.....$4,500.00

(b) Manufacturer's permit, Class 2, wine manufacturer.....$1,800.00

(c) Manufacturer's permit, Class 3, native wine manufacturer per ten thousand (10,000) gallons or part thereof produced.....$ 10.00

(d) Native wine retailer's permit.....$ 50.00

(e) Package retailer's permit, each.....$ 900.00

(f) On-premises retailer's permit, except for clubs and common carriers, each.....$ 450.00

(g) On-premises retailer's permit for wine of more than five percent (5%) alcohol by weight, but not more than twenty-one percent (21%) alcohol by weight, each.....$ 225.00

(h) On-premises retailer's permit for clubs...$ 225.00

(i) On-premises retailer's permit for common carriers, per car, plane, or other vehicle.....$ 120.00

(j) Solicitor's permit, regardless of any other provision of law, solicitor's permits shall be issued only in the discretion of the department.....$ 100.00

(k) Filing fee for each application except for an employee identification card.....$ 25.00

(l) Temporary permit, Class 1, each.....$ 10.00

(m) Temporary permit, Class 2, each.....$ 50.00

(n) (i) Caterer's permit.....$ 600.00

(ii) Caterer's permit for holders of on-premises retailer's permit.....$ 150.00

(o) Research permit.....$ 100.00

(p) Temporary permit, Class 3 (wine only).....$ 10.00

(q) Special service permit.....$ 225.00

(r) Merchant permit.....$ 225.00

(s) Temporary wine charitable auction permit..$ 10.00

(t) Event venue retailer's permit.....$ 225.00

(u) Temporary theatre permit, each.....$ 10.00

(v) Charter ship operator's permit.....$ 100.00

(w) Direct wine shipper's permit.....$ 100.00

If a person approved for a manufacturer's permit, Class 1, distiller's permit produces a product with at least fifty-one percent (51%) of the finished product by volume being obtained from alcoholic fermentation of grapes, fruits, berries, honey and/or vegetables grown and produced in Mississippi, and produces all of the product by using not more than one (1) still having a maximum capacity of one hundred fifty (150) liters, the annual privilege license tax for such a permit shall be Ten Dollars ($10.00) per ten thousand (10,000) gallons or part thereof produced. Bulk, concentrated or fortified ingredients used for blending may be produced outside this state and used in producing such a product.

In addition to the filing fee imposed by paragraph (k) of this subsection, a fee to be determined by the Department of Revenue may be charged to defray costs incurred to process applications. The additional fees shall be paid into the State Treasury to the credit of a special fund account, which is hereby created, and expenditures therefrom shall be made only to defray the costs incurred by the Department of Revenue in processing alcoholic beverage applications. Any unencumbered balance remaining in the special fund account on June 30 of any fiscal year shall lapse into the State General Fund.

All privilege taxes imposed by this section shall be paid in advance of doing business. The additional privilege tax imposed for an on-premises retailer's permit based upon purchases shall be due and payable on demand.

(2) (a) There is imposed and shall be collected from each permittee, except a common carrier, solicitor, holder of a direct wine shipper's permit or a temporary permittee, by the department, an additional license tax equal to the amounts imposed under subsection (1) of this section for the privilege of doing business within any municipality or county in which the licensee is located.

(b) (i) In addition to the tax imposed in paragraph (a) of this subsection, there is imposed and shall be collected by the department from each permittee described in subsection (1)(f), (g), (h), (m) and (t) of this section, an additional license tax for the privilege of doing business within any municipality or county in which the licensee is located in the amount of Two Hundred Twenty-five Dollars ($225.00) on purchases exceeding Five Thousand Dollars ($5,000.00) and Two Hundred Twenty-five Dollars ($225.00) for each additional purchase of Five Thousand Dollars ($5,000.00), or fraction thereof.

(ii) In addition to the tax imposed in paragraph (a) of this subsection, there is imposed and shall be collected by the department from each permittee described in subsection (1)(n) and (r) of this section, an additional license tax for the

privilege of doing business within any municipality or county in which the licensee is located in the amount of Two Hundred Fifty Dollars ($250.00) on purchases exceeding Five Thousand Dollars ($5,000.00) and Two Hundred Twenty-five Dollars ($225.00) for each additional purchase of Five Thousand Dollars ($5,000.00), or fraction thereof.

(iii) Any person who has paid the additional privilege license tax imposed by this paragraph, and whose permit is renewed, may add any unused fraction of Five Thousand Dollars ($5,000.00) purchases to the first Five Thousand Dollars ($5,000.00) purchases authorized by the renewal permit, and no additional license tax will be required until purchases exceed the sum of the two (2) figures.

(c) If the licensee is located within a municipality, the department shall pay the amount of additional license tax collected under this section to the municipality, and if outside a municipality the department shall pay the additional license tax to the county in which the licensee is located. Payments by the department to the respective local government subdivisions shall be made once each month for any collections during the preceding month.

(3) When an application for any permit, other than for renewal of a permit, has been rejected by the department, such decision shall be final. Appeal may be made in the manner provided by Section 67-1-39. Another application from an

applicant who has been denied a permit shall not be reconsidered within a twelve-month period.

(4) The number of permits issued by the department shall not be restricted or limited on a population basis; however, the foregoing limitation shall not be construed to preclude the right of the department to refuse to issue a permit because of the undesirability of the proposed location.

(5) If any person shall engage or continue in any business which is taxable under this section without having paid the tax as provided in this section, the person shall be liable for the full amount of the tax plus a penalty thereon equal to the amount thereof, and, in addition, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term of not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(6) It shall be unlawful for any person to consume alcoholic beverages on the premises of any hotel restaurant, restaurant, club or the interior of any public place defined in Chapter 1, Title 67, Mississippi Code of 1972, when the owner or manager thereof displays in several conspicuous places inside the establishment and at the entrances of establishment a sign containing the following language: NO ALCOHOLIC BEVERAGES ALLOWED.

SECTION 11. Section 27-71-7, Mississippi Code of 1972, is amended as follows:

27-71-7. (1) There is hereby levied and assessed an excise tax upon each case of alcoholic beverages sold by the * * * department to be collected from each retail licensee at the time of sale in accordance with the following schedule:

(a) Distilled spirits.....$2.50 per gallon

(b) Sparkling wine and champagne.....$1.00 per gallon

(c) Other wines, including native wines $ .35 per gallon

(2) (a) In addition to the tax levied by subsection (1) of this section, and in addition to any other markup collected, the Alcoholic Beverage Control Division shall collect a markup of three percent (3%) on all alcoholic beverages, as defined in Section 67-1-5, Mississippi Code of 1972, which are sold by the division. The proceeds of the markup shall be collected by the division from each purchaser at the time of purchase.

(b) Until June 30, 1987, the revenue derived from this three percent (3%) markup shall be deposited by the division in the State Treasury to the credit of the "Alcoholism Treatment and Rehabilitation Fund," a special fund which is hereby created in the State Treasury, and shall be used by the Division of Alcohol and Drug Abuse of the State Department of Mental Health and public or private centers or organizations solely for funding of treatment and rehabilitation programs for alcoholics and alcohol abusers which are sponsored by the division or public or private centers or organizations in such amounts as the Legislature may

appropriate to the division for use by the division or public or private centers or organizations for such programs. Any tax revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund. It is the intent of the Legislature that the State Department of Mental Health shall continue to seek funds from other sources and shall use the funds appropriated for the purposes of this section and Section 27-71-29 to match all federal funds which may be available for alcoholism treatment and rehabilitation.

From and after July 1, 1987, the revenue derived from this three percent (3%) markup shall be deposited by the division in the State Treasury to the credit of the "Mental Health Programs Fund," a special fund which is hereby created in the State Treasury and shall be used by the State Department of Mental Health for the service programs of the department. Any revenue in the "Alcoholism Treatment and Rehabilitation Fund" which is not encumbered at the end of Fiscal Year 1987 shall be deposited to the credit of the "Mental Health Programs Fund."

(3) There is levied and assessed upon the holder of a direct wine shipper's permit, a tax in the amount of thirty-four percent (34%) of the sales price of each sale and shipment of wine made to a resident in this state. The holder of a direct wine shipper's permit shall file a monthly report with the department along with a copy of the invoice for each sale and shipment of wine and remit any taxes due; however, no report shall be required for months in

which no sales or shipments were made into this state. The report, together with copies of the invoices and the payment of all taxes, shall be filed with the department not later than the twentieth day of the month following the month in which the shipment was made. Permittees who fail to timely file and pay taxes as required by this subsection shall pay a late fee in the amount of Fifty Dollars ($50.00), in addition to any other penalty authorized by this article.

SECTION 12. Section 27-71-15, Mississippi Code of 1972, is amended as follows:

27-71-15. Except as otherwise provided in Section 67-9-1 for the transportation of limited amounts of alcoholic beverages for the use of an alcohol processing permittee, and in Sections 1 through 9 of this act for the sale and shipment of wine by the holder of a direct wine shipper's permit, if transportation requires passage through a county which has not authorized the sale of alcoholic beverages, such transportation shall be by a sealed vehicle. Such seal shall remain unbroken until the vehicle shall reach the place of business operated by the permittee. The operator of any vehicle transporting alcoholic beverages shall have in his possession an invoice issued by the * * * department at the time of the wholesale sale covering the merchandise transported by the vehicle. The * * * department is authorized to issue regulations controlling the transportation of alcoholic beverages.

When the restrictions imposed by this section and by the regulation of the * * * department have not been violated, the person transporting alcoholic beverages through a county wherein the sale of alcoholic beverages is prohibited shall not be guilty of unlawful possession and such merchandise shall be immune from seizure.

SECTION 13. Section 27-71-29, Mississippi Code of 1972, is amended as follows:

27-71-29. (1) All taxes levied by this article shall be paid to the * * * department in cash or by personal check, cashier's check, bank exchange, post office money order or express money order and shall be deposited by the * * * department in the State Treasury on the same day collected, but no remittances other than cash shall be a final discharge of liability for the tax herein imposed and levied unless and until it has been paid in cash to the * * * department.

(2) All taxes levied under Section 27-71-7(1) and received by the * * * department under this article shall be paid into the General Fund, and the three percent (3%) levied under Section 27-71-7(2) and received by the * * * department under this article shall be paid into the special fund in the State Treasury designated as the "Alcoholism Treatment and Rehabilitation Fund" as required by law. Any funds derived from the sale of alcoholic beverages in excess of inventory requirements shall be paid not less often than annually into the General Fund.

(3) All taxes levied under Section 27-71-7(3) and received by the department under this article shall be paid into the General Fund, except for an amount equivalent to the three percent (3%) levied under Section 27-71-7(2), which shall be paid into the special fund in the State Treasury designated as the "Mental Health Programs Fund" as required by law.

SECTION 14. Section 67-1-41, Mississippi Code of 1972, is amended as follows:

67-1-41. (1) The *** * *** Department of Revenue is hereby created a wholesale distributor and seller of alcoholic beverages, not including malt liquors, within the State of Mississippi. It is granted the sole right to import and sell intoxicating liquors at wholesale within the state, and no person who is granted the right to sell, distribute or receive intoxicating liquors at retail shall purchase any intoxicating liquors from any source other than the *** * *** department except as authorized in subsections (4) and (9) of this section and Sections 1 through 9 of this act. The *** * *** department may establish warehouses, purchase intoxicating liquors in such quantities and from such sources as it may deem desirable and sell the intoxicating liquors to authorized permittees within the state including, at the discretion of the *** * *** department, any retail distributors operating within any military post or qualified resort areas within the boundaries of the state, keeping a correct and accurate record of all such transactions and exercising such control over

the distribution of alcoholic beverages as seem right and proper in keeping with the provisions or purposes of this chapter.

(2) No person for the purpose of sale shall manufacture, distill, brew, sell, possess, export, transport, distribute, warehouse, store, solicit, take orders for, bottle, rectify, blend, treat, mix or process any alcoholic beverage except in accordance with authority granted under this chapter, or as otherwise provided by law for native wines.

(3) No alcoholic beverage intended for sale or resale shall be imported, shipped or brought into this state for delivery to any person other than as provided in this chapter, or as otherwise provided by law for native wines.

(4) The * * * department may promulgate rules and regulations which authorize on-premises retailers to purchase limited amounts of alcoholic beverages from package retailers and for package retailers to purchase limited amounts of alcoholic beverages from other package retailers. The * * * department shall develop and provide forms to be completed by the on-premises retailers and the package retailers verifying the transaction. The completed forms shall be forwarded to the commission within a period of time prescribed by the * * * department.

(5) The * * * department may promulgate rules which authorize the holder of a package retailer's permit to permit individual retail purchasers of packages of alcoholic beverages to return, for exchange, credit or refund, limited amounts of

original sealed and unopened packages of alcoholic beverages purchased by the individual from the package retailer.

(6) The * * * department shall maintain all forms to be completed by applicants necessary for licensure by the * * * department at all district offices of the * * * department.

(7) The * * * department may promulgate rules which authorize the manufacturer of an alcoholic beverage or wine to import, transport and furnish or give a sample of alcoholic beverages or wines to the holders of package retailer's permits, on-premises retailer's permits, native wine retailer's permits and temporary retailer's permits who have not previously purchased the brand of that manufacturer from the * * * department. For each holder of the designated permits, the manufacturer may furnish not more than five hundred (500) milliliters of any brand of alcoholic beverage and not more than three (3) liters of any brand of wine.

(8) The * * * department may promulgate rules disallowing open product sampling of alcoholic beverages or wines by the holders of package retailer's permits and permitting open product sampling of alcoholic beverages by the holders of on-premises retailer's permits. Permitted sample products shall be plainly identified "sample" and the actual sampling must occur in the presence of the manufacturer's representatives during the legal operating hours of on-premises retailers.

(9) The * * * department may promulgate rules and regulations that authorize the holder of a research permit to

import and purchase limited amounts of alcoholic beverages from importers, wineries and distillers of alcoholic beverages or from the * * * department. The * * * department shall develop and provide forms to be completed by the research permittee verifying each transaction. The completed forms shall be forwarded to the * * * department within a period of time prescribed by the * * * department. The records and inventory of alcoholic beverages shall be open to inspection at any time by the Director of the Alcoholic Beverage Control Division or any duly authorized agent.

SECTION 15. Section 67-1-45, Mississippi Code of 1972, is amended as follows:

67-1-45. No manufacturer, rectifier or distiller of intoxicating liquor shall sell or attempt to sell any such intoxicating liquor, except malt liquor, within the State of Mississippi, except to the * * * department, or to the holder of a research permit as provided in Section 67-1-41. A producer of native wine may sell native wines to the * * * department or to consumers at the location of the native winery or its immediate vicinity. The holder of a direct wine shipper's permit may sell wines directly to residents in this state as authorized by Sections 1 through 9 of this act.

Any violation of this section by any manufacturer, rectifier or distiller shall be punished by a fine of not less than Five Hundred Dollars ($500.00), and not more than Two Thousand Dollars

($2,000.00), to which may be added imprisonment in the county jail not to exceed six (6) months.

SECTION 16. Section 67-1-51, Mississippi Code of 1972, is amended as follows:

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

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

Manufacturer's permits shall be of the following classes:

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

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

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

(b) **Package retailer's permit.** Except as otherwise provided in this paragraph and Section 67-1-52, a package retailer's permit shall 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. A package retailer's permit, with prior approval from the department, shall authorize the holder thereof to sample new product furnished by a manufacturer's representative or his employees at the permitted place of business so long as the sampling otherwise complies with this chapter and applicable department regulations. Such samples may not be provided to customers at the permitted place of business. 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; however, a patron of the permit holder may remove one (1)

bottle of wine from the licensed premises if: (i) the patron consumed a portion of the bottle of wine in the course of consuming a meal purchased on the licensed premises; (ii) the permit holder securely reseals the bottle; (iii) the bottle is placed in a bag that is secured in a manner so that it will be visibly apparent if the bag is opened; and (iv) a dated receipt for the wine and the meal is available. Such a permit shall be issued 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 department, in its discretion, may 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 department, 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 department, by a statement signed under penalty of perjury submitted ten (10) days prior to the proposed

date or such other time as the department 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 department, following review of the statement provided by the applicant 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 paragraph (c) of this subsection. A Class 2 permit may be issued only to applicants demonstrating to the department, by a statement signed under the penalty of perjury, that they meet the qualifications of Sections 67-1-5(l), (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 department, following a preliminary review of the statement provided by the applicant 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 department or, with approval of the department, 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 statement, the applicant shall never again be eligible for a retail alcohol beverage permit and shall be subject to prosecution for perjury.

Class 3. A temporary one-day permit may be issued to a retail establishment authorizing the complimentary distribution of wine, including native wine, to patrons of the retail establishment at an open house or promotional event, for consumption only on the premises described in the temporary permit. A Class 3 permit may be issued only to an applicant demonstrating to the department, by a statement signed under penalty of perjury submitted ten (10) days before the proposed date or such other time as the department may determine, that it meets 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. A Class 3 permit holder shall obtain all alcoholic beverages from the holder(s) of a package retailer's permit located in the county in which the temporary permit is issued. Wine remaining in stock upon expiration of the temporary permit may be returned by the Class 3 temporary permit holder to the package retailer for a refund of the purchase price, with consent of the package

retailer, or may be kept by the Class 3 temporary permit holder exclusively for personal use and consumption, subject to all laws pertaining to the illegal sale and possession of alcoholic beverages. The department, following review of the statement provided by the applicant and the requirements of the applicable statutes and regulations, may issue the permit. No retailer may receive more than twelve (12) Class 3 temporary permits in a calendar year. A Class 3 temporary permit shall not be issued to a retail establishment that either holds a merchant permit issued under paragraph (l) of this subsection, or holds a permit issued under Chapter 3, Title 67, Mississippi Code of 1972, authorizing the holder to engage in the business of a retailer of light wine or beer.

(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.

When the holder of an on-premises retailer's permit or an affiliated entity of the holder also holds a caterer's permit, the caterer's permit shall not authorize the service of alcoholic beverages on a consistent, recurring basis at a separate, fixed location owned or operated by the caterer, on-premises retailer or affiliated entity and an on-premises retailer's permit shall be required for the separate location. 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. The location being catered may be anywhere within a county or judicial district that has voted to come out from under the dry laws or in which the sale, distribution and possession of alcoholic beverages is otherwise authorized by law. 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 shall have at the location the identification card issued by the Alcoholic Beverage Control Division of the department. 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 department 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 department.

(j) **Hospitality cart permit.** A hospitality cart permit shall authorize the sale of alcoholic beverages from a mobile cart on a golf course that is the holder of an on-premises retailer's permit. The alcoholic beverages sold from the cart must be consumed within the boundaries of the golf course.

(k) **Special service permit.** A special service permit shall authorize the holder to sell commercially sealed alcoholic beverages to the operator of a commercial or private aircraft for en route consumption only by passengers. A special service permit shall be issued only to a fixed-base operator who contracts with an airport facility to provide fueling and other associated services to commercial and private aircraft.

(l) **Merchant permit.** A merchant permit shall be issued only to the owner of a spa facility, an art studio or gallery, or a cooking school, and shall authorize the holder to serve complimentary by the glass wine only, including native wine, at the holder's spa facility, art studio or gallery, or cooking school. A merchant permit holder shall obtain all wine from the holder of a package retailer's permit.

(m) **Temporary wine charitable auction permit.** A temporary permit, not to exceed five (5) days, may be issued to a qualifying charitable nonprofit organization that is exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986. The permit shall authorize the holder to sell wine for the limited purpose of raising funds for the organization during a live or silent auction that is conducted by the organization and that meets the following requirements: (i) the auction is conducted in an area of the state where the sale of wine is authorized; (ii) if the auction is conducted on the premises of an on-premises retailer's permit holder, then the wine

to be auctioned must be stored separately from the wine sold, stored or served on the premises, must be removed from the premises immediately following the auction, and may not be consumed on the premises; (iii) the permit holder may not conduct more than two (2) auctions during a calendar year; (iv) the permit holder may not pay a commission or promotional fee to any person to arrange or conduct the auction.

(n) **Event venue retailer's permit.** An event venue retailer's permit shall authorize the holder thereof to purchase and resell alcoholic beverages, including native wines, for consumption on the premises during legal hours during events held on the licensed premises if food is being served at the event by a caterer who is not affiliated with or related to the permittee. The caterer must serve at least three (3) entrees. The permit may only be issued for venues that can accommodate two hundred (200) persons or more. The number of persons a venue may accommodate shall be determined by the local fire department and such determination shall be provided in writing and submitted along with all other documents required to be provided for an on-premises retailer's permit. The permittee must derive the majority of its revenue from event-related fees, including, but not limited to, admission fees or ticket sales for live entertainment in the building. "Event-related fees" do not include alcohol, beer or light wine sales or any fee which may be construed to cover the cost of alcohol, beer or light wine. This

determination shall be made on a per event basis. An event may not last longer than two (2) consecutive days per week.

(o) **Temporary theatre permit.** A temporary theatre permit, not to exceed five (5) days, may be issued to a charitable nonprofit organization that is exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code and owns or operates a theatre facility that features plays and other theatrical performances and productions. The permit shall authorize the holder to sell alcoholic beverages, including native wines, to patrons of the theatre during performances and productions at the theatre facility for consumption during such performances and productions on the premises of the facility described in the permit. A temporary theatre permit holder shall obtain all alcoholic beverages from package retailers located in the county in which the permit is issued. Alcoholic beverages remaining in stock upon expiration of the temporary theatre 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.

(p) **Charter ship operator's permit.** Subject to the provisions of this paragraph (p), a charter ship operator's permit shall authorize the holder thereof and its employees to serve, monitor, store and otherwise control the serving and availability

of alcoholic beverages to customers of the permit holder during private charters under contract provided by the permit holder. A charter ship operator's permit shall authorize such action by the permit holder and its employees only as to alcoholic beverages brought onto the permit holder's ship by customers of the permit holder as part of such a private charter. All such alcoholic beverages must be removed from the charter ship at the conclusion of each private charter. A charter ship operator's permit shall not authorize the permit holder to sell, charge for or otherwise supply alcoholic beverages to customers, except as authorized in this paragraph (p). For the purposes of this paragraph (p), "charter ship operator" means a common carrier that (i) is certified to carry at least one hundred fifty (150) passengers and/or provide overnight accommodations for at least fifty (50) passengers, (ii) operates only in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, and (iii) provides charters under contract for tours and trips in such waters.

(q) Direct wine shipper's permit. A direct shipper's permit shall authorize the holder to sell and ship a limited amount of wine directly to residents in this state in accordance with the provisions of Sections 1 through 9 of this act, without being required to transact the sale and shipment of those wines through the Alcoholic Beverage Control Division of the department.

(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 department.

(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 department 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 department 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 or to the sale or storage of alcoholic beverages in a historic district that is listed in the National Register of

Historic Places, is a qualified resort area and is located in a municipality having a population greater than one hundred thousand (100,000) according to the latest federal decennial census.

(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 17. Section 67-1-53, Mississippi Code of 1972, is amended as follows:

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

(2) Every applicant for each type of permit authorized by Section 67-1-51 shall give notice of such application by publication for two (2) consecutive issues in a newspaper of general circulation published in the city or town in which

applicant's place of business is located. However, in instances where no newspaper is published in the city or town, then the notice shall be published in a newspaper of general circulation published in the county where the applicant's business is located. If no newspaper is published in the county, the notice shall be published in a qualified newspaper which is published in the closest neighboring county and circulated in the county of applicant's residence. The notice shall be printed in ten-point black face type and shall set forth the type of permit to be applied for, the exact location of the place of business, the name of the owner or owners thereof, and if operating under an assumed name, the trade name together with the names of all owners, and if a corporation, the names and titles of all officers. The cost of such notice shall be borne by the applicant. The provisions of this subsection (2) shall not apply to applicants for a direct wine shipper's permit under Sections 1 through 9 of this act.

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

SECTION 18. 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 * * * department until the applicant has first filed with the * * * department 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 percent (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 *** * *** department 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 ($500.00) or imprisoned for not more than one (1) year, or both,

and the person or applicant shall never again be eligible for any permit pertaining to alcoholic beverages.

The provisions of this section shall not apply to persons applying for a direct wine shipper's permit under Sections 1 through 9 of this act.

SECTION 19. Section 67-1-57, Mississippi Code of 1972, is amended as follows:

67-1-57. Before a permit is issued the *** * *** department shall satisfy itself:

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

(b) That, except in the case of an application for a solicitor's permit, the applicant is the true and actual owner of the business for which the permit is desired, and that he intends to carry on the business authorized for himself and not as the agent of any other person, and that he intends to superintend in person the management of the business or that he will designate a

manager to manage the business for him; except for managers employed by the holder of a direct wine shipper's permit, any manager must be approved by the * * * department and must possess all of the qualifications required of a permittee.

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

(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 * * * department 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 * * * department 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 * * * department 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.

(l) That the applicant and the applicant's key employees, as determined by the * * * department, 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 * * * department 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 department may waive the fingerprint requirement in the case of an applicant for a direct wine shipper's permit. The * * * department shall not deny employment to an employee of the applicant prior to the identification of a disqualifying record or other disqualifying information.

SECTION 20. Section 67-1-73, Mississippi Code of 1972, is amended as follows:

67-1-73. (1) Except as otherwise provided in subsection (3) of this section, every manufacturer, including native wine producers, within or without the state, and every other shipper of alcoholic beverages who sells any alcoholic beverage, including

native wine, within the state, shall, at the time of making such sale, file with the * * * department a copy of the invoice of such sale showing in detail the kind of alcoholic beverage sold, the quantities of each, the size of the container and the weight of the contents, the alcoholic content, and the name and address of the person to whom sold.

(2) Except as otherwise provided in subsection (3) of this section, every person transporting alcoholic beverages, including native wine, within this state to a point within this state, whether such transportation originates within or without this state, shall, within five (5) days after delivery of such shipment, furnish the * * * department a copy of the bill of lading or receipt, showing the name or consignor or consignee, date, place received, destination, and quantity of alcoholic beverages delivered. Upon failure to comply with the provisions of this section, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of Fifty Dollars ($50.00) for each offense.

(3) Information regarding the sales, shipment, delivery and transportation of wine in this state by the holder of a direct wine shipper's permit under Sections 1 through 9 of this act shall be in such form and content as prescribed by the department.

SECTION 21. Section 97-31-47, Mississippi Code of 1972, is amended as follows:

97-31-47. It shall be unlawful for any transportation company, or any agent, employee, or officer of such company, or any other person, or corporation to transport into or deliver in this state in any manner or by any means any spirituous, vinous, malt, or other intoxicating liquors or drinks, or for any such person, company, or corporation to transport any spirituous, malt, vinous, or intoxicating liquors or drinks from one place within this state to another place within the state, or from one (1) point within this state to any point without the state, except in cases where this chapter, *** * *** Section 67-9-1, or Sections 1 through 9 of this act authorizes the transportation.

SECTION 22. Section 97-31-49, Mississippi Code of 1972, is amended as follows:

97-31-49. Except as otherwise provided in Sections 1 through 9 of this act, it shall be unlawful for any person, firm or corporation in this state, in person, by letter, circular, or other printed or written matter, or in any other manner, to solicit or take order in this state for any liquors, bitters or drinks prohibited by the laws of this state to be sold, bartered, or otherwise disposed of. The inhibition of this section shall apply to such liquors, bitters and drinks, whether the parties intend that the same shall be shipped into this state from outside of the state, or from one point in this state to another point in this state. If such order be in writing, parol evidence thereof is admissible without producing or accounting for the absence of

the original; and the taking or soliciting of such orders is within the inhibition of this section, although the orders are subject to approval by some other person, and no part of the price is paid, nor any part of the goods is delivered when the order is taken.

SECTION 23. This act shall take effect and be in force from and after July 1, 2016.

ST: Alcoholic beverages; allow direct sales and shipments of wine to be made to residents in this state.