MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Roberson

To: Judiciary A; Ways and Means

HOUSE BILL NO. 564

AN ACT TO BRING FORWARD SECTION 67-1-5, MISSISSIPPI CODE OF 1972, WHICH DEFINES CERTAIN TERMS UNDER THE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW, FOR THE PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 67-1-5, Mississippi Code of 1972, is brought forward as follows:

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

(a) "Alcoholic beverage" means any alcoholic liquid, including wines of more than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include light wine, light spirit product and beer, as defined in Section 67-3-3, Mississippi Code of 1972, but shall include native wines. The words "alcoholic beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes or beer of an alcoholic content of more than eight percent (8%) by weight if the beer is legally manufactured in this state for sale in another state.

(b) "Alcohol" means the product of distillation of any fermented liquid, whatever the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

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

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

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

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

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

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

(i) "State Tax Commission," "commission" or "department" means the Department of Revenue of the State of Mississippi, which shall create a division in its organization to be known as the Alcoholic Beverage Control Division. Any reference to the commission or the department hereafter means the powers and duties of the Department of Revenue with reference to supervision of the Alcoholic Beverage Control Division.

(j) "Division" means the Alcoholic Beverage Control Division of the Department of Revenue.

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

(l) "Hotel" means an establishment within a municipality, or within a qualified resort area approved as such by the department, where, in consideration of payment, food and lodging are habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations. Hotels in towns or cities of more than twenty-five thousand (25,000) population are similarly defined except that they must have fifty (50) or more sleeping rooms. Any such establishment described in this paragraph with less than fifty (50) beds shall operate one or more regular dining rooms designed to be constantly frequented by customers each day. When used in this chapter, the word "hotel" shall also be construed to include any establishment that meets

the definition of "bed and breakfast inn" as provided in this section.

(m) "Restaurant" means:

(i) A place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals commonly ordered at various hours of the day; the service of such food as sandwiches and salads only shall not be deemed in compliance with this requirement. Except as otherwise provided in this paragraph, no place shall qualify as a restaurant under this chapter unless twenty-five percent (25%) or more of the revenue derived from such place shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to twenty-five percent (25%) or more of total revenue; or

(ii) Any privately owned business located in a building in a historic district where the district is listed in the National Register of Historic Places, where the building has a total occupancy rating of not less than one thousand (1,000) and where the business regularly utilizes ten thousand (10,000) square feet or more in the building for live entertainment, including not only the stage, lobby or area where the audience sits and/or stands, but also any other portion of the building necessary for

the operation of the business, including any kitchen area, bar area, storage area and office space, but excluding any area for parking. In addition to the other requirements of this subparagraph, the business must also serve food to guests for compensation within the building and derive the majority of its revenue from event-related fees, including, but not limited to, admission fees or ticket sales to live entertainment in the building, and from the rental of all or part of the facilities of the business in the building to another party for a specific event or function.

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

(i) Organized or created under the laws of this 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 department 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 department, 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 department 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 department. The department may not approve an area as a qualified resort area after July 1, 2018, if any portion of such proposed area is located within two (2) miles of a convent or monastery that is located in a county traversed by Interstate 55 and U.S. Highway 98. A convent or monastery may waive such distance restrictions in favor of allowing approval by the department of an area as a qualified resort area. Such waiver shall be in written form from the owner, the governing body, or the appropriate officer of the convent or monastery having the authority to execute such a waiver, and the waiver shall be filed with and verified by the department before becoming effective.

(i) The department 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 department; however, such

declaration may only be initiated in a written request for resort area status made to the department 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, tennis courts and related facilities and swimming pool and related facilities where the golf course, tennis courts and related facilities and swimming pool and related facilities are 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; however, the governing authorities of such a municipality may by ordinance:

a. Specify the hours of operation of facilities that offer alcoholic beverages for sale;

b. Specify the percentage of revenue that facilities that offer alcoholic beverages for sale must derive from the preparation, cooking and serving of meals and not from the sale of beverages;

c. Designate the areas in which facilities that offer alcoholic beverages for sale may be located;

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

8. a. Land that is located in any county in which Mississippi Highway 43 and Mississippi Highway 25 intersect and:

A. Owned by the Pearl River Valley Water Supply District, and/or

B. Located within the Reservoir Community District, zoned commercial, east of Old Fannin Road, north of Regatta Drive, south of Spillway Road, west of Hugh Ward Boulevard and accessible by Old Fannin Road, Spillway Road, Spann Drive and/or Lake Vista Place, and/or

C. Located within the Reservoir Community District, zoned commercial, west of Old Fannin Road, south of Spillway Road and extending to the boundary of the corporate limits of the City of Flowood, Mississippi;

b. The board of supervisors of such county, with respect to B and C of item 8.a., may by resolution or other order:

A. Specify the hours of operation of facilities that offer alcoholic beverages for sale,

B. Specify the percentage of revenue that facilities that offer alcoholic beverages for sale

must derive from the preparation, cooking and serving of meals and not from the sale of beverages, and

C. Designate the areas in which facilities that offer alcoholic beverages for sale may be located;

9. Any facility located on property that is a game reserve with restricted access that consists of at least eight hundred (800) contiguous acres with no public roads, that offers as a service hunts for a fee to overnight guests of the facility, and has accommodations for at least fifty (50) overnight guests;

10. Any facility that:

a. Consists of at least six thousand (6,000) square feet being heated and cooled along with an additional adjacent area that consists of at least two thousand two hundred (2,200) square feet regardless of whether heated and cooled,

b. For a fee is used to host events such as weddings, reunions and conventions,

c. Provides lodging accommodations regardless of whether part of the facility and/or located adjacent to or in close proximity to the facility, and

d. Is located on property that consists of at least thirty (30) contiguous acres;

11. Any facility and related property:

a. Located on property that consists of at least one hundred twenty-five (125) contiguous acres and consisting of an eighteen (18) hole golf course, and/or located in a facility that consists of at least eight thousand (8,000) square feet being heated and cooled,

b. Used for the purpose of providing meals and hosting events, and

c. Used for the purpose of teaching culinary arts courses and/or turf management and grounds keeping courses, and/or outdoor recreation and leadership courses;

12. Any facility and related property that:

a. Consist of at least eight thousand (8,000) square feet being heated and cooled,

b. For a fee is used to host events,

c. Is used for the purpose of culinary arts courses, and/or outdoor recreation and leadership courses;

13. The clubhouse and associated golf course where the golf course is adjacent to one or more residential developments and the golf course and all such developments collectively include at least two hundred (200) acres and at least one hundred fifty (150) residential units and are located a. in a county that has voted against coming out from under the dry law; and b. outside of but in close proximity to a municipality in such county which has voted under Section 67-1-14, after January 1, 2013, to come out from under the dry law;

14. The clubhouse and associated eighteen (18) hole golf course located in a municipality traversed by Interstate Highway 55 and U.S. Highway 51 that has voted to come out from under the dry law;

15. Land that is planned for mixed use development and consists of at least two hundred (200) contiguous acres with one or more planned residential developments collectively planned to include at least two hundred (200) residential units when completed and which land is located:

a. In a county that has voted to come out from under the dry law,

b. Outside the corporate limits of any municipality in such county and adjacent to or in close proximity to a golf course located in a municipality in such county, and

c. Within one (1) mile of a state institution of higher learning;

16. Any facility with a capacity of five hundred (500) people or more, to be used as a venue for private events, on a tract of land in the Southwest Quarter of Section 33, Township 2 South, Range 7 East, of a county where U.S. Highway 45 and U.S. Highway 72 intersect and that has not voted to come out from under the dry law;

17. One hundred five (105) contiguous acres, more or less, located in Hinds County, Mississippi, and in the City of Jackson, Mississippi, whereon are constructed a variety of

buildings, improvements, grounds or objects for the purpose of holding events thereon to promote agricultural and industrial development in Mississippi;

18. Land that is owned by a state institution of higher learning and:

a. Located entirely within a county that has elected by majority vote not to permit the transportation, storage, sale, distribution, receipt and/or manufacture of light wine and beer pursuant to Section 67-3-7, and

b. Adjacent to but outside the incorporated limits of a municipality that has elected by majority vote to permit the sale, receipt, storage and transportation of light wine and beer pursuant to Section 67-3-9.

If any portion of the land described in this item 18 has been declared a qualified resort area by the department before July 1, 2020, then that qualified resort area shall be incorporated into the qualified resort area created by this item 18;

19. Any facility and related property:

a. Used as a flea market or similar venue during a weekend (Saturday and Sunday) immediately preceding the first Monday of a month and having an annual average of at least one thousand (1,000) visitors for each such weekend and five hundred (500) vendors for Saturday of each such weekend, and

b. Located in a county that has not voted to come out from under the dry law and outside of but in

close proximity to a municipality located in such county and which municipality has voted to come out from under the dry law;

20. Blocks 1, 2 and 3 of the original town square in any municipality with a population in excess of one thousand five hundred (1,500) according to the latest federal decennial census and which is located in:

a. A county traversed by Interstate 55 and Interstate 20, and

b. A judicial district that has not voted to come out from under the dry law;

21. Any municipality with a population in excess of two thousand (2,000) according to the latest federal decennial census and in which is located a part of White's Creek Lake and in which U.S. Highway 82 intersects with Mississippi Highway 9 and located in a county that is partially bordered on one (1) side by the Big Black River; however, the governing authorities of such a municipality may by ordinance:

a. Specify the hours of operation of facilities that offer alcoholic beverages for sale;

b. Specify the percentage of revenue that facilities that offer alcoholic beverages for sale must derive from the preparation, cooking and serving of meals and not from the sale of beverages; and

c. Designate the areas in which facilities that offer alcoholic beverages for sale may be located.

22. A restaurant located on a two-acre tract adjacent to a five-hundred-fifty-acre lake in the northeast corner of a county traversed by U.S. Interstate 55 and U.S. Highway 84.

23. Any tracts of land in Oktibbeha County, situated east of Mississippi Boulevard, north of Coliseum Boulevard and east of Montgomery Hill Road, and not located on the property of a state institution of higher learning.

The status of these municipalities, districts, clubhouses, facilities, golf courses and areas described in subparagraph (iii) of this paragraph (o) as qualified resort areas does not require any declaration of same by the department.

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

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

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

(s) "Board" shall refer to the Board of Tax Appeals of the State of Mississippi.

(t) "Spa facility" means an establishment within a municipality or qualified resort area and owned by a hotel where, in consideration of payment, patrons receive from licensed professionals a variety of private personal care treatments such as massages, facials, waxes, exfoliation and hairstyling.

(u) "Art studio or gallery" means an establishment within a municipality or qualified resort area that is in the sole

business of allowing patrons to view and/or purchase paintings and other creative artwork.

(v) "Cooking school" means an establishment within a municipality or qualified resort area and owned by a nationally recognized company that offers an established culinary education curriculum and program where, in consideration of payment, patrons are given scheduled professional group instruction on culinary techniques. For purposes of this paragraph, the definition of cooking school shall not include schools or classes offered by grocery stores, convenience stores or drugstores.

(w) "Campus" means property owned by a public school district, community or junior college, college or university in this state where educational courses are taught, school functions are held, tests and examinations are administered or academic course credits are awarded; however, the term shall not include any "restaurant" or "hotel" that is located on property owned by a community or junior college, college or university in this state, and is operated by a third party who receives all revenue generated from food and alcoholic beverage sales.

SECTION 2. This act shall take effect and be in force from and after July 1, 2021.