

4/13/15

9:50 A.M.

Chapter No. 438  
15/SS26/R333  
CRS 1TB/SR

***SENATE BILL NO. 2071***

Originated in Senate *Arwelch* Secretary

SENATE BILL NO. 2071

AN ACT TO AMEND SECTIONS 27-71-335, 67-1-18, 67-1-72, 67-3-13, 67-3-15 AND 67-3-57, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT LIGHT WINE AND BEER UPON WHICH TAXES HAVE FAILED TO BE PAID, THAT IS POSSESSED IN A DRY COUNTY, THAT IS MANUFACTURED WITHOUT A PERMIT OR POSSESSED OR SOLD BY A RETAILER WITHOUT A PERMIT, SHALL BE SEIZED AND DISPOSED OF IN THE SAME MANNER AS PROVIDED FOR THE SEIZURE AND DISPOSAL OF ALCOHOLIC BEVERAGES; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 27-71-335, Mississippi Code of 1972, is amended as follows:

27-71-335. Any light wines or beer found at any point within this state which has been in the possession of any wholesaler or distributor for a period of more than forty-eight (48) hours and any light wines or beer transported into this state from a point outside this state, or from point-to-point within this state in violation of the provisions of this article, or any light wines or beer held or possessed by any person within this state on which the legal and proper tax has not been paid when due, whether such person be a wholesaler, retailer or distributor, or individual,

and whether \* \* \* the light wines or beer be for sale or storage or individual use, except light wines or beer in possession of a licensed wholesaler or distributor for a period of time less than forty-eight (48) hours after receipt of \* \* \* the light wines or beer within this state, and light wines or beer held in storage by licensed manufacturers or producers, are hereby declared to be contraband goods, and there is hereby imposed and assessed, as tax and penalty, to be collected by the commissioner, an amount equal to the amount of the excise tax otherwise imposed under the Mississippi Wine and Beer Tax Law, plus a penalty of one hundred percent (100%) of the amount of \* \* \* the tax; or, at the option of the commissioner, the \* \* \* light wines or beer may be seized by the commissioner or his agents or any sheriff, or other lawful officer, and shall be dealt with in the \* \* \* same manner \* \* \* as provided for in Section 67-1-18 for alcoholic beverages.

\* \* \*

**SECTION 2.** Section 67-1-18, Mississippi Code of 1972, is amended as follows:

67-1-18. (1) Any alcoholic beverage, light wine, beer or raw material seized under the authority of this chapter, Chapter 3 of Title 67, or Chapter 31 of Title 97, Mississippi Code of 1972, shall be submitted to the custody of the Mississippi \* \* \* Department of Revenue for disposition.

(2) The \* \* \* department shall not dispose of any alcoholic beverage, light wine, beer or raw material without first having a

hearing with reasonable notice to all individuals having an interest in \* \* \* the property and an opportunity for them to appear and establish their right or claim to the property. \* \* \* If no appeal is requested by the passage of the appropriate deadline, the \* \* \* department shall \* \* \* require the alcoholic beverages, light wine, beer or raw materials to be \* \* \* sold for the benefit of the state or destroyed.

(3) (a) If the \* \* \* department orders the property, other than alcoholic beverages, sold, then the \* \* \* property shall be sold to the highest bidder, \* \* \* the bidder being any person, firm or government agency. The offer for sale shall be made to not less than three (3) qualified prospective buyers, by mailing them an invitation to bid, which shall describe the property, terms of sale, method of delivery, manner of bidding and fixing a time of not more than fifteen (15) days from the date of invitation for opening of bids received by the \* \* \* department.

(b) All bids and payment shall be made in the manner as prescribed by the \* \* \* department. Bids, after opening, shall be subject to public inspection.

(4) If the \* \* \* department orders the sale of seized alcoholic beverages, it may place \* \* \* the alcoholic beverages in the state inventory to be sold to authorized retailers in the same manner as other alcoholic beverages in the state inventory are sold.

(5) Any appeal from a seizure and disposal made under this section shall be made pursuant to Section 67-1-72.

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

67-1-72. (1) Except as otherwise provided in this chapter, any applicant or holder of a permit issued under this chapter which is aggrieved by an action of the Department of Revenue to deny his application for a permit, to deny the renewal of his permit or to revoke or suspend his permit shall be allowed to appeal to the Board of Tax Appeals from this action. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that person received notice of the action of the department being aggrieved. If the person aggrieved fails to appeal within this fifteen-day period, the action of the Department of Revenue shall take effect as set out in the notice. The Department of Revenue retains the authority to change at any time the action aggrieved to in an appeal under this subsection. The applicant or holder of any permit issued under this chapter may waive his right to notice and opportunity to a hearing as provided by this subsection and agree to the action being taken by the department. The inability of the Department of Revenue to issue or renew a permit due to an incomplete application or due to the failure of the applicant to pay the annual privilege taxes and fees provided by Section

27-71-5 and/or the failure of the applicant to post or deposit the bond, cash or securities as required by Section 27-71-21 shall not constitute a denial for purposes of this subsection.

(2) Any applicant for approval as a manager of an establishment operating under a permit issued under this chapter or who holds the designation of an approved manager of an establishment operating under a permit issued under this chapter and who is aggrieved by an action of the Department of Revenue to deny his application for approval as a manager or to revoke or suspend his designation as an approved manager shall be allowed to appeal to the Board of Tax Appeals from this action. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that person received notice of the action of the department being aggrieved. If the person aggrieved fails to appeal within this fifteen-day period, the action of the Department of Revenue shall take effect as set out in the notice. The Department of Revenue retains the authority to change at any time the action aggrieved to in an appeal under this subsection. The applicant or holder of an approved manager designation may waive his right to notice and opportunity to a hearing as provided by this subsection and agree to the action being taken by the department. The inability of the Department of Revenue to consider an application for approval of an applicant as a manager due to an incomplete application shall

not constitute a denial of the application for purposes of this subsection.

(3) Any applicant for approval of an area or locality as a qualified resort area under this chapter who is aggrieved by the decision of the Department of Revenue to deny the qualified resort area as requested and any county or municipality wherein the proposed qualified resort area is located may appeal to the Board of Tax Appeals from such decision. This appeal is to be filed by the aggrieved applicant or by the affected county or municipality with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that the person or entity filing the appeal received notice of the decision of the Department of Revenue to deny the qualified resort area. If an appeal is not filed within this fifteen-day period, the decision of the Department of Revenue shall become final. The Department of Revenue retains the authority to change at any time the decision aggrieved to in an appeal under this subsection. The inability of the Department of Revenue to consider an application for the approval of an area or locality as a qualified resort area due to an incomplete application shall not constitute a denial of that application for purposes of this subsection.

(4) Any person, including any county or municipality in which the qualified resort area is located, who is aggrieved by the decision of the Department of Revenue to revoke the approval

of an area or locality as a qualified resort area may appeal to the Board of Tax Appeals from such decision. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that the person or entity filing the appeal received notice of the decision of the department to revoke approval of the qualified resort area. At the discretion of the Department of Revenue, in addition to any other notice to be provided under this subsection, the department may provide notice of its decision to revoke approval of the qualified resort area by publication in the same manner as provided by regulation when approval of a qualified resort area is sought. In regard to such publication, the fifteen-day period provided herein will begin on the date that notice is first published. If an appeal is not filed within this fifteen-day period, the decision of the Department of Revenue shall become final. The Department of Revenue retains the authority to change at any time the decision aggrieved to in an appeal under this subsection.

(5) Any person objecting to an application for the issuance or transfer of a permit, other than a temporary retailer's permit, issued under this chapter and who timely requests in writing a hearing on his objection shall be given a hearing before the Board of Tax Appeals unless the permit is denied by the Department of Revenue and an appeal is not taken by the applicant to the Board

of Tax Appeals from that denial or the applicant withdraws his application. Any written request for a hearing on an objection must be filed with the Department of Revenue within fifteen (15) days from the first date of publication of the notice of such application under Section 67-1-53. If the department determines that the permit should be denied, notice will be provided to the applicant as set out in subsection (1) of this section, and if the applicant timely requests a hearing on the denial as provided by this subsection (5), the department will advise the Executive Director of the Board of Tax Appeals and the applicant of the written request for a hearing on an objection to the permit. The hearing on the objection to the permit and the hearing on the appeal by the applicant from the denial of the department of the application shall be consolidated and heard by the Board of Tax Appeals at the same time. If the department determines that the permit should be issued, the department will advise the applicant and the Executive Director of the Board of Tax Appeals of the timely written request for a hearing on an objection to the application and a hearing will be set before the Board of Tax Appeals on this objection. If prior to the hearing, either the person requesting the hearing withdraws his request or the applicant withdraws his application, the hearing will be cancelled and the objection proceedings before the Board of Tax Appeals on the application will be dismissed as moot. In the case of such withdrawals, the Board of Tax Appeals is authorized to assess to

either or both parties any costs incurred by it prior to such withdrawal. The Department of Revenue retains authority to issue the permit to the applicant where the person objecting to the application withdraws his request for a hearing.

(6) Any person objecting to an application for approval by the Department of Revenue of a area or locality as a qualified resort area under this chapter and who timely requests in writing a hearing on his objection shall be given a hearing before the Board of Tax Appeals unless approval of the application is denied by the Department of Revenue and an appeal is not taken by the applicant or the county or municipality in which the proposed qualified resort area is located to the Board of Tax Appeals from that denial or the applicant withdraws his application. Any written request for a hearing on an objection must be filed with the Department of Revenue within fifteen (15) days from the first date of publication of the notice of such application as provided by regulation. If the department determines that the application for approval of the proposed area or locality as a qualified resort area should be denied, the department will proceed with denial of such application as set out in subsection (3) of this section, and if the applicant or the county or municipality in which the proposed qualified resort area is located timely requests a hearing on the denial as provided by subsection (3) of this section, the department will advise the Executive Director of the Board of Tax Appeals and the applicant of the written request

for a hearing on an objection to the application. The hearing on the objection to approval of the proposed qualified resort area and the hearing on the appeal from the denial of the department of the application for such approval shall be consolidated and heard by the Board of Tax Appeals at the same time. If the department determines that the proposed qualified resort area should be approved, the department will advise the applicant and the Executive Director of the Board of Tax Appeals of the timely written request for a hearing on an objection to the application and a hearing will be set before the Board of Tax Appeals on this objection. If prior to the hearing, either the person requesting the hearing withdraws his request or the applicant withdraws his application, the hearing will be cancelled and the objection proceedings before the Board of Tax Appeals on the application will be dismissed as moot. In the case of such withdrawals, the Board of Tax Appeals is authorized to assess to either or both parties any costs incurred by it prior to such withdrawal. The Department of Revenue retains authority to approve the proposed area or locality as a qualified resort area where the person objecting to the application withdraws his request for a hearing.

(7) Any person having an interest in any alcoholic beverages, light wine, beer or raw materials which the Department of Revenue intends to dispose of under Section 67-1-18 shall be given reasonable notice of this proposed disposal, and upon such notice, this person may request a hearing before the Board of Tax

Appeals to establish his right or claim to this property. This request for a hearing shall be filed with the Board of Tax Appeals, with a copy sent to the Department of Revenue, within fifteen (15) days from the date of receipt of the notice provided above by the person filing the request. If a request is not received by the Board of Tax Appeals within this fifteen-day period, the department may order the property disposed of in accordance with Section 67-1-18.

(8) Upon receipt of a written request for hearing or appeal as set out above, the executive director shall schedule a hearing before the Board of Tax Appeals on this request or appeal. A notice of the hearing shall be mailed to all persons or entities having an interest in the matter being heard which shall always include the person or entity filing the request or appeal for which the hearing is being set, the applicant or holder of any permit, approved manager status or qualified resort area status in issue, any person who filed a written request for a hearing on an objection to any application in issue and the Department of Revenue. This notice shall provide the date, time and location of the hearing. Mailing to the attorney representing a person or entity in the matter being heard shall be the same as mailing to the person or entity the attorney represents. Failure of the person or entity on whose request or appeal the matter was set for hearing to appear personally or through his designated representative at the hearing shall constitute an involuntary

withdrawal of his request or appeal. Upon such withdrawal, the Board of Tax Appeals shall note on the record the failure of the person or entity to appear at the hearing and shall dismiss the request or appeal and remand the matter back to the Department of Revenue for appropriate action.

(9) At any hearing before the Board of Tax Appeals on an appeal or hearing request as set out above, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing, the Board of Tax Appeals shall try the issues presented according to law and the facts and pursuant to any guidelines established by regulation. The rules of evidence shall be relaxed at the hearing and the hearing shall be recorded by a court reporter. After reaching a decision on the issues presented, the Board of Tax Appeals shall enter an order setting forth its findings and decision in the matter. A copy of the order of the Board of Tax Appeals shall be mailed to the person or entity filing the request or appeal which was heard, the applicant or holder of any permit, approved manager status or qualified resort area status in issue, any person who filed a written request for a hearing on an objection to any application in issue and the Department of Revenue to notify them of the findings and decision of the Board of Tax Appeals.

**SECTION 4.** Section 67-3-13, Mississippi Code of 1972, is amended as follows:

67-3-13. (1) Except as otherwise provided herein and as authorized under this section and Section 67-9-1, in any county which has at any time since February 26, 1934, elected, or which may hereafter elect, to prohibit the transportation, storage, sale, distribution, receipt and/or manufacture of wine and beer of an alcoholic content of not more than four percent (4%) by weight in such county, it is hereby declared to be unlawful to possess such beverages therein. In any county which, after July 1, 1998, elects to prohibit the transportation, storage, sale, distribution, receipt and/or manufacture of wine and beer of an alcoholic content of not more than five percent (5%) by weight in such county, it is hereby declared to be unlawful to possess such beer therein. In any county which, after July 1, 2012, elects to prohibit the transportation, storage, sale, distribution, receipt and/or manufacture of wine of an alcoholic content of not more than five percent (5%) by weight in such county and beer of an alcoholic content of not more than eight percent (8%) by weight, it is hereby declared to be unlawful to possess such beer therein. Any person found possessing any beer or wine of any quantity whatsoever in such county shall, on conviction, be imprisoned not more than ninety (90) days or fined not more than Five Hundred Dollars (\$500.00), or be both so fined and imprisoned.

(2) Notwithstanding the provisions of subsection (1) of this section, in any county or municipality in which the transportation, storage, sale, distribution, receipt and/or

manufacture of light wine and beer is prohibited, it shall not be unlawful for a permitted wholesaler or distributor to possess light wine and beer when such light wine and beer is held therein solely for the purpose of storage and for distribution to other counties and municipalities in which possession of such beverages is lawful.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, in any county in which transportation, storage, sale, distribution, receipt and/or manufacture of light wine and beer is prohibited, it shall not be unlawful:

(a) To receive, store, possess or consume light wine or beer at a resort area as defined in Section 67-1-5;

(b) To distribute and transport light wine or beer to a resort area as defined in Section 67-1-5;

(c) To transport beer of an alcoholic content of more than eight percent (8%) by weight if it is being transported to another state for legal sale in that state;

(d) To transport homemade beer as authorized in Section 67-3-11.

(4) Any light wine or beer found in possession of, or sold by, a person in violation of this section shall be seized and disposed of in the manner provided for in Section 67-1-18.

**SECTION 5.** Section 67-3-15, Mississippi Code of 1972, is amended as follows:

67-3-15. (1) Any person who shall brew or manufacture or sell any beer or light wine without first having secured a permit and/or license from the commissioner authorizing the brewing or manufacture or sale of such liquor, shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for not more than one (1) year, or both, in the discretion of the court. Any person so convicted may not apply for any permit or license issued by the commissioner until five (5) years have elapsed from the date of such conviction.

(2) This section shall not apply to beer authorized to be made pursuant to Section 67-3-11.

(3) Any light wine or beer found in possession of, or sold by, a person in violation of this section shall be seized and disposed of in the manner provided for in Section 67-1-18.

**SECTION 6.** Section 67-3-57, Mississippi Code of 1972, is amended as follows:

67-3-57. (1) It shall be unlawful for any retailer to possess, sell or offer to sell, or to possess for purpose of sale, any light wine or beer at his place of business before securing a permit required by this chapter.

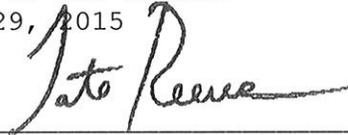
(2) It shall be unlawful for any person to possess, sell or offer to sell any light wine or beer at his place of business after revocation of his permit or to purchase, to sell or offer to

sell any light wine or beer during the period of suspension of his permit.

(3) Any light wine or beer found in possession of, or sold by, a person in violation of this section shall be seized and disposed of in the manner provided for in Section 67-1-18.

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

PASSED BY THE SENATE  
March 29, 2015



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PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 29, 2015



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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



\_\_\_\_\_  
GOVERNOR

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