

# SELECTED ALCOHOLIC BEVERAGE STATUTES

## CHAPTER 1

### Local Option Alcoholic Beverage Control

#### **§ 67-1-1. Short title.**

This chapter shall be known and may be cited as the "Local Option Alcoholic Beverage Control Law" of the State of Mississippi.

**Sources:** Codes, 1942, § 10265-02; Laws, 1966, ch. 540, § 2, eff from and after July 1, 1966.

#### **§ 67-1-3. Prohibition reannounced as law of state.**

The policy of this state is reannounced in favor of prohibition of the manufacture, sale, distribution, possession and transportation of intoxicating liquor; and the provisions against such manufacture, sale, distribution, possession and transportation of intoxicating liquor, as contained in Chapter 31 of Title 97, Mississippi Code of 1972 and elsewhere, are hereby redeclared the law of this state. The purpose and intent of this chapter is to vigorously enforce the prohibition laws throughout the state, except in those counties and municipalities voting themselves out from under the prohibition law in accordance with the provisions of this chapter, and, in those counties and municipalities, to require strict regulation and supervision of the manufacture, sale, distribution, possession and transportation of intoxicating liquor under a system of state licensing of manufacturers, wholesalers and retailers, which licenses shall be subject to revocation for violations of this chapter.

All laws and parts of laws in conflict with this chapter are repealed only to the extent of such conflict; however, except as is provided in this chapter, all laws prohibiting the manufacture, sale, distribution and possession of alcoholic beverages, which are not in conflict with this chapter shall remain in full force and effect, and all such laws shall remain in full force and effect in counties and municipalities wherein the manufacture, sale, distribution and possession of alcoholic beverages has not been authorized as a result of an election held under Section 67-1-11 or Section 67-1-14, Mississippi Code of 1972, or as otherwise provided in this chapter.

**Sources:** Codes, 1942, §§ 10265-01, 10265-36; Laws, 1966, §§ 1, 36; Laws, 1990, ch. 569, § 2, eff from and after passage (approved April 9, 1990).

**§ 67-1-5. Definitions.**

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 wine containing five percent (5%) or less of alcohol by weight and shall not include beer containing not more than five percent (5%) of alcohol by weight, as provided for in Section 67-3-5, 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.
- (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 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) "Commission" means the State Tax Commission 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 hereafter means the powers and duties of the State Tax Commission with reference to supervision of the Alcoholic Beverage Control Division.
- (j) "Division" means the Alcoholic Beverage Control Division of the State Tax Commission.

- (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 commission, 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 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. 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.
- (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 commission may, in its discretion, waive the five-year provision of this paragraph. In order to qualify under this paragraph, a club must file with the commission, at the time of its application for a license under this chapter, two (2) copies of a list of the names and residences of its members and similarly file, within ten (10) days after the election of any additional member, his name and address. Each club applying for a license shall also file with the commission at the time of the application a copy of its articles of association, charter of incorporation, bylaws or other instruments governing the business and affairs thereof.

(o) "Qualified resort area" means any area or locality outside of the limits of incorporated municipalities in this state commonly known and accepted as a place which regularly and customarily attracts tourists, vacationists and other transients because of its historical, scenic or recreational facilities or attractions, or because of other attributes which regularly and customarily appeal to and attract tourists, vacationists and other transients in substantial numbers; however, no area or locality shall so qualify as a resort area until it has been duly and properly approved as such by the commission.

- (i) The commission may approve an area or locality outside of the limits of an incorporated municipality that is in the process of being developed as a qualified resort area if such area or locality, when developed, can reasonably be expected to meet the requisites of the definition of the term "qualified resort area." In such a case, the status of qualified resort area shall not take effect until completion of the development.
- (ii) The term includes any state park which is declared a resort area by the commission; however, such declaration may only be initiated in a written request for resort area status made to the commission by the Executive Director of the Department of Wildlife, Fisheries and Parks, and no permit for the sale of any alcoholic beverage, as defined in this chapter, except an on-premises retailer's permit, shall be issued for a hotel, restaurant or bed and breakfast inn in such park.
- (iii) The term includes:
  1. The clubhouses associated with the state park golf courses at the Lefleur's Bluff State Park, the John Kyle State Park, the Percy Quin State Park and the Hugh White State Park; and
  2. The clubhouse and associated golf course where the golf course is adjacent to one or more planned residential developments and the golf

course and all such developments collectively include at least seven hundred fifty (750) acres and at least four hundred (400) residential units.

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

- (p) "Native wine" means any product, produced in Mississippi for sale, having an alcohol content not to exceed twenty-one percent (21%) by weight and made in from the alcoholic fermentation of the juice of ripe grapes, fruits, berries 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 commission 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" mean s 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.

**Sources:** Codes, 1942, § 10265-05; Laws, 1966, ch. 540, § 5; Laws, 1976, ch. 467, § 12; Laws, 1977, ch. 488, § 2; Laws, 1980, ch. 348, § 1; Laws, 1984, ch. 425, § 1; Laws, 1987, ch. 358; Laws, 1988, ch. 384; Laws, 1990, ch. 569, § 3; Laws, 1994, ch. 558, § 20; Laws, 1998, ch. 306, § 2; Laws, 1999, ch. 453, § 19; Laws, 2004, ch. 397, § 1, eff from and after July 1, 2004.

#### **§ 67-1-7. General applicability of chapter.**

(1) Except as otherwise provided in Section 67-9-1 for the transportation and possession of limited amounts of alcoholic beverages for the use of an alcohol processing permittee, and subject to all of the provisions and restrictions contained in this chapter, the manufacture, sale, distribution, possession and transportation of alcoholic beverages shall be lawful, subject to the restrictions hereinafter imposed, in those counties and municipalities of this state in which, at a local option election called and held for that purpose under the provisions of this chapter, a majority of the qualified electors voting in such election shall vote in favor thereof. The manufacture, sale and distribution of alcoholic beverages shall not be permissible or lawful in counties except in (a)

incorporated municipalities located within such counties, (b) qualified resort areas within such counties approved as such by the State Tax Commission, or (c) clubs within such counties, whether within a municipality or not. The manufacture, sale, distribution and possession of native wines shall be lawful in any location within any such county except those locations where the manufacture, sale or distribution is prohibited by law other than this section or by regulations of the commission.

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

**Sources:** Codes, 1942, § 10265-04; Laws, 1966, ch. 540, § 4; Laws, 1976, ch. 467, § 13; Laws, 1990, ch. 569, § 4; Laws, 1994, ch. 558, § 21; Laws, 1996, ch. 417, § 1; Laws, 2004, ch. 397, § 2, eff from and after July 1, 2004.

**§ 67-1-9. Alcoholic beverages prohibited except as authorized in this chapter; penalties.**

(1) It shall be unlawful for any person to manufacture, distill, brew, sell, possess, import into this state, export from the state, transport, distribute, warehouse, store, solicit, take order for, bottle, rectify, blend, treat, mix or process any alcoholic beverage except as authorized in this chapter. However, nothing contained herein shall prevent importers, wineries and distillers of alcoholic beverages from storing such alcoholic beverages in private bonded warehouses located within the State of Mississippi for the ultimate use and benefit of the State Tax Commission as provided in Section 67-1-41. The commission is hereby authorized to promulgate rules and regulations for the establishment of such private bonded warehouses and for the control of alcoholic beverages stored in such warehouses. Additionally, nothing herein contained shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or prevent any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution. Any drugstore employing a licensed pharmacist may possess and use alcoholic liquors in the combination of prescriptions of duly licensed physicians. The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this chapter.

(2) Any person, upon conviction of any provision of this section, shall be punished as follows:

(a) By a fine of not less than One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail not less than one (1) week nor more than three (3) months, or both, for the first conviction under this section.

(b) By a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the county jail not less than sixty (60) days, nor more than six (6) months, or both fine and imprisonment, for the second conviction for violating this section.

(c) By a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the State Penitentiary not less than one (1) year, nor more than five (5) years, or both fine and imprisonment, for conviction the third time under this section for the violation thereof after having been twice convicted of its violation.

**Sources:** Codes, 1942, § 10265-06; Laws, 1966, ch. 540, § 6; Laws, 1985, ch. 412; Laws, 1993, ch. 505, § 1, eff from and after July 1, 1993.

**§ 67-1-10. Penalties for owning, controlling or possessing illegal distillery, or parts thereof; exceptions.**

It shall be unlawful for any person, firm or corporation to own or control or have in such person's, firm's or corporation's possession any distillery commonly called a still or any integral part thereof. It shall not be unlawful to own or have in possession a distillery or still in the following circumstances:

(a) Where the same is used exclusively for the distillation of rosin products;

(b) Where the same is used exclusively for the distillation of water;

(c) Where the same is kept and lawfully used in any laboratory;

(d) Where the same is in the possession of any officers of the law, to be disposed of according to law; or

(e) Where the person or corporation can prove that the same is in his or their possession for the purpose of being delivered up to an officer of the law to be disposed of according to law. Any person guilty of violating this section shall be guilty of a felony and upon conviction thereof shall be confined in the State Penitentiary not less than one (1) year, nor more than three (3) years for a first offense, and for a second offense he shall be confined in the State Penitentiary not less than five (5), nor more than ten (10) years.

**Sources:** Laws, 1993, ch. 505, § 2, eff from and after July 1, 1993.

**§ 67-1-11. Local option election to render chapter effective in county.**

- (1) Notwithstanding any provision of this chapter, the legalizing provisions of this chapter, except as authorized under Section 67-9-1 and Section 67-1-7(2), shall not be effective, applicable or operative in any county unless and until a local option election shall be called and held in such county in the manner and with the results hereinafter provided.
- (2) Upon presentation and filing of a proper petition requesting same signed by at least twenty percent (20%) or fifteen hundred (1,500), whichever number is the lesser, of the qualified electors of the county, it shall be the duty of the board of supervisors to call an election at which there shall be submitted to the qualified electors of the county the question of whether or not the sale, distribution and possession of alcoholic liquors shall be permitted in such county as provided in this chapter. Such election shall be held and conducted by the county election commissioners on a date fixed by the order of the board of supervisors, which date shall not be more than sixty (60) days from the date of the filing of said petition. Notice thereof shall be given by publishing such notice once each week for at least three (3) consecutive weeks in some newspaper published in said county or, if no newspaper be published therein, by such publication in a newspaper in an adjoining county and having a general circulation in the county involved. The election shall be held not earlier than fifteen (15) days from the first publication of such notice.
- (3) Said election shall be held and conducted as far as may be possible in the same manner as is provided by law for the holding of general elections. The ballots used thereat shall contain a brief statement of the proposition submitted and, on separate lines, the words "I vote FOR coming out from under the dry law in \_\_\_\_\_ County ( )" "I vote AGAINST coming out from under the dry law in \_\_\_\_\_ County ( )" with appropriate boxes in which the voters may express their choice. All qualified electors may vote by marking the ballot with a cross (x) or check ( ) mark opposite the words of their choice.
- (4) The election commissioners shall canvass and determine the results of said election, and shall certify same to the board of supervisors which shall adopt and spread upon its minutes an order declaring such results. If, in such election, a majority of the qualified electors participating therein shall vote in favor of the proposition, this chapter shall become applicable and operative in such county and the manufacture, sale, distribution and possession of alcoholic beverages therein shall be lawful to the extent and in the manner permitted hereby. If, on the other hand, a majority of the qualified electors participating in the election shall vote against the proposition, this chapter, except for Section 67-9-1 and 67-1-7(2), shall not become effective and operative in such county and, except as otherwise provided under Section 67-9-1 and 67-1-7(2), all laws prohibiting and regulating the manufacture, sale, distribution and possession of intoxicating liquor shall remain in full force and effect and be administered and vigorously

prosecuted therein. In either case, no further election shall be held in said county under the provisions of this chapter for a period of two (2) years from the date of the prior election and then only upon the filing of a petition requesting same signed by at least twenty percent (20%) or fifteen hundred (1,500), whichever number is the lesser, of the qualified electors of the county as is otherwise provided herein.

**Sources:** Codes, 1942, § 10265-35; Laws, 1966, ch. 540, § 35; Laws, 1996, ch. 417, § 6; Laws, 2004, ch. 397, § 3, eff from and after July 1, 2004.

**§ 67-1-13. Local option election to render chapter ineffective in county.**

(1) When this chapter has been made effective and operative in any county as a result of an election called and held as provided in Section 67-1-11, the same may be made ineffective and inapplicable therein by an election called and held upon a petition filed with the board of supervisors requesting same signed by at least twenty percent (20%) or fifteen hundred (1500), whichever number is the lesser, of the qualified electors of the county as is otherwise provided in Section 67-1-11, all of the provisions of which shall be fully applicable thereto. However, nothing herein shall authorize or permit the calling and holding of any election under this chapter in any county more often than once every two (2) years. If in such election, a majority of the qualified electors participating therein shall vote against the legalized sale of intoxicating liquor, then the prohibition laws of the State of Mississippi, except as otherwise provided under Section 67-9-1 and 67-1-7(2), shall become applicable in said county.

(2) Notwithstanding an election reinstating the prohibition laws in a political subdivision, the holder of a native wine producer's permit or a native wine retailer's permit is allowed to continue to operate under such permits and to renew such permits. Possession of native wines and personal property related to the activities of the native wine permit holder which would otherwise be unlawful under prohibition shall be allowed subject to regulations of the Alcoholic Beverage Control Division.

**Sources:** Codes, 1942, § 10265-35; Laws, 1966, ch. 540, § 35; Laws, 1984, ch. 411; Laws, 1996, ch. 417, § 7; Laws, 2004, ch. 397, § 4, eff from and after July 1, 2004.

**§ 67-1-14. Local option election to render chapter ineffective in certain municipalities.**

(1) The legalizing provisions of this chapter may be effective, applicable and operative in any municipality located in a county which has voted against coming out from under the dry law if a local option election shall be called and held in such municipality in the manner and with the results hereinafter provided.

(2) (a) Any municipality in this state having a population of not less than six thousand (6,000) according to the latest federal census, all or any portion of which is located within five (5) miles of the Tennessee-Tombigbee Waterway and which is located

in a county which has voted against coming out from under the dry law, may, at an election held for the purpose under the election laws applicable to such municipality, either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale, and the receipt, storage and transportation for the purpose of sale, of alcoholic beverages. An election to determine whether such sale and possession shall be permitted in municipalities wherein its sale and possession is prohibited by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. In like manner, an election to determine whether such sale and possession shall be prohibited in municipalities wherein its sale is permitted by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. No election on either question shall be held by any one (1) municipality more often than once in two (2) years.

Thirty (30) days' notice shall be given to the qualified electors of such municipality, in the manner prescribed by law, upon the question of either permitting or prohibiting such sale and possession, such notice to contain a statement of the question to be voted on at the election. The ballots to be used in the election shall have the following words printed thereon: "For the legal sale of alcoholic liquors," and the words "Against the legal sale of alcoholic liquors" next choice.

If in the election a majority of the qualified electors voting in the election shall vote "for the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order permitting the legal sale of such alcoholic beverages in such municipality. If in the election a majority of the qualified electors voting in the election shall vote "against the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order prohibiting the sale of alcoholic beverages in such municipality.

(b) The provisions of this subsection shall also apply to any municipality having a population of not less than six thousand (6,000) according to the latest federal census, a portion of which is located in a county which has voted against coming out from under the dry law and a portion of which is located in a county which has voted in favor of coming out from under the dry law. For the purpose of determining whether or not such a municipality meets the threshold population of six thousand (6,000) which will qualify the municipality to hold an election under this subsection, the entire population of the municipality shall be considered; however, the petition to hold the election authorized in this subsection shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality who reside in that portion of the municipality located in a county which has voted against coming out from under the dry law and the election shall be held only in that portion of the municipality. In all other respects, the authority for the holding of elections and the manner in which such elections shall be conducted shall be as prescribed in paragraph (a) of this

subsection; and, after proper certification of election results, the municipal governing authorities shall pass the appropriate order to permit or prohibit the legal sale of alcoholic beverages in that portion of the municipality located in a county which has voted against coming out from under the dry law.

**Sources:** Laws, 1990, ch. 569, § 1; Laws, 1993, ch. 445, § 1; Laws, 1996, ch. 417, § 8, eff from and after July 1, 1996.

**§ 67-1-15. Local option elections in counties having two judicial districts.**

In any county having two judicial districts, each such judicial district shall be construed to be a political subdivision or subdivision of government on the same basis as a county, and as such, a judicial district will be entitled to all of the rights, privileges, and immunities as a county for the purposes of authorizing the sale of intoxicating liquor therein under the provisions of this chapter.

**Sources:** Codes, 1942, § 10265-35; Laws, 1966, ch. 540, § 35, eff from and after July 1, 1966.

**§ 67-1-17. Unlawful possession of alcoholic beverages; seizure and sale.**

- (1) It shall be unlawful for any person to have or possess either alcoholic beverages or personal property intended for use in violating the provisions of this chapter, or regulations prescribed under this chapter, or Chapter 31 of Title 97, Mississippi Code of 1972. No property rights shall exist in any such personal property or alcoholic beverages. All such personal property and alcoholic beverages shall be considered contraband and shall be seized and forfeited to the state of Mississippi.
- (2) The following are subject to forfeiture:
  - (a) All alcoholic beverages which have been manufactured, distilled, distributed, dispensed or acquired in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;
  - (b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any alcoholic beverage in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;
  - (c) All property which is used, or intended for use, as a container for property described in items (a) or (b) of this subsection;
  - (d) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt, possession or concealment, of property described in item (a) of this subsection which is in excess of six (6) gallons or of property described in item (b) of this subsection; however,

- (i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;
- (ii) No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation; and
- (ii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;
- (e) All money, deadly weapons, books, records and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972.
- (3) Property subject to forfeiture may be seized by the alcoholic beverage control division and its agents, local law enforcement officers, Mississippi Highway Patrol officers and other law enforcement personnel charged by Section 67-1-91, with enforcing the provisions of this chapter upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:
  - (a) The Seizure is incident to an arrest or a search under a search warrant or an administrative inspection under Section 67-1-37(k);
  - (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter or Chapter 31 of Article 97, Mississippi Code of 1972; or
  - (c) The alcoholic beverage control division of the state tax commission and other law enforcement personnel described in this subsection have probable cause to believe that the property was used or is intended to be used in violation of this chapter or Chapter 31 of Article 97, Mississippi Code of 1972.
- (4) Alcoholic beverages and raw materials seized or detained under the authority of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, is deemed to be in the custody of the agent or agency so seizing the property and subject only to the orders and decrees of the court having jurisdiction over the property. When such property is seized it may be retained as evidence until final disposition of the

cause in which such property is involved, and then the agent or agency so seizing the property shall physically transfer such alcoholic beverage or raw material to the director of the alcoholic beverage control division of the state tax commission together with an appropriate inventory of the items seized. Alcoholic beverages and raw materials seized or detained under the authority of this section shall be disposed of in accordance with the provisions of Section 67-1-18.

- (5) Any property other than alcoholic beverages and raw materials seized or detained pursuant to this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, shall be deemed to be in the custody of the agent or agency so seizing the property and subject only to the orders and decrees of the court having jurisdiction over the property. When such property is seized it may be retained as evidence until the final disposition of the cause in which such property is involved. Property seized or detained other than alcoholic beverages or raw materials shall be disposed of in accordance with the provisions of Sections 67-1-93, 67-1-95 and 67-1-97.

**Sources:** Codes, 1942, § 10265-07; Laws, 1966, ch. 540, § 7; Laws, 1971, ch. 347, § 1; Laws, 1984, ch. 424, § 1, eff from and after passage (approved April 23, 1984).

### **CHAPTER 3**

#### **Sale of Light Wine, Beer, and Other Alcoholic Beverages**

##### **§ 67-3-1. Declaration of purpose.**

The purpose of this chapter is to legalize the manufacture and sale within this state of light wines and beer of an alcoholic content of not more than five percent (5%) by weight, and to regulate the business of manufacturing and of selling such liquors so as to prevent the illicit manufacture, sale, and consumption of liquors having an alcoholic content of more than five percent (5%) by weight, the manufacture and sale of which it is not the purpose of this chapter to legalize.

**Sources:** Codes, 1942, § 10211; Laws, 1934, ch. 171; Laws, 1998, ch. 306, § 3, eff from and after July 1, 1998.

##### **§ 67-3-3. Definitions.**

When used in this chapter, unless the context indicates otherwise:

(a) "Commissioner" means the Chairman of the State Tax Commission of the State of Mississippi, and his authorized agents and employees;

(b) "Person" means one or more persons, a company, a corporation, a partnership, a syndicate or an association;

(c) "Manufacturer" and "retailer" include brewpubs licensed pursuant to Article 3, Chapter 71, Title 27, Mississippi Code of 1972, unless otherwise clearly provided; and

(d) "Beer" means a malt beverage as defined in the Federal Alcohol Administration Act and any rules and regulations adopted pursuant to such act.

**Sources:** Codes, 1942, § 10210; Laws, 1934, ch. 171; Laws, 1998, ch. 308, § 8; Laws, 2003, ch. 322, § 1, eff from and after passage (approved Mar. 7, 2003.)

#### **§ 67-3-5. Light wines and beer legalized.**

It shall be lawful, subject to the provisions set forth in this chapter, in this state to transport, store, sell, distribute, possess, receive, and/or manufacture wine and beer of an alcoholic content of not more than five percent (5%) by weight, and it is hereby declared that it is the legislative intent that this chapter privileges the lawful sale and manufacture, within this state, of such light wines and beer. In determining if a wine product is "light wine," or contains an alcoholic content of more than five percent (5%) by weight, or is not an "alcoholic beverage" as defined in the Local Option Alcoholic Beverage Control Law, Chapter 1 of Title 67, Mississippi Code of 1972, the alcoholic content of such wine product shall be subject to the same permitted tolerance as is allowed by the labeling requirements for light wine provided for in Section 27-71-509.

**Sources:** Codes, 1942, §§ 10207, 10228; Laws, 1934, ch. 171; Laws, 1987, ch. 355, § 2; Laws, 1998, ch. 306, § 4, eff from and after July 1, 1998.

#### **§ 67-3-7. Local option elections in county.**

(1) If any county, at an election held for the purpose under the election laws of the state, shall by a majority vote of the duly qualified electors voting in the election determine that 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 shall not be permitted in such county, then the same shall not be permitted therein except as authorized under Section 67-9-1 and as may be otherwise authorized in this section. An election to determine whether such transportation, storage, sale, distribution, receipt and/or manufacture of such beverages shall be excluded from any county in the state, shall on a petition of twenty percent (20%) of the duly qualified electors of such county, be ordered by the board of supervisors thereof, for such county only. No election on the question shall be held in any one (1) county more often than once in five (5) years.

In counties which have elected, or may elect by a majority vote of the duly qualified electors voting in the election, that the transportation, storage, sale, distribution, receipt and/or manufacture of wine or beer of an alcoholic content of not more than five percent (5%) by weight shall not be permitted in said county, an election may be held in the same manner as the election hereinabove provided on the question of whether or not said transportation, storage, sale, distribution, receipt and/or manufacture of said beverages shall be permitted in such county. Such election shall be ordered by the board of

supervisors of such county on a petition of twenty percent (20%) of the duly qualified electors of such county. No election on this question can be ordered more often than once in five (5) years.

(2) Nothing in this section shall make it unlawful to possess beer or wine, as defined herein, in any municipality which has heretofore or which may hereafter vote in an election, pursuant to Section 67-3-9, in which a majority of the qualified electors vote in favor of permitting the sale and the receipt, storage and transportation for the purpose of sale of beer or wine as defined herein.

(3) Nothing in this section shall make it unlawful to:

(a) Possess or consume light wine or beer at a qualified resort area as defined in Section 67-1-5;

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

(c) Sell light wine or beer at a qualified resort area as defined in Section 67-1-5 if such light wine or beer is sold by a person with a permit to engage in the business as a retailer of light wine or beer.

**Sources:** Codes, 1942, § 10208; Laws, 1934, ch. 171; Laws, 1942, ch. 224; Laws, 1956, ch. 252; Laws, 1958, ch. 279; Laws, 1996, ch. 417, § 9; Laws, 1998, ch. 306, § 5; Laws, 2004, ch. 397, § 5, eff from and after July 1, 2004.

### **§ 67-3-9. Local option elections in certain municipalities.**

Any city in this state, having a population of not less than two thousand five hundred (2,500) according to the latest federal census, at an election held for the purpose, under the election laws applicable to such city, may either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale and the receipt, storage and transportation for the purpose of sale of beer of an alcoholic content of not more than five percent (5%) by weight. An election to determine whether such sale shall be permitted in cities wherein its sale is prohibited by law shall be ordered by the city council or mayor and board of aldermen or other governing body of such city for such city only, upon the presentation of a petition for such city to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. In like manner, an election to determine whether such sale shall be prohibited in cities wherein its sale is permitted by law shall be ordered by the city council or mayor and board of aldermen or other governing board of such city for such city only, upon the presentation of a petition to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. No election on either question shall be held by any one (1) city oftener than once in five (5) years.

Thirty (30) days' notice shall be given to the qualified electors of such city in the manner prescribed by law upon the question of either permitting or prohibiting such sale, said notice to contain a statement of the question to be voted on at said election. The tickets to be used in said election shall have the following words printed thereon: "For the legal sale of beer of an alcoholic content of not more than five percent (5%) by weight"; and the words "Against the legal sale of beer of an alcoholic content of not more than five percent (5%) by weight," next below. In making up his ticket the voter shall make a cross (X) opposite the words of his choice.

If in said election a majority of the qualified electors voting in the election shall vote "For the legal sale of beer of an alcoholic content of not more than five percent (5%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order permitting the legal sale of such beer in such city. If in said election a majority of the qualified electors voting in the election shall vote "Against the legal sale of beer of an alcoholic content of not more than five percent (5%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order prohibiting the sale of such beer in such city.

All laws or parts of laws in conflict with this section are hereby repealed to the extent of such conflict only, this section being cumulative and supplementary.

**Sources:** Codes, 1942, § 10208.5; Laws, 1950, ch. 501, §§ 1-3; Laws, 1996, ch. 417, § 10; Laws, 1998, ch. 306, § 6, eff from and after July 1, 1998.

#### **§ 67-3-11. Homemade wine.**

Every person shall have the right to make homemade wine for domestic or household uses only, free of all restraint by this chapter or otherwise, and no such election as provided for in Sections 67-3-7, 67-3-9 and 67-3-13, shall deprive any person of the right to make homemade wine for domestic or household uses only.

**Sources:** Codes, 1942, §§ 10209, 10227; Laws, 1934, ch. 171.

#### **§ 67-3-13. Prohibition against possession of light wine and beer in dry counties; penalty; exceptions.**

- (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. 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.

**Sources:** Codes, 1942, § 10208; Laws, 1934, ch. 171; Laws, 1942, ch. 224; Laws, 1956, ch. 252; Laws, 1958, ch. 279; Laws, 1987, ch. 349; Laws, 1996, ch. 417, § 11; Laws, 1998, ch. 306, § 7; Laws, 2004, ch. 397, § 6, eff from and after July 1, 2004.